

FREEDOM OF PRESS: A STUDY IN CONTEXT OF THE INDIAN CONSTITUTION

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There has always been an emphasis on the importance of free speech to the healthy functioning of a democratic society. In the democratic world, the topic of press freedom has been the subject of several disputes over the past few decades. Today, a state's legitimacy as a democracy is considered in part by the freedom it provides to the press. The press covers the social, political, economic, and cultural life of the country thoroughly and impartially. It is widely agreed that the press is among the most vital institutions of any democracy since it serves as the watchdog over government and as the fourth pillar of the Constitution. The foundation of any democracy, and especially one as diverse as India's, is the presence of a free, independent, and influential media. One of the roles of the media is to shape public opinion on issues that are on the local, national, and global agendas. When the people have power, we get a democracy. A structure built on three solid bases. Even though modern Indian society has become unsteady on its three legs—the executive, the legislative, and the judiciary—a fourth pillar i.e. the media, has emerged thanks to the protection provided by Article 19 (1)(a)¹. Given the media's newfound prominence, journalists must maintain the highest standards of objectivity and professionalism in their coverage. No individual has an absolute right to freedom in a democratic society. Media freedom must be utilized within acceptable limits. There is a price to pay for having so much influence like Article 19(1)(a), the freedom guaranteed by this provision is contingent upon the need to avoid breaking the law. This paper is an attempt to recognize the role of media in our country, the freedom that is provided to media for its proper functioning, reasonable restrictions by the Government on the media, and various case laws to thoroughly understand the stand of media in the country.

Keywords: Democracy, Influential Media, Legislature, Judiciary, Media Freedom.

INTRODUCTION

Freedom of Press refers to the unfettered ability to share ideas and information via all necessary means, be they traditional or nontraditional media, print or digital. Such liberty can exist in the absence of coercive governmental action but it can be safeguarded through constitutional or

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¹ Constitution of India 1950, art 19(1)

other legal means. Indian newspapers date back to when India was still under British dominion, the British government passed several laws to regulate the media including the Indian Press Act 1910, the Indian Press (Emergency) Act etc. between 1931 and 1932. The Defence of India Act gave the government sweeping authority during World War II that it used to impose press censorship and limit information flow. All actions on the press who were reporting the Congress actions were prohibited at this time and the view has shifted since the end of the Constitutional Period while freedom of press is guaranteed by the Bill of Rights in the United States Constitution, as it was not specifically mentioned in the Indian Constitution. There has been widespread consensus, however, that press freedom is encompassed by the words 'speech and expression' in Article 19(1)(a)². Freedom of the press means that newspapers can publish and distribute their information without fear of retaliation from the government. Article 19(2)³ of the Constitution imposes limitations on the powers granted by Article 19(1)(a)⁴.

LITERATURE REVIEW

'Freedom of Press in India: A Fundamental Right?',⁵ written by Tauseef Jawed of Alliance University, Bengaluru. The author of this article not only provides a comprehensive explanation of what 'freedom of the press' means but also details the historical context of the concept by analyzing the numerous laws that were in effect throughout that era. The author emphasizes the significance of having a free press in a democratic society. He continues by elaborating on the role of the press as a cornerstone of democracy. In addition to this, he is responsible for the passage of numerous laws in India that regulate the freedom of the press. He then goes on to discuss the current state of affairs about the freedom of the press in India. Along with the conclusion, the author wraps up the article with a variety of suggestions coming from his perspective.

B. Mugundhan and C. Renuga in their paper titled 'A Study on Freedom of Press in India: Concerning Article 19'⁶ contains extensive information regarding the definition of freedom of the press as well as the historical context of 'freedom of press' in India. The author goes on to

² *Ibid*

³ Constitution of India 1950, art 19(2)

⁴ Constitution of India 1950, art 19(1)

⁵ Tauseef Jawed, 'Freedom of Press in India: A Fundamental Right?' (2021) 2(2) Burnished law journal <<http://burnishedlawjournal.in/wp-content/uploads/2021/04/FREEDOM-OF-PRESS-IN-INDIA-A-FUNDAMENTAL-RIGHT-BY-TAUSEEF-JAWED-1.pdf>> accessed 10 October 2023

⁶ B. Mugundhan and C. Renuga, 'A Study on Freedom of Press In India: With Reference To Article 19 Introduction' (2018) 120(5) International Journal of Pure and Applied Mathematics <<https://acadpubl.eu/hub/2018-120-5/4/329.pdf>> accessed 10 October 2023

discuss the current state of press freedom in India as well as the country's accomplishments in this area. In the following section, he contrasts the Freedom of Press: A Constitutional Perspective in India with the Constitution of the United States of America. The author wraps up the piece by offering several recommendations from his perspective on how the freedom of the press in India will be improved from its current state.

Rahesha Sehgal and Udit Malik in their paper titled 'Press Freedom in India: A Legal Study'⁷ placed special emphasis on the significance of press freedom and its associated historical backdrop. The author continues their discussion on the Constitution's protection of the freedom of the press. The constitutional mandate provided to the press in India is compared with the constitutional mandate given to the press in the United States. The author goes on to comment further on a variety of legislative advantages that are granted to its members. The author concludes the article by offering a few recommendations that might be used to improve press freedom in India.

'Fourth Estate in the Constitutional Ambit Analyzing Free Speech under Democracy'⁸ by Prateek Shanker investigates the significance of the right to a free press as well as its historical context. The author goes on to discuss the significance of Article 19, its applicability and how it has changed over time about the press. The author provides additional information regarding the subsequent posture of the press, the censor scissors, and the idea of a media trial. He goes into additional detail on the notoriety of sting operations and the scope of Article 19 in his paper.

RESEARCH METHODOLOGY

The paper was created by performing an in-depth research study on a variety of books, journals, and research papers written by well-known authors. The creation of the work makes use of information obtained from secondary sources. To provide further context for the subject that is currently being discussed, several different case laws have been stated.

⁷ Rahesha Sehgal and Udit Malik, 'Press Freedom in India: A Legal Study' (2018) 4(5) International Journal of Advance Research and Innovative Ideas in Education

<http://ijarjie.com/AdminUploadPdf/Press_Freedom_in_India_ijarjie9081.pdf> accessed 10 October 2023

⁸ Prateek Shanker Srivastava, 'Fourth Estate in the Constitutional Ambit- Analyzing Free Speech under Democracy' (RMLNLU, 2009) <http://www.rmlnlu.ac.in/webj/prateek_shanker_srivastava.pdf> accessed 10 October 2023

RESEARCH OBJECTIVES

1. To have an understanding of what 'freedom of the press' means.
2. To have an understanding of what 'freedom of the press' means in terms of significance.
3. To have an understanding of the history of freedom of the press.
4. To investigate the constraints placed on the right to freedom of the press in India.
5. To acquire an awareness of the state of affairs regarding the freedom of the press in India.

RESEARCH HYPOTHESIS

H1 – Free media is essential for the development of the country.

H2 – Democracy cannot be sustained without a free press.

FREEDOM OF PRESS

Freedom is defined as the absence of tyranny, constraint or control. Therefore, 'freedom of the press' refers to the privilege of publishing without governmental censorship. However, Freedom, like other freedoms, is not unlimited but is subject to well-known limitations acknowledged in the public interests, which are enumerated in Article 19(2)⁹ of the Indian Constitution.

It is widely believed that the primary goal of the free press guarantee is to establish a fourth institution external to the government as a further check on the three official branches:

- Executive.
- Legislative.
- Judiciary.

There is no governmental or legal restriction on the free flow of information, ideas, knowledge, and thoughts in a situation. The First Amendment to the U.S. Constitution protects the right to free speech and the government stifles the press. Indian leaders certainly knew of the US First Amendment and Thomas Jefferson's famous declaration: 'Were it left me to determine whether we should have a government without newspapers or newspapers without a government, I would not hesitate for a moment to prefer the latter.' Jawahar Lal Nehru held a like mind. Given

⁹ Constitution of India 1950, art 19(2)

the choice between a free and an oppressed or regulated press, I would opt for the former every time. I disagree with everything you say, but I will defend your right to say it to my death, Voltaire once stated.¹⁰

Mrs. Gandhi's distrust of the media runs deep. She felt the press had given too much attention to student turmoil in the country. She said, 'How much liberty should the press have in a country like India which is involved in fighting a war against poverty, backwardness, superstition, and ignorance?' Mrs. Gandhi refused to offer suggestions on possible press restrictions and instead left that decision up to the country's most prominent newspapers and journalists. When Mrs. Gandhi declared an emergency nine years later, immediate strict censorship was instituted. Finding the facts and sharing them with the public is central to my idea of a free press. People must have the liberty to speak their minds and make their opinions known to the public if the democratic way of life is to survive. Press freedom is essential for a healthy and prosperous society, as the press is a potent medium of mass communication. If citizens' right to free speech was restricted, their ability to sway public opinion would inevitably suffer. Press freedom, the right of the citizen to information, and the right to freedom of speech and expression are all limited beyond what is allowed under the Constitution. All of these laws and regulations must be followed to maintain public safety and protect the state's independence and integrity.¹¹

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SIGNIFICANCE OF FREEDOM OF PRESS

The freedom of the press is often called the mother of all other liberties in a democratic society because of its central role in informing the public and galvanizing support for social change. The press is an effective check on government authority and helps ensure that elected officials remain accountable to the people they were elected to serve. One of the most important intermediaries between the government and the people is the free press. Therefore, press

¹⁰ Npradhan 'Constitution of India-Freedom of Speech and Expression' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-572-constitution-of-india-freedom-of-speech-and-expression.html>> accessed 10 October 2023

¹¹ Dr. Jhumur Ghosh, 'Indira Gandhi's Call of Emergency and Press Censorship in India: The Ethical Parameters Revisited' (2017) 8(1) *Global Media Journal – Indian Edition* <<https://www.caluniv.ac.in/global-media-journal/Article-Nov-2017/A4.pdf>> accessed 10 October 2023

freedom must be safeguarded along with the freedom of individuals even inside the press, and any attempt to limit press freedom must be thwarted.¹²

HISTORY OF FREEDOM OF PRESS IN INDIA

The fight for free expression in India may be traced back to the 18th century when it was first waged against the British in India. Press freedom in India has evolved alongside the country's nationalist struggle. Repression of free speech and expression was used in the fight against the nationalist movement for a free India. These laws were passed to quell any potential for a united front against colonial oppression. The British government felt the need to periodically implement the repressive laws to neutralize the power of the print media demonstrating the press's indispensable role in fostering political consciousness.¹³

Publication and Press Act 1867: The Press and Registration of Books Act 1867 is the earliest press-specific law still on the books. However, the goal was to have the government regulate press freedom. It was a statute that allowed the Indian government to keep archives of books and other printed materials in India and to register printing machines and publications.¹⁴

Official Secrets Act 1923: The Official Secrets Act of 1923 affects the media disproportionately because it protects state secrets from leaks, sabotage, and other security concerns. The Indian Press (Emergency) Powers Act of 1931 requires the media to protect the Executive. The Criminal Law Amendment Act of 1932 permitted a provincial government to order a printing press to post a security that would be lost if the press published material promoting Section 4's illegal acts. These actions included but were not limited to, promoting hatred or disdain for the government, discontent with the government, and hostility and enmity between subject classes.¹⁵

The Press (Objectionable Matter) Act 1951: The Press (Objectionable Matter) Act 1951 included a seemingly innocent prologue to prevent crime-encouraging printing and publication. Certain changes were made and The Act of 1931 was a perpetual law, but the Act of 1951 was only in effect for two years. The new Act required a judicial inquiry by a Sessions Judge before

¹² 'Press Freedom' (*News Media Association*) <<https://newsmediauk.org/topics/press-freedom/#:~:text=A%20free%20press%20is%20fundamental,of%20voices%20to%20be%20heard>> accessed 10 October 2023

¹³ Jawed (n 5)

¹⁴ The Press and Registration of Books Act 1867

¹⁵ Official Secrets Act 1923

a printing press security can be demanded or forfeited to the government and the person against whom a complaint had been made could demand a jury and appeal the Sessions Judge's order to the High Court to decide the matter.¹⁶

In 1965, Congress passed the Press Council Act: In 1965, the British model was followed when the Press Council Act of 1965 established a press council. This law was designed to provide legal force to the findings and recommendations of the Press Commission. The Press Council was established to protect press freedom and raise the quality of India's newspapers. Its purpose was to establish guidelines for the publication of material that did not violate any laws but was nonetheless deeply offensive to most people.¹⁷

FREEDOM OF PRESS: A CONSTITUTIONAL MANDATE

First, protecting people's freedom of thought, speech, and belief is one of the main goals of India's constitution, as stated in the preamble. Article 19(1)(a)¹⁸ titled 'Freedom of Speech and Expression' is where the media gets its power and it is a basic human entitlement. Although press freedom is not given its article but is protected under this Article.

Article 19(1)(a) mentions that the media obtains the rights given to every citizen of India, which reads as follows: *Individuals have the right to (a) freedom of speech and expression;*

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.

When citizens have the right to free speech and expression, the media benefits as well. Therefore, the media has the same freedom of expression guarantees as any other citizen.

RESTRICTIONS ON FREEDOM OF PRESS IN INDIA

The importance of a free and independent press in a democratic society cannot be overstated. However, no freedom can be full or completely unconstrained; hence, it is also important to set

¹⁶ The Press (Objectionable Matter) Act 1951

¹⁷ Press Council Act 1965

¹⁸ Constitution of India 1950, art 19(1)

some constraints on this freedom for the sake of maintaining social order. Accordingly, the State may adopt a law restricting the right to freedom of the press in the interest of the public for the following reasons, as stated in Article 19(2)¹⁹ of the Constitution of India:

- Sovereignty & Integrity of India
- Security of the State
- Friendly relations with Foreign States
- Public Order
- Decency or Morality
- Contempt of Court
- Defamation
- Incitement to an Offence.

All the reasons given above are clearly nationalistic or societally beneficial. The first group of justifications—sovereignty, India's territorial integrity, and security; India's ties with other states; and the maintenance of public order—are all matters of national interest. On the other hand, the second group of justifications—contempt of court, defamation, and incitement to an offense—all relate to the public good. However, the judiciary has the duty under Article 19 to verify that any limits placed on the media by law are proportional to those aims. Since the question of reasonableness is essentially for the Court to resolve, the matter is brought within the jurisdiction of the court by the possibility of reasonable constraints under the Indian Constitution.

Thus, the Supreme Court of India ruled in **Prabhu Dutt v Union of India**²⁰ that access to information about how the government operates is protected by the First Amendment's guarantee of press freedom. While the press has the right to freely gather information, this freedom is not unlimited and can be limited to protect society and the privacy of individuals. When a person willingly provides information, they are within their rights to collect it.

The Supreme Court of India, in **Papnasam Labour Union v Madura Coats Ltd.**²¹, has outlined some guidelines for determining whether or not a statutory provision restricting fundamental rights guaranteed by Articles 19(1)(a)–(g) is constitutional when challenged based

¹⁹ Constitution of India 1950, art 19(2)

²⁰ *Prabha Dutt v Union of India & Ors* (1982) SCR 1 1184

²¹ *Papnasam Labour Union v Madura Coats Ltd* (1995) SCC 1 501

on the unreasonableness of the restriction it imposes. The Indian Supreme Court agreed with the following statement from **Pennekamp v Florida**²², made by the US Supreme Court (Frankfurter, J.): ‘If men, including judges and journalists, were angels, there would be no problem of contempt of court.’ The Indian Supreme Court in its decision in *Roe Arundhati Roy* cited this statement. ‘Angelic jurists wouldn't be bothered by outside influences, and angelic media wouldn't try to sway them. To ensure that judges can make decisions for the community as fairly as is given to the lot of men to determine, the authority to penalize for contempt is not granted to judges. A judge's authority to penalize contempt of court serves as a protection not for the judges themselves but for the institution they uphold.’

The petitioner, a labour union activist, was sentenced to six months imprisonment together with the newspaper's editor, printer, publisher and reporter in the case **Rajendra Sail v MP High Court Bar Association**.²³ They erred when they printed slanderous comments made by a union activist during a protest of workers against the judges of a High Court based on a report filed by a trainee journalist. The High Court's ruling was described as ‘rubbish’ and ‘fit for a dustbin’ in the comments.

The Supreme Court affirmed the contempt charge against them on appeal, though it lightened the original punishment. The Supreme Court of India ruled in **D.C. Saxena (Dr.) v Chief Justice of India**²⁴ that only another judge can be accused of misconduct, partiality or incompetence. The courts were established by the Constitution to dispense justice and this safeguard is meant to ensure that judges can do their jobs without fear of reprisal.

STATUS OF FREEDOM OF PRESS IN INDIA

In the landmark case **Romesh Thapar v State of Madras**²⁵, Justice Patanjali Shastri wrote, ‘Freedom of speech & the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.’ Madras has banned the import and distribution of Bombay-printed *Cross Road*, an English-language magazine. ‘Without liberty of distribution, publishing would be of little value’ this violated free speech.

²² *Pennekamp v Florida* 328 U.S. 331 [1946]

²³ ‘Indian Judiciary and Freedom of Press’ (*Legal Service India*)

<<https://www.legalservicesindia.com/law/print/1046>> accessed 12 October 2023

²⁴ *Dr. D.C. Saxena v Hon'ble the Chief Justice of India* (1996) SCC 7 216

²⁵ *Romesh Thappar v the State of Madras* (1950) SCR 594

‘One-sided information, disinformation, distortion, and noninformation, all equally generate an uninformed population which makes democracy a farce’ the Supreme Court of India said in **Union of India v Association for Democratic Reforms**²⁶. Information sharing is part of the First Amendment's free exchange of ideas. **Indian Express Newspapers v Union of India**²⁷ established that the press is vital to democracy. The courts must overturn press-restricting laws and executive orders. Press freedom has three elements. Everyone should have equal access to speech, press, and information distribution.

Numerous laws have stifled press freedom. In **Sakal Papers v Union of India**²⁸, the ‘Daily Newspapers (Fee and Page) Order 1960’ was found to violate the right to free speech and unjustifiably limit it. In **Bennett Coleman and Co. v/s Union of India**, the court invalidated the Newsprint Control Order because it violated Article 19(1) i.e. Right to freedom of expression and was not a reasonable restriction. The Court rejected the Government's claim that this would boost local newspapers.

CURRENT SCENARIO

As we have already established, the press plays a critical role as a watchdog over the other two branches of government in a democracy. Citizens have the right to freedom of speech and press, yet the media nevertheless faces many obstacles. In the recent past, the portal Tehelka.com was forced to shut down completely, and its journalists were regularly harassed, all because the journalists discovered a ‘scam’ in the defense ministry involving ex-defense personnel and central government ministers. There have been numerous incidents in which journalists have been physically threatened or assaulted.

Morality and Decency: When it comes to the press's freedom of expression, ‘morality’ and ‘decency’ are often used as justifications for limiting that right. Several statutes regulate these two factors. There are additional judicial rulings beyond the scope of these statutes. Neither of these words refers to anything in particular. In different societies, these will take on different forms. Generations pass, and so do the norms, as do the views of individual judges.

²⁶ *Union of India v Association for Democratic Reforms and Anr* 2002 (3) SCR 294; *People's Union for Civil Liberties and Anr v Union of India and Anr* AIR 1997 SC 568

²⁷ *Indian Express Newspapers (Bombay) Private Ltd. v Union of India* (1985) SCR (2) 287

²⁸ *Sakal Papers (P) Ltd. & Ors v the Union of India* (1962) SCR 3 842

The Supreme Court made this observation in the case of **Chandrakant Kalayandas Kakodkar v State of Maharashtra**,²⁹ saying, ‘Such ideas vary from country to country depending on their moral standard.’ However, even within a single country like India, moral standards shift at different distances. That is why it is so hard to put these ideas in a box.

Vulnerable Matters: The average person has a responsibility to be abreast of current events and other matters of public importance. This privilege, however, does not extend to learning the identity of a celebrity's rape victim or the details of their problems. The news media is not interested in these details since they are not considered newsworthy. In the State of Punjab v Gurmit Singh, it was argued that rape victims' identities should be kept to spare them public humiliation and to ensure that the best possible evidence is collected and something the victim may be unable to do if she is out in public.³⁰

The Supreme Court confirmed the legality of Section 30 of the Prevention of Terrorism Act, 2002³¹, which allows in-camera proceedings to be undertaken if a witness's life is in danger. This case was **People's Union for Civil Liberties v Union of India**³². The witness's name and location are shielded from public view in such proceedings. All sorts of laws exist to keep people's identities secret and to conduct proceedings in private. This means that in some circumstances, the highest level of security must be afforded to personal and sensitive information, as this is implied in Indian Law.

Contempt of Court: Contempt of court occurs when sub-judice topics are discussed and condemned in the press. This reduces the judiciary's role in delivering justice. When a case is before the court, the media must let it play out. They can report fairly in court. Wait for the case's conclusion. This is the logic behind **Rajendra Sail v MP High Court Bar Association**³³. The Supreme Court admonished the media against sensationalizing matters and emphasized self-regulation. It stated the media's reach is great and many people trust its reports. Press freedom should benefit the people. The court said the press should have a way to analyze news accounts on institutions like the courts, which cannot respond to publications. They should use press freedom carefully. Truth and honest faith are normal contempt defenses.

²⁹ *Chandrakant Kalyandas Kakodar v the State of Maharashtra and Ors* (1970) SCR 2 80

³⁰ *Sehgal* (n 7)

³¹ Prevention of Terrorism Act 2002, s 30

³² *People's Union for Civil Liberties and Anr v Union of India and Anr* AIR 1997 SC 568

³³ *Indian Judiciary and Freedom of press* (n 23)

Recent trends of trial by media: Recently, the press, particularly the electronic media, has been quite eager to seize and report on it even before the Police or other channels have had a chance to learn about it. Even if this kind of investigative journalism is important, it is getting out of control. There is no way to put any controls on it.³⁴

SUGGESTION AND RECOMMENDATIONS

The main goal of the government should be growth with freedom. When considering the role of the media in India, it is imperative to keep in mind the importance of a free press in creating an educated and engaged citizenry that is aware of and prepared to address the challenges facing their country. Only with such a free press can a fledgling democracy like India thrive and grow in a way that protects and promotes social justice and the interests of the average citizen.

The press needs to improve. One shouldn't make excuses for the Indian press's shortcomings. Almost all newspapers take a soft stance toward private companies and their owners. This is due in part to the ideology of the people who own many newspapers and, by extension, the publications themselves when it comes to appointing top journalists. Reporters and editors are hampered in their ability to report the news and express their opinions because of pressure from their capitalist owners. Therefore, it's important to keep the pressure from the owners down to a minimum.

Small and independent papers should be encouraged. At the same time, constructive measures must be taken to ensure the continued existence and growth of alternative publications. Their needs should be met by the kinds of broad institutions that encourage the development of independent businesses of all sizes.

There should be no fear of the government among the media. This fight is essential because the State continues to pose the greatest threat to press freedom, as seen by events around the world and in our own country since independence.

All the obstacles to granting the Press unrestricted freedom to report on and comment on all aspects of national life so that the citizens of our fledgling democracy can stay informed are evidence that the Press needs special protection. Many scholars have concluded that Article

³⁴ Sehgal (n 7)

19(1)'s guarantee of free speech is more than sufficient to safeguard the press. In addition, the suggestions of the National Commission to Review the Operation of the Constitution must be taken into account (NCRWC). Article 19(1)³⁵ has been proposed to be revised to include press-media freedom.

CONCLUSION

Democracy values press freedom. 'Representative democracy and the press are so connected that the press is now a democratic institution.' Analysts say democracy has four pillars: judicial, executive, legislative, and media. The legislature sets legislation and oversees executive performance. In a democracy, the people must be well-informed and free to participate in public affairs by having options. The press reveals government flaws. Most people read and watch the newspaper and TV news. If newspapers and electronic media are allowed to represent different points of view, including those of the opposition, the people can have free opinions and discussions on public concerns.

Suggestive Measures:

- Article 19 can encompass journalistic freedom.
- Parameterize press freedom.
- Cheap and timely information is needed.
- The press should respect privacy.
- The free press must promote law and order.
- The law must govern the free press.
- The press ensures fair, open, and above-board trials, yet it can be punished for noncompliance.
- Press freedom is limited.

³⁵ Constitution of India 1950 art 19(1)