

A Comparative Analysis among the Constitution of India and Media Laws to Maintain Checks and Balances in the Light of Freedom of Speech and Expression

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Abstract

Article 19(1)(a) of the Indian Constitution protects freedom of speech and expression, and in many ways, it is what keeps the idea of a free press alive in India. It allows people to speak, question, and debate openly things that are absolutely necessary in any working democracy. But this freedom does not come without limits. Article 19(2) steps in to put certain restrictions in place, especially when it comes to how media and press operate, making sure that freedom does not slide into irresponsibility. Over the decades, the laws around media regulation in India have changed quite a bit. The courts have played a major role time and again and the judges have stepped in to push back against censorship and stop the government from overstepping its boundaries. That said, the rise of digital media has thrown up a whole new set of problems that the legal system has not quite caught up with yet. This research paper looks at how constitutional values and media laws interact with each other, and whether India's legal setup manages to protect free expression while also keeping misinformation in check. By going through Supreme Court decisions, various laws, and regulatory frameworks, it tries to map out how media regulation has developed over the years and where the courts and parliament have made a difference. While India's judiciary has preserved the Article 19(1) in its various landmark decisions, ambiguity in statutory provisions and inconsistencies in enforcement continue to pose significant challenges. The study underscores the pressing need for a balanced approach that ensures media accountability without undermining constitutional rights. In conclusion, this research emphasizes the necessity of a well-defined and enforceable legal framework that safeguards journalistic integrity while addressing contemporary challenges. The research advocates for targeted reforms in media laws, strengthened judicial oversight, and increased public awareness to foster a media ecosystem that is both free and responsible, while sustaining national security and unity of India.

Keywords: Freedom of Speech and Expression, Media Regulation, Press Freedom, Digital Media, Judicial Oversight.

I. Introduction

The title of the present research is a comparative analysis of the Constitution of India and media laws, which are necessary to maintain checks and balances in the light of freedom of speech and expression". As the title reflects

it examines the relationship between the Constitution of India and media laws with the objective of assessing their effectiveness in maintaining checks and balances while upholding the fundamental right to freedom of speech and expression. The study employs a comparative approach, analyzing the constitutional provisions and media laws in India. Through this comparative lens, it seeks to identify commonalities, differences, and best practices that could inform potential reforms or improvements in India's legal framework governing speech regulation.

The research begins with an exploration of the constitutional guarantees of freedom of speech and expression enshrined in Article 19(1) (a) of the Indian Constitution. It examines judicial interpretations and landmark judgments that have shaped the interpretation and scope of this fundamental right, highlighting the evolving legal landscape in India. Subsequently, it provides an overview of key media laws in India, including defamation laws, contempt of court laws as per The Press and Book Registration Act 1867, The Press Council Act 1978, The Official Secrets Act 1923, The Right to Information Act 2005, The Contempt of Courts Act 1971. It analyzes the objectives and scope of these laws, assessing their compatibility with constitutional guarantees and their effectiveness.

Drawing on comparative perspectives, the study examines media laws such as The Press and Book Registration Act 1867, The Press Council Act 1978, The Official Secrets Act 1923, The Right to Information Act, 2005, The Contempt of Courts Act 1971 and regulatory frameworks in select jurisdictions known for their strong protections of freedom of speech and expression. Additionally, it evaluates the role of the judiciary in interpreting and upholding constitutional guarantees of freedom of speech and expression. It assesses significant legal precedents and court decisions shaping the interaction between the Constitution and media laws, emphasizing the importance of judicial oversight in safeguarding fundamental right freedom of speech and expression. Finally, the research discusses challenges and shortcomings in the existing legal framework governing freedom of speech and expression in India. It offers recommendations for legal reforms, policy interventions, and institutional changes to address gaps and enhance protections, aiming to foster a more robust and inclusive environment for freedom of speech and expression in India's democratic society.

Through its comprehensive analysis and comparative approach, this contributes to a deeper understanding of the complex dynamics between the Constitution of India and media laws in maintaining checks and balances while safeguarding fundamental right to freedom of speech and expression.

II. Constitutional Gurantees

The protection of individual liberties is made possible by the fundamental rights especially freedom of speech and expression. These fundamental rights work as a bridge between the state and citizens. This study makes us able to know the historical background related to colonial era and also the significance of these rights in maintaining the democracy in our country. The foundation of the constitution of India was the struggle for freedom from the British colonial rule. During the colonial era, the Indian populace endured various forms of oppression, including censorship, restrictions on freedom of speech, and arbitrary detention. The freedom movement, led by prominent leaders such as Mahatma Gandhi and Jawaharlal Nehru, mobilized mass movements advocating for civil liberties and self-governance.

The bitter taste of colonial rules compelled Indian law makers to ensure these fundamental rights to its free and independent citizens so that they not have to face the atrocities and rash behavior which they have seen during the colonial rule. The Oppressive measures which were used during the British administration forced us to make some constitutional safeguards which will prevent the country from becoming authoritarian.

Constitutional Adoption

As we all know that the constitution of India was adopted on 26-Jan-1950, the representatives from all the sections of the society and also from diverse background were chosen to be a part of Constitutional Assembly which was to be responsible for the formulation of constitution. This was done so as to make our constitution justifiable to all sections of the society. Almost all the constitutions of various democratic countries and the

countries with legal framework were studied thoroughly so that each and every good point of the others constitution could be inculcated in the constitution. Our framers of the constitution not only guaranteed fundamental rights but also kept in consideration of demographic governance, social justice and inclusive development. The passage of the Constitution was a turning point in Indian history as the country was ushered in from British colonial rule to self-government through democratic means. Constitutional promises enshrined in the Constitution were an assurance to keep alive the dreams of freedom, equality, and justice for every citizen. At last we could say that whatever freedom of speech and expression is being given in the Indian constitution is the result of long struggle of our country with colonial rule of Britain. Our freedom fighters have to shed their blood for ensuring these rights to the Indian citizen. With the help of constitutional adoption India was able to ensure principles of democracy and protection of rights of its citizen. The constitution can be regarded as a shield which is helpful in protecting our country from tyranny and guide our country to democratic ideals and inclusive governance.

Constitutional Provisions

The preamble of India serves as a guideline for the nation's goal and governance. The preamble of our country gives a strong emphasis on equality, justice, liberty equality and fraternity which are help ful in promoting individual dignity and unity of the Indian State. Although the Preamble does not grant legally binding rights, but its helpful in understanding the constitution's provisions specially related to freedom of speech and expressions.

Article 19(1)(a): The right to freedom of speech and expression is guaranteed to every Indian citizen by Article 19(1) (a) of the Constitution. Through this provision, people are free to express their ideas, beliefs, opinions, and convictions freely through speech, writing, printing, or any mode of communication. Freedom of speech and expression is basic to individual liberty as well as democratic rule, and it is believed to be necessary for a good democracy to thrive.

Limitation of Article 19(2): The freedom of speech and expression is not an absolute right which is guaranteed in Article 19(1) (a). Some limitations are mentioned in Article 19(2) regarding the curtailment of freedom of speech and expressions. The State may impose restrictions on the freedom of speech and expression if any topic is related to public order, decency or morality, defamation, incitement to commit an offense, state security, sovereignty and integrity, friendly relations with foreign states. These restrictions aim to strike a balance between individual liberties and the larger interests of society and state.

Judicial Interpretation: In the interpretation of the Article 19(1) (a) and 19(2) is done by the Judiciary. The Various landmark decisions of the supreme court of India served as a landmark in protecting the rights of speech and expressions of the citizen of India. For the protection of dissenting voices, promotion of transparency and accountability judicial interpretation plays a very important role. However, courts have also recognized the need to balance free speech with other competing interests, such as public order and national security.

III. Media Laws In India

The production, distribution and consumption of media content across the world is regulated with the help of various Media laws which forms a complex web between freedom of speech, intellectual property, privacy rights and defamation. In today's world it has become extremely important to form a legal framework between freedom of speech and other societal interests. Since a lot of information is being shared on the social media without any filters and censorship which can be considered good and healthy for the prosperity of a country. First and foremost, in many of the countries these freedom of speech principles are written in their constitution , they are also considered as a major clause of human rights. These rights are helpful for the citizen to express their views regarding any oppressions and policies of the government or government officials without any fear and hesitation. However, the protection of public health, national security, public order, and other people's rights and reputations may require restrictions on this freedom, which is not inimitable. Intellectual property laws play a crucial role in media law, as they protect the rights of creators and owners of media content. Copyright laws, for instance, grant authors, artists, and creator's exclusive rights to their literary, artistic, and musical works, preventing unauthorized use or reproduction by others. Similarly, trademark laws safeguard media

organizations' unique symbols, names, and logos to keep consumers from becoming confused.

Privacy rights are another important aspect of media law, especially in the digital age, where it is simple to access and share personal information. Laws pertaining to data protection govern how media corporations gather, store, and utilize the personal information of individuals, guaranteeing the protection and observance of their right to privacy. Additionally, whether they are published in traditional media outlets or on digital platforms, defamation laws protecting organizations and individuals from false statements that damage their reputation. Regulation of media ownership and media law puts an emphasis on competition in order to prevent monopolies or an excessive concentration of power in the hands of a small number of media conglomerates. Antitrust laws may be used to regulate mergers and acquisitions within the media industry to safeguard diversity of voices and viewpoints in the marketplace of ideas. Furthermore, there are specific regulations governing different forms of media, such as broadcasting, print journalism, online platforms, and social media. Broadcasting laws, for example, may require licenses for radio and television stations and impose content regulations to ensure compliance with community standards and values. Similarly, online content regulations may address issues like hate speech, incitement to violence, and illegal content dissemination, while also protecting net neutrality to maintain an open and accessible internet.

In addition to statutory laws, media law also encompasses case law established through judicial decisions, which interpret and apply legal principles to specific factual scenarios. Precedents set by courts play a significant role in shaping the evolving landscape of media law, particularly in areas such as defamation, privacy, and freedom of expression.

Overall, media law serves to balance competing interests and values in a rapidly evolving media environment, where technological advancements continually challenge traditional legal norms and principles. By providing a framework for responsible media practices, protecting fundamental rights, and promoting diversity and competition, media law is essential to maintaining democratic values and fostering informed public discourse. The landmark case of **Romesh Thappar v. State of Madras (1950)**⁴ established the principle that freedom of speech and expression includes the right to circulate and distribute information to the public. This case laid the foundation for judicial activism in protecting press freedom and challenging censorship laws.

In 1988, the Supreme Court of India delivered a historic judgment in the case of **S. Rangarajan v. P. Jagjivan Ram**, affirming the importance of free speech in a democratic society and striking down government censorship of a film deemed offensive to religious sentiments. This judgment reaffirmed the judiciary's role as a guardian of fundamental rights and set a precedent for future cases involving freedom of expression. The advent of digital media and the internet posed new challenges for media regulation in India. The Information Technology Act of 2000 introduced provisions governing electronic commerce, digital signatures, and cybercrime, but also included controversial provisions granting the government broad powers to censor online content deemed objectionable.

In recent years, concerns have been raised about the misuse of laws such as sedition, defamation, and the Information Technology Act to stifle dissent and intimidate journalists critical of the government. Discussions concerning how to strike a balance between public order, freedom of expression, and national security have been triggered by the targeting of bloggers, journalists, and social media users for their online posts. Despite these challenges, India's vibrant media landscape continues to play a vital role in informing public debate, holding authorities accountable, and amplifying diverse voices. As India navigates the complexities of a digital age, the need for a robust legal framework that protects media freedom while addressing emerging threats to individual rights remains paramount.

Freedom of Press - Media Laws

The Article 19(1)(a) of the Indian Constitution writes about the Freedom of Speech and expression. But there are some restrictions also with these laws or rights for the better functioning of public order, morality and security of the state. The main role of media is to inform the general public about the wrong policies of the government and authority thus making the government accountable for all its works and this property of media

makes it a fourth pillar of democracy. So as to maintain the high standards of the press and the media the Press Council Act of 1978 was established so as to regulate and govern the functioning of the media and press in India. The Cable Television Networks (Regulation) Act which was formulated in 1995 was made to regulate and govern the cable networks present in India. The above act kept or still keeping a close eye on the working and content of the various TV channels. The Information Technology Act of 2000 addresses issues related to electronic commerce, digital signatures, and cybercrime, impacting online media platforms.

Now the main question arises that why there is a need for these legal protections for the press. So the answer to this would be that there are many incidence in the past where the journalists were being harassed and tortured for putting the real news and information in front of the public. Issues such as censorship, self-censorship, and media ownership concentration also raise concerns about the independence and diversity of the press. The huge landscape of media stands as a vital pillar of democracy which is capable of shaping public discourse and informing it's citizen about the important information pertaining to some critical issues.

Scope of Power of Press

For the successful democracy the power of press plays a very vital role. The responsible press is very important as it serves as a watchdog to the society by making the government accountable for all its deeds whether good or bad. It controls the corruptions by keeping a strong watch on the government agencies. With the help of press the normal public can able to know the working criteria of the government and its offices. Thus during the elections they can use this information accordingly for electing their government. The press are of different kinds such as print media, broadcast media and digital media. Among all the above most liked and popular is the Print media as it has reach in every corner of the country due to its cheap availability. The broadcast media which includes TV and radio has also very good amount of reach because it makes the news very interesting and the person does not have to be educated enough to understand it. The last digital media includes the news circulated on internet. Now a day the internet usage in the country has grown whether it is city or village. The use of Smartphone has made the access of the news on internet very common. Thus it will not be contrary to say that in future this digital media will rule the world and our country.

There are some challenges also faced by the press. In today's scenario every individual wants to become rich in a short span of time so the ethics of journalism which is supposed to be backbone of the true journalism is vanishing day by day. Now days the journalists are using the media as an instrument of blackmailing others and getting huge funds in return. Most of media houses are taking funds and are promoting Paid news which are generally far away from the reality. Media organizations have a responsibility to serve the public interest, prioritizing the dissemination of accurate and reliable information over commercial interests or political agendas.

Restrictions on Freedom of Press and Media

In Indian constitution freedom of press is the fundamental rights of Indian citizen but with certain limitations and restrictions. These restrictions were important for national security, law and order and unity of the country. In Indian constitution Article 19(1)(a) is for fundamental rights of freedom of speech and expressions whereas Article 19(2) is about the restrictions placed on the rights of media under some special circumstances.

These restrictions and limitations can be of different types and forms, including censorship, content regulation, licensing requirements, defamation laws. Governments may censor or regulate media content deemed seditious, obscene, or harmful to public order or national security. Licensing requirements may be imposed on media outlets, limiting the number of players in the market and controlling the flow of information.

Defamation laws may be used to restrict the publication of counterfeit news and information which can prove dangerous for the country/ institutions or individuals. Restrictions on access to information may hinder journalists' ability to investigate and report any information which could in the interest of the country and its citizens, particularly when the government agencies withhold or classify information as confidential.

IV. Check And Balances Between Constitution And Media Law

The constitution and media law works as sieve which filters the counterfeit news and information from the element necessary for the freedom of speech and expression. The constitution is superior and all the laws has to formulated in line with the constitution, thus establishing a legal ground which has the ability to enhance the governance and the freedom of speech and expressions. Media laws establish, however, the legal framework and directives overseeing the functioning of media institutions and the sharing of information. Together, they form a sieve like structure which protects the rights of individuals while promoting the issues which are good for public.

There are many articles in the constitution which acts as guide for the media laws. The Article 19 of our constitution states about the Freedom of speech which forms a base for freedom for press. These rights serve as the bedrock of a free and democratic society, empowering individuals to express their opinions, share information, and participate in public debate without fear of censorship or reprisal. The Article 19(2) states about the limitations put on the freedom of speech and expression which is necessary for the integrity and unity of our country.

Media laws, derived from constitutional principles, translate these rights and restrictions into actionable regulations governing the operation of media organizations and the conduct of journalists. These laws encompass a wide range of issues, including defamation, privacy, intellectual property, broadcasting standards, and access to information. They aim to balance the need for a free and vibrant media with the tools necessary to stop counterfeit news and information.

One example of the checks and balances between the constitution and media law is the concept of prior restraint. The freedom of press and the media laws may allow for certain restrictions on the topics which are related to national unity and peace of our country. However, any such restrictions must meet strict constitutional standards, including the requirement of a compelling state interest and the absence of less restrictive alternatives [9].

Similarly, defamation laws provide strict laws for false and defamatory statements published by the media. While these laws serve to protect individual reputations, they must be in line with the fundamental right of freedom of speech and expression given in Article 19(1) of the constitution. Courts may strike down defamation laws that unduly restrict legitimate speech or impose disproportionate penalties on media organizations.

The judiciary serves as a monitor between the constitution and media law. Courts interpret constitutional provisions and apply them to specific cases involving media freedom and regulation. Through judicial review, courts have the power of checking whether the media laws and government orders or schemes are in line with the constitution or not.

The checks and balances between the constitution and various media-related laws in India serve as a platform where all the news and information are checked so that the counterfeit news can be stopped and thus maintaining the rule of law.

The Constitution of India, , provides the system of laws within which all other laws, including media-related legislation, must operate. In our constitution various fundamental rights are given such as freedom of speech and expression (Article 19(1) (a)), right to information (Article 19(1) (g)), and right to life and personal liberty (Article 21).

- **The Press and Books Registration Act, 1867:** The British government passed this act so as to control seditious publications, it also restricted press freedom. However, its provisions were in constant judicial review so that it could be justified that any restrictions imposed is reasonable and necessary.
- **The Official Secrets Act, 1923:** This act was formulated so as to protect the secrets and sensitive information from being disclosed. While it may impose restrictions on the media for reporting certain information which were confidential. Courts have interpreted the act narrowly to ensure that it does not unduly infringe on press freedom.

- **The Contempt of Courts Act, 1971:** The above act was formulated to punish the offenders who did not followed the orders of the court or lowered the prestige of court. Its application to media reporting has been subject to constitutional scrutiny. From the starting courts have stated that the freedom of press is very important for ensuring transparency and accountability in the judiciary while also balancing it with the need to respect the independence of the judiciary.
- **The Press Council Act, 1978:** This act was established for maintaining the high standards of journalism. While it was formulated to put some limitations and regulate the functioning of press but in no means it interfered in the freedom of press. The Press Council operates within the constitutional framework and cannot impose sanctions that violate fundamental rights.
- **The Right to Information Act, 2005:** This act was formulated for making the Indian system of governance more transparent and corruption free. In this act it was mentioned that the citizen of India can ask for any information from any government offices and that department has the obligation to give that information in that limited time frame. It complements the constitutional right to information and serves as a tool for promoting good governance. However, the act is also subject to constitutional limitations, ensuring that any restrictions on the right to information are reasonable and in public interest.

Overall, media-related laws play a very important role in the protection of national security, unity and integrity of our country. The judiciary acts as the ultimate arbiter, which is given the duty of interpreter which means that any rule or act which is not according to the spirit of the constitution, the Judiciary has the power to make it null and void.

V. Conclusion

The comparative analysis between the Constitution of India and media laws shows that a great amount of balance is necessary for the protection of Freedom of Speech and Expression. Throughout this examination, it becomes evident that while media laws are essential for addressing instances of media infringement against freedom of speech but the relationship that they have with the constitutional guarantees does need some careful consideration. Our constitution has a strong framework for fundamental rights, particularly Article 19(1)(a), serves as the bodyguard of freedom of speech. The judiciary, through its interpretation of constitutional principles, has always protected the fundamental right of freedom of speech and expression and also made sure that if any restrictions are made on freedom of speech and expression then they should be according to the permissible limits given in the constitution. Media laws, on the other hand, provide the legal framework for regulating the media industry, addressing issues such as defamation, censorship, and the dissemination of false information. While these rules and regulations (laws) are very important for maintaining accountability and responsibility of journalism. They must be read harmoniously with the spirit of the Constitution to avoid any conflict with freedom of speech [7].

At last, we can say that by doing comparative analysis we can make a balance between the freedom of speech and expression and regulatory measures related to media industry. There is strong need for the formulation of media laws which are in line with the constitutional setup of the country while also addressing legitimate concerns regarding media ethics and accountability. Ultimately, For the responsible and ethical functioning of the media we should make such regulations which are very strong balance between the constitutional setup and media laws which serves a guiding force for democracy. As we know that our constitution is the supreme law of land which means that constitution is supreme in India every person who is citizen of India must follow the constitution. So, our constitution has given us fundamental rights and with that, have made various kinds of rules and regulations which are according to these fundamental rights for the proper working of democracy. The operation of Media in our country, which comes under the freedom of speech and expression, is regulated by Media Laws. These Media laws serve as a strong bridge between the fundamental right of speech and public order, national security and individual rights. Through landmark judicial decisions, the judiciary of our country is made the interpreter of the laws by the constitution. The judiciary can be named as the guardian of fundamental rights which means that any action or law framed by the government which is not according to the

soul of constitution then it could be challenged in the court of law and can be declared null and void by the honorable courts of India.

However, challenges remain in reconciling the sometimes-conflicting interests of media freedom and other societal interests. Media laws must evolve with time and they should always maintain the strict laws to stop counterfeit news and information with keeping in mind they should not destroy the fundamental right of speech and expression. Moreover, so as to maintain public trust and confidence the digital media has to work under the ethics and norms of media which was created by our national leaders.

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