

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 4 | Issue 2

2022

© 2022 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in the International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Legal Science and Innovation**, kindly email your Manuscript at submission@ijlsi.com.

Powers and Privileges to the Fourth Pillar of Indian Democracy

RITU BHARDWAJ¹ AND SIDDHARTH BHARDWAJ²

ABSTRACT

In India, Media is considered the fourth pillar of democracy. Democracy is founded on the principle that people have a say in the governance of the country. The press or media gives them the platform to say what they want. They play an important role in framing the opinion of society and people at large. This pillar is capable of changing the whole viewpoint through which people perceive various events. We all know that the circulation of newspapers and magazines in English as well as the various regional languages has been continuously growing in our country. Moreover, the advent of cable television, local radio networks, and the internet has greatly improved the reach and impact of mass media in the past two decades. Evidently, they make people aware of the various happening in the country and across the world. We should acknowledge that existence of free, unbiased, independent, and powerful media is the cornerstone of democracy and especially for a country like India having a mixed society. For that, it is required that these kinds of rights are backed by law so that the people are not deprived of their basic rights. But, what allows them to do so? Who empowers the press for bringing crime and other information into the public domain which affects society? Do they have any special privileges?

This article explains the necessity of a free press in the proper functioning of the country. Further, it emphasizes various power and privileges to the press and media including the right to publish legislative and judicial proceedings. Indian Judiciary has held many times that the printing and publication of the news is an essential right of the press. Although, there is no specific provision dealing with powers Courts have recognized the rights of the press time and again.

Keywords: *Democracy, Press, Media, Power, Rights, Privileges, Publication.*

I. INTRODUCTION

Powers and rights are the two sides of the same coin. So, where there is power there is a right. When someone is dragged to the court, it means

the other person possessed the power to do. It implies that one must have a right or any privilege or any immunity. Jurist Hohfeld said, “rights in the wider sense include powers,

¹ Author is an Advocate at Supreme court of India and Delhi High Court, India.

² Author is an Advocate at Supreme court of India and Delhi High Court, India.

immunities, privileges and liberties”.³ The Rights in the coming points can also be termed as power or immunity or a privilege that media possess. Even though freedom of the press has no explicit provision in the constitution of India, it still immunizes the press in various ways with various rights. Judiciary plays a significant role in not only protecting the rights of the press but prior by recognizing them. The Constitution gives the shield of the fundamental freedom to the rights and interests of the press. On one hand, it gives immunity and on other hand, it even limits such privileges for the public interest. Right of the press was observed of not much difference after British rule. In *M.S.M. Sharma v. Krishna Sinha*,⁴ the Supreme Court has observed that the “A non-citizen running a newspaper is not entitled to the fundamental right to freedom of speech and expression, and therefore cannot claim, as his fundamental right, the benefit of the liberty of the press.

II. POWER AND PRIVILEGES TO THE PRESS

The liberty of the press in India stands on no higher footing than the freedom of speech and expression of the citizen and that no privilege attaches to the press as such, that is to say, as distinct from the freedom of the citizen. In other words, the status of the right of media is the same as that of an individual. Press is obliged with basic law and enjoys no special privilege as

compared to the citizens. Although, there is no separate provision Courts have recognized the rights of the press time and again.⁵ Few privileges to Press and media are discussed as follows:

A. Right to circulation

Freedom of the press is standing on communication and dissemination of information. It is of no value without the freedom to circulate information. Right to circulation is derived from freedom of the press, which itself is derived from the right to freedom of speech and expression under Art. 19(1)(a). Therefore, the right to circulation is a fundamental right of the press. This right was recognized by Supreme Court in the case of *Romesh Thapar v State of Madras*,⁶ stating that “the freedom of the press includes the right to circulate. It is opined here that first of all the freedom of the press is implied in the freedom of speech and expression and secondly the right to circulation is implied in freedom of the press.”

The right to free press not only includes the right to publish views but also includes dispensing and circulating those views. In the *Sakal Newspapers v Union of India*,⁷ wherein Supreme Court 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).”

³ DIAS RMW, JURISPRUDENCE (5th edn., Butterworth&co,1994).

⁴ M.S.M. Sharma v. Krishna Sinha, A.I.R. 1959 S.C. 395.

⁵ Brij Bhushan v. State of Delhi, A.I.R 1950 S.C. 129; Express Newspapers Ltd. v. Union of India,

A.I.R. 1958 S.C 578; Maneka Gandhi v. Union of India, (1978) 1 S.C.C 248.

⁶ Romesh Thapar v State of Madras, A.I.R 1950 S.C 124.

⁷ Sakal Newspapers v Union of India, A.I.R 1962 S.C 305.

B. Right to publication

There appears no liberty to press without the right to publication. Press freedom to Publish news is derived from Article 19(1)(a) only. The news may include any information which may not be prejudiced to the national interest. This information may not be related to any political or public matter or issues.⁸ Freedom of publication includes the freedom to print news. Right to print is the residuary right of the right to publish for the print media. In *Re Daily Zemedar*,⁹ it was stated by the judiciary that the printing and publication of the news was the essential right of the press. The court further stated ‘that it is the right of the press to print the facts of contemporary history.’¹⁰ Hence, it can be said the right to publish itself comprises of what cannot be published.

Printing can be done by presses in order to disseminate the views, opinions or statements opined.

In *Gopal Dass v. D.M.*,¹¹ Court opined “freedom of the press includes printing of editor’s or author’s views”. A similar view was observed by Supreme Court in *Sharma v. Srikrishna*,¹² and held “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”.

C. Right to obtain information

Information can be communicated to the public only after obtaining it from the right source. For that purpose, it is essential to have the right to obtain information to present that up to the members of the society who are depending on media to gather information. In *Prabha v. Union of India*,¹³ the Hon’ble court mentioned that “the right to collect information would be meaningless if the right of access to the sources of such information would not be granted”. But on the other hand, this right is limited by limitations. The press cannot gather any such information which may harm the country or which is secretive in nature. This right does not bound government to give away such information under the name of a fundamental right. This has been stated by the judiciary’ in *Branzburg v. Hayes*,¹⁴ that the press does not have a constitutional right of access to secret information. ‘The press also enjoys one very potent right that is to collect the diversified information from hostile sources on the ground of competitive market.’¹⁵

The press can get the information through conducting interviews. But this right is qualified by two basic limitations. These are first; the interview will be started only after the interviewer obtains consent from the interviewee. Secondly; the interview will be put to an end on the consent of the interviewee.

D. Right to broadcast

⁸ *Thornhill v. Alabama*, (1950) 310 U.S. 88 (102) & *Time, Inc., v. Hill*, (1967) 385 U.S. 374 (388).

⁹ *Re Daily Zemedar*, A.I.R 1947 Lah. 340.

¹⁰ *Ibid*.

¹¹ *Gopal Dass v. D.M.*, A.I.R 1974 S.C. 213.

¹² *Sharma v. Srikrishna*, A.I.R 1959 S.C. 395.

¹³ *Prabha v. Union of India*, A.I.R 1982 S.C 6.

¹⁴ *Branzburg v. Haye*, (1972) 408 U.S 665.

¹⁵ *Himmat Lal v . Police Commr.*, A.I.R 1973 S.C. 87.

The media without the power to broadcast is like an operative machine. The concept of broadcasting was evolved rapidly after globalization and commercialization. Broadcasting means to showcase or present the program through the transmission of airwaves.

E. Right to comment, criticize and interpret

The Supreme Court gave another side to the liberty of the press by including the right to Comment under the ambit of freedom of the press in *Bennett Coleman v. State of J. & K.*¹⁶ The court observed right to freedom of the press includes freedom to comment. The right to comment on public affairs includes the right to criticize people holding public posts and also to criticize the public policies. This right is also limited by defamation and Seditious.

Criticism is very important for democracy. The right to criticism acts as an eye-opener to the faults and loopholes in the working of government in society. The media must be set free to criticize to bring out the real thing on the face. Therefore, freedom of the press even includes the power to criticize. This enables the media to interpret and analyze government activities and policies. But, the line of control that the limitations shall be supposed to be not crossed by media. Because the might make media entice the government to present better. This right shall not lead to anyway to agitation against the government. it shall not be exercised in a way leading to rebellion Hence, this right is

desired to be exercised with proper care and caution on freedom of speech and expression.

F. Right to report judicial proceedings

The power of the media to report the court proceedings is counted under the head of freedom of the press. According to Bentham ‘publicity is the very soul of justice’.¹⁷ If the judicial proceedings are kept secret then it will attract injustice in the society. The media's right to report about the court's adjudication will boost transparency and accountability. This Freedom of the press will keep a check and is bound to eliminate any biases. The judiciary makes reasonable and just decisions when the proceedings are made public by the media. The Supreme Court opined in *Naresh Shridhar Mirajkar v State of Maharashtra*,¹⁸ 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”.

G. Right to report legislative proceedings

The media has the right to attend and report legislative proceedings. But the reporting must be true and within the purview of Article 19(2). The media is bound to publish true reports of the parliamentary proceedings as per Article 361 of the Indian Constitution. Here the conflict arises between the privileges of parliament and the privileges of the press, where the right of speech and expression of the press will triumph as per the verdicts of the Supreme Court. Today in the scene of mandatory live telecast of the legislative

¹⁶ *Bennett Coleman v. State of J. & K.*, (1975) Cr LJ 211.

¹⁷ *Scot v. Scot* 1913 A.C 417.(U.S)

¹⁸ *Naresh Shridhar Mirajkar v State of Maharashtra*, A.I.R. 1967 S.C 1.

proceedings, the concept of legislative privileges really remains a question.

H. Right to advertise

The media has the privilege to act as an advertising medium. Media has the right to advertise as a freedom of the press in Art. 19. Before the verdict of Apex court in case *Tata Press v Mahanagar Telephone Nigam*,¹⁹ the advertisements were not counted under the ambit of free speech. However, later the Supreme Court acknowledged that 'even advertisements were covered under Article 19(1)(a) of the Constitution'. This case gave a new perspective on freedom of speech and expression. Later, the right to the advertisement was incorporated as a segment of freedom of speech and expression.

III. CONCLUSION

After doing intensive research and taking into consideration various issues and points raised along with the changes that happened over the period of time in a matter related to rights and powers to the fourth pillar of democracy, authors are more inclined toward the concept of having a free and independent press. In *Bennett Coleman v. State of J. & K.*,²⁰ The Supreme Court gave another side to the liberty of the press by including the right to Comment under the ambit of Freedom of speech and expression. Freedom to Publish news is derived from Article 19(1)(a) only. Vividly, there appears no liberty to press without above power and rights but in case of judicial proceeding and for the proper administration of justice it is mandatory to limit

the powers so granted. This is needed as a precautionary measure and not as a punitive measure. Media should conduct responsible journalism. It is rightly said power comes with responsibility, so where there is great power there is great responsibility.

¹⁹ *Tata Press v Mahanagar Telephone Nigam*, (1995) 5 S.C.C. 139.

²⁰ *Supra* 14.