

National Security Laws and Freedom of the Press in India: Constitutional Limits, Judicial Responses, and Democratic Concerns

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ABSTRACT

Freedom of press is an integral part of a democratic country as it permits citizens to stay knowledgeable, informed and express their opinions and keep the government accountable. In India freedom of the press is safeguard under article 19(1)(a) of the Indian constitution as part of the freedom of speech and expression. This initiates an ongoing strain between the need to protect national security and need to secure a free and independent press. The study explores the friction by scrutinizing how national security laws in India affects the freedom of press and the role of the judiciary in this context. The study highlights the ways in which Courts have established principles such as reasonableness, proportionality and the requirement of a direct connection between the speech and threat to National Security.

The study also gives light on the democratic issues emerging from the exploitation of national security laws. The freedom of press praises an essential role in maintaining accountability transparency and informed public participation. When the freedom of press is curbed without reasonable justification, it diminishes the value of democratic institution and public trust. The research deduces that although judiciary has taken important measures to protect the freedom of the press, stringent safeguards and adequate standards are required to prevent misuse of national security laws. Securing an impartial and just balance between national security and freedom of the press is crucial for protecting constitutional values and nourish democracy in India.

Keywords: Freedom of the Press, Judicial Review, Media Freedom, Rule of Law, Public Interest.

INTRODUCTION

Freedom of Press is an integral part of any democratic country generally known as the Fourth pillar of Democracy. In India, the press has always played an important role in our society as it keeps people informed about what is happening in society and the functions of the government. We can derive the role of press During the British rule till now as during freedom movements newspapers helped spread awareness against British rule and it encouraged people to stand up for their rights. Even after we got independence the press has continued to act as a medium through which citizens receive information about the government policies, public issues and various social problems. The Supreme Court has also recognised that a free press is necessary for democracy to function properly.¹ At the same time the state has a responsibility to protect national security and maintain public order. There are certain challenges that India faces such as internal conflicts terrorism and threats to its sovereignty. So, to deal with these kind of challenges, National Security Laws have been enacted by government. In recent years these laws have often been used Against the journalist and media organisations against their right of Freedom of press. So, in recent years India has been facing various cases where journalists were arrested media face various restrictions and access to information was also blocked by citing national security reasons. This has created a major concern about whether these laws are really used for security purposes or just to restrict criticism against the government.² This research paper mainly focuses on rising friction and heightened tension between national security laws and freedom of press in India. Despite the fact that Constitution Permits reasonable restrictions On Freedom of Speech, the frequent and recurrent uses of

¹ Indian Constitution, Art, 19(1)(a).

² Ibid.

Security law Against journalist and media house creates feeling of anxiety or dismay and discourages independent reporting. Therefore, it is an important topic to study and research whether a balanced constitutional and democratic approach is being maintained by Government between application of National Security and Freedom of Press.³

Meaning and scope of Freedom of Press in India

Though Constitution of India does not explicitly mention freedom of press as a separate right but it is an integral part of our constitution under Freedom of Speech and Expression. The Supreme Court of India has clearly stated that freedom of press is covered within rights of freedom of speech and expression under article 19 (1)(a) Of Indian Constitution. In some of the earliest cases, the Court observed that without a free press, the right to free speech would lose its real meaning.⁴ The courts have also recognised that restrictions imposed indirectly, such as limiting newspaper circulation or placing financial controls on media houses, can seriously affect press freedom even if they are not directly banned.⁵ However, this freedom is not absolute. Article 19 (2) of Indian Constitution allows the government to impose reasonable restrictions on the fundamental right to freedom of speech and expression balancing the individual liberty with Public Interest, Public Order, morality, sovereignty of the state, security, decency, defamation, contempt of court and incitement to an offence. The judiciary clarified that the restrictions must be reasonable and implemented through Laws and it must be directly related to the specific grounds that are mentioned, preventing absolute freedom but safeguarding the core expression. Ambiguous and extensive laws create fear among journalists and prevent them from free reporting eventually hampers the Public's right to know.⁶

Concept of State Sovereignty and National Security

In General, national security refers to the protection of Country's borders, internal stability and sovereignty of the nation. It is always been a sensitive issue in country like India due to various factors such as border disputes, internal disturbances, and terrorism. To address these concerns the government enacted strict National Security Laws that provides extensive powers in the hands of authorities. While these laws are meant to protect the nation, they also have a direct impact on fundamental rights, including freedom of the press. The Constitution recognizes national security as a valid ground for restricting fundamental rights. Article 19(2) of Indian Constitution allows restrictions on free speech in the interest of state security, sovereignty and integrity of India. Also, Supreme Court of India clarified that only serious situations that has tendency to threaten the existence of State is accountable for such restrictions.⁷ Even after various guidelines stated by the Supreme Court of India the term national securities often interpreted very widely. This research examines whether national security laws are being applied in a fair manner or whether they unnecessarily limit press freedom in a democratic society.

Research Questions and Objectives

The main question addressed in this research is whether national security laws in India operate within constitutional limits when they restrict freedom of the press. To understand this issue better, the study also examines how the judiciary has interpreted press freedom and what principles courts use to justify restrictions imposed in the name of national security. The purpose of this research paper is to study the provisions of the Indian constitution related to press freedom, examine the important Judicial decisions and inspect how national security laws affect the journalism in India. The concept of freedom of an independent media plays an important role for a democratic country because it helps public stay knowledgeable, well informed and engages significantly in public roles and interaction.

³India const. Art. 19, clause (1)(a), (2).

⁴*Romesh Thappar*, 1950 S.C 124; *Brij Bhushan*, 1950 S.C 129.

⁵*Bennett Coleman & Co. v. Union of India*, (1973) 2 S.C.C. 788 (India); *Express Newspapers (P) Ltd. v. Union of India*, A.I.R. 1958 S.C. 578 (India).

⁶*S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 S.C.C. 574, 586 (India).

⁷*Superintendent, Cent. Prison v. Ram Manohar Lohia*, A.I.R. 1960 S.C. 633, 639 (India).

Research Methodology and its Sources

This research follows a doctrinal and analytical method of study. It mainly relies on constitutional provisions, national security laws, and judgments delivered by the Supreme Court and High Courts. Important cases related to press freedom, sedition, internet shutdowns, and surveillance have been studied to understand the judicial approach to these issues. In addition to case laws, books, research articles, and journal papers have been referred to for a better understanding of the topic. International human rights standards have also been briefly considered to compare India's approach with global practices. The research study is descriptive and analytical in essence and its goal is to unfold the relationship between national security laws and freedom of the press in a transparent and simple manner.⁸

Constitutional Framework Regulating Press Freedom in India

Freedom of press is considered as a fourth pillar of democracy. It is one of the strongest notions of a democratic society. In India the press has a significant role in providing information and knowledge to citizens and to question the authority in power and bringing accountability and transparency to the governance. However, this privilege often comes into conflict with National Security Laws mostly when media reports on matters related to terrorism, internal disturbances, military operations or government surveillance. The Indian constitution seeks to maintain a balance between protection of freedom of speech and expression and allowing the state to safeguard National Security. This part scrutinizes how the constitution protects freedom of press and the way in which restrictions are imposed in the name of national security, and the manner in which judiciary responded to this democratic balance.

Freedom of Speech and Expression under Article 19(1)(a)

The Indian constitution gives every citizen the right to freedom of speech in expression under article 19 (1)(a). Although constitution does not specifically use the word "press" Indian courts have interpreted that freedom of the press is a part of this right. The rationale behind this is clear: media has a significant role in providing information to the public and help them to express their opinions.⁹ Press helps to keep people well informed about the functions of the Government, bring social problems into public discussion and give opportunities to hear different views. Making contents and reports on the laws related to terrorism, internal security operations for government, actions in the area of conflict helps public to understand how their power is being used in their name.¹⁰ Simultaneously, journalist face many troubles during the reporting of such sensitive issues. National security laws like the Unlawful Activities (Prevention) Act or the Official Secrets Act often used against journalist in publishing information that the State considers critical.¹¹ Usually, journalists are not accused of spreading rumours or false news but they are interrogated or prosecuted only for challenging the official version of incidents.

Reasonable Restrictions under article 19(2)

Also, freedom of speech and expression is guaranteed under Article 19(1)(a) but it is not absolute in nature. Article 19(2) provides reasonable restrictions that the government can impose against this freedom of speech and expression. These restrictions can be imposed in the interest of national security, integrity and sovereignty of India, public order, morality, decency and other similar grounds. Many National Security Laws are justified using the provisions of Article 19 (2) of Indian constitution. The term "reasonable restriction" is the centre of focus here, it states that constitution does not empowers the government an absolute power to restrict free speech. The restrictions that are imposed on free speech must be fair, justified and necessary for achieving legitimate purpose. Preferably, this provision should prevent the misuse of power by the government.¹²

⁸*Media One TV Pvt. Ltd. v. Union of India*, (2023) 7 S.C.C. 1 (India); International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171.

⁹*Romesh Thappar v. State of Madras*, AIR 1950 SC 124 (India).

¹⁰*Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 S.C.C. 641 (India).

¹¹Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* 112–15 (Oxford Univ. Press 2016).

¹²INDIA CONST. art. 19, cl. 2.

However, in reality, the National Security laws are created in very wide terms. Terms like "security threat", "Anti-national activities" or "Unlawful Activities" remain ambiguous and open for interpretation. Due to this, these laws have tendency to be used easily against journalists specially when they report on controversial and politically sensitive issues. As an outcome, many journalists practice self-censorship out of fear of legal action.¹³ It was originally made for serious threat such as war or terrorism but nowadays it is being used to justify action against peaceful criticism or reporting from undisturbed areas. This gives rise to a serious concern that whether such restrictions are being applied in just and fair manner under the Indian constitution. Courts have frequently stated that restrictions under Article 19(2) should not be absolute and must have a direct link with the threat to the national security. Despite the continuous efforts of Courts state power often overrides Press Freedom.

One of the most remarkable developments in Indian constitutional law is the recognition of freedom of press. Such laws generally operate in areas where information is tightly managed and decisions are taken by the executive with limited transparency. By encouraging freedom of the press as an implied constitutional right by the Indian judiciary, they tried to protect journalists from unlawful or illicit actions taken by the Government. Also, because this right is not specifically mentioned in the constitution it remains a sensitive topic especially during the times when national security is used to justify the limits on civil liberties.

National Security Laws Affecting the Press in India

In India, national security laws function as a pivotal role in creating the conditions in which the press operates. While these laws are formed for the protection of the sovereignty, integrity and security of the state, their implementation in real life has significant implications on press freedom. Journalists reporting on serious security issues such as terrorism, internal conflicts, intelligence operations, and government surveillance often end up in negotiating complex legal framework that limits their approach to information and put them on the risk of legal action. This part of the study analyses leading national security laws that influence the press freedom in India and assess their impact on freedom of journalism and democratic accountability.¹⁴

The Official Secrets Act, 1923

The Official Secrets Act, 1923 is one of the oldest laws influencing press freedom in India. It came into force during the British rule and its aim was protection of sensitive government data from being disclosed to general public. Even after India gains independence and adopts democratic constitution, this act continues to remain in force with few amendments.¹⁵ The Official Secrets Act prohibits the unauthorised disclosure, possession or communication of information that the government categorises as secret. Hence, during reporting on defence matters, intelligence operations or internal security issues gives rise to a substantial obstacle. This Act lacks in interpreting a clarity on what constitutes "secret" information, handing over a vast discretion to the executive. One of the challenges with the Official Secrets Act is lack of a public interest defence. Even if a journalist reveals issues of corruption, abuse of power, or human rights violations with the help of available data, the law provides no protection for journalists based on public good. This gives silent treatment on investigative journalism and demoralises the media from holding the government accountable in issues related to National Security.¹⁶ In a democratic Nation, the balance between secrecy and transparency must be upheld. Hence, the continuous use of colonial rule law like Official Secrets Act gives rise to a serious concern about its compatibility with constitutional values and press freedom in the modern world.

Unlawful Activities (Prevention) Act, 1967

The Unlawful Activities (Prevention) Act, 1967 as one of the strongest and widely exercised National Security Laws in India. Initially, this act came into force to deal with threat to the sovereignty and integrity of the nation, the act remarkably stretched over time, especially in the context of counter terrorism.¹⁷ The Unlawful

¹³Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1, 87–90 (India).

¹⁴Uppendra Baxi, Freedom of Expression and the Indian Constitution, 42 J. Indian L. Inst. 1 (2000)

¹⁵H.M. Seervai, Constitutional Law of India 1098–1102 (4th ed. 2015).

¹⁶P. Ishwara Bhat, Freedom of Speech and Expression 312–15 (2d ed. 2016).

¹⁷Gautam Bhatia, Offend, Shock, or Disturb: Free Speech under the Indian Constitution 188–92 (2016).

Activities (Prevention) Act poses serious threats to journalists. Provisions relating to Unlawful Activities, Terrorist Acts and membership of banned organisations are widely interpreted. The major concern of Unlawful Activities (Prevention) Act is its strict bail provisions which makes it challenging for accused person to obtain release during trial. As a result, journalist accused under this act often face unnecessary detention even before their guilt is established. Whereas the government justifies the use of UAPA on the ground of national security, its uses against journalist raises serious concerns about Freedom of Speech and Expression. The threat of being held liable under such acts leads to self-censorship and restricts free reporting on critical issues related to national security.

National Security Act, 1980

The National Security Laws, 1980 authorizes the government to detain individuals preventively in the domain of national security, public order or the maintenance of essential supplies and services. Provision of Preventive detention under the National Security Laws permits the authorities to detain a person in absence of formal charge or trial for prolonged time.¹⁸ The use of preventive detention against journalist challenges the principle of due process and created an atmosphere of fear within the media community.¹⁹ One of the concerns of National Security Laws is narrow scope of judicial review. The order of preventive detention or generally based on sole satisfaction of the executive an access to the comprehensive reason of detention maybe curbed. From the perspective of a Democratic Nation the usage of preventive detention laws against journalist is highly questionable. It limits not only liberty of an individual but also restrict public right to information.

Sedition Laws under Bhartiya Nyaya Sanhita

Section 152 of Bharatiya Nyaya Sanhita, commonly known as the sedition law, has favourably been used to press down the disagreements and critical opinions. Historically, this law introduced during the colonial rule to suppress freedom fighters but it continues to exist in independent India irrespective of widespread criticism. It criminalizes any speech or expression that contributes to hatred, contempt or disaffection against the government. Especially journalists are at risk under this law whenever they report on any critical issues related to government policies, report on protest or questions State actions related to National Security.²⁰

However, the Supreme Court has reiterated that only speech that provoke violence or public disorder can amount to sedition but the law is repeatedly practiced by the authorities in harsh manner. This law infringes with the right of the journalist as this allows serious consequences like arrest, prolonged legal proceeding and damage to professional reputation only by registration of a sedition case. This frequent use of sedition laws against journalist creates an environment of fear in press freedom. Even when such cases do not result in conviction they work as a tool of intimidation. This raises a serious concern about whether sedition laws in today's generation comprise with the provisions of constitutional democracy and free expression.

Information Technology Laws and Surveillance Regimes

In this digitalized modern era, information technology laws and surveillance mechanism plays very important role in press freedom. Information Technology Act, 2000 along with its supplementary rules, give the authorities broad authorisation to intercept, monitor and block online content. Social media platform, online news portals and independent journalist are forced to hand down their contents, block their websites and suspension of their accounts. Also, the surveillance of digital communications hampers journalistic confidentiality.²¹ Improper oversight and lack of transparency in surveillance increases these concerns. However, Cyber Security and Digital Security are the recognised concerns. Extreme and unnecessary surveillance and content control diminishes press freedom. In a democratic society, technological regulation must be backed by the constitutional principles of necessity, proportionality and accountability.

¹⁸A.K. Gopalan v. State of Madras, AIR 1950 SC 27 (India).

¹⁹Anuradha Bhasin v. Union of India, (2020) 3 SCC 637 (India).

²⁰Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955 (India).

²¹Justice B.N. Srikrishna et al., A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians (2018).

Judicial Responses to the Conflict between National Security and Press Freedom

The core relation between national security and press freedom has constantly leads to constitutional challenge in India. From one point of view, the state claims the necessity to protect sovereignty, integrity and public order and on the other, the press claims its role as a watchdog for democratic accountability. Through the years, Indian courts have proceed from early phase of stringent deference to State authority towards a more stabilized manner that progressively acknowledges the importance of press freedom even in matters related to National Security.²²

Early Judicial Approach: Deference to State Security

At early phases following independence, the courts of India widely accepted a differential approach towards state action in issues related to National Security. This perspective was developed by the historical factors of partition, internal instability, and concerns related to maintaining public order in the newly independent country. And this regime Indian Courts were often hesitant to enquire executive decisions especially when restriction on speech and expression was justified on the grounds of security.²³ As a result, press freedom was considered as subordinate to the broader interest of state security.

The focus was on reserving order rather than protecting expressive freedoms. While this initiative may have been foreseeable in the context of post-independence challenges it often evolved in restricted judicial protection for the press. Eventually this undisputed acceptance of state claims begins to raise criticism.

Doctrine of Proportionality and Reasonableness

One of the major contributions of the judiciary in the latest decades has been the acceptance of the doctrine of proportionality while assessing restrictions on fundamental rights involving press freedom. This further necessitates that any restriction applied by the state must meet certain criteria, it must have a legitimate objective, must be suitable to achieve that objective, necessary to balance the restriction and the right affected. This approach relocates blind deference and seeks justification from the state.²⁴ The Courts has stated that reasonableness is not only formality but a necessary standard. Imposed restrictions must not be excessive, arbitrary or disproportionate to the threat implicated. Unambiguous connection to National Security is no longer sufficient to justify restrictions on press freedom.

Preventive Detention and Media Restrictions

Preventive detention laws pose one of the crucial challenges to press freedom as they permit the state to detain individual without any formal charge or trial nearly on the ground of national security or public order. Whereas these laws are constitutionally allowed only under limited circumstances, their frequent usage against journalist raise a serious democratic concern. The supreme Court has formally accepted that preventive detention directly impacts personal liberty and affect the freedom of the press. When journalists are detained for covering serious issues and sharing opinions, it gives ominous message to the broad media community.²⁵ The provision of judicial review in cases of preventive detention has generally been limited, emphasizing on procedural safeguards instead of substantive justification. However, current judicial shift shows a growing willingness to scrutinize detention orders more precisely especially when they affect freedom of speech. Courts have repeatedly focused that detention cannot be solely based on ambiguous or speculative grounds. There must be a direct link between the actions of journalist and the posed threat to security. This developing approach shows a presumption that misuse of preventive detention can become a measure for suppressing opinions rather than conveying genuine security risk.

²²Upendra Baxi, Freedom of Expression and the Indian Constitution, 42 J. Indian L. Inst. 1, 6–9 (2000).

²³A.K. Gopalan v. State of Madras, AIR 1950 SC 27 (India).

²⁴Modern Dental Coll. & Research Ctr. v. State of Madhya Pradesh, (2016) 7 SCC 353 (India).

²⁵H.M. Seervai, Constitutional Law of India 1224–27 (4th ed. 2015).

Recent Judicial Trends and Evolving Standards

Over time, Indian Courts have shown tremendous responsiveness to democratic concerns encompassing press freedom and national security. Judicial efforts have progressively acknowledged that democracy depends not only on the factor of free election but also on smooth flow of information and opinions. The press freedom is now more publicly acknowledged as a constitutional participant rather than the earlier topic of regulation. Courts have demonstrated their concern over internet shutdowns, surveillance, arrests of journalist, content blocking under the grounds of national security laws. Hence, there is a growing need of transparency, accountability and need of stringent legal standards while restricting freedom of press. Judicial intellectual has initiated to reflect International Human Rights principle especially the importance of necessity and proportionality.²⁶

Simultaneously, challenges still remain within the judiciary. Experts asserts that Courts are often slow to step in specially at the pre-trial stage and relief usually provided after significant harm has already suffered. Prolong detention, delays in bail and reluctant to strike down controversial provisions continue to raise concerns. However, the complete judicial path proposes a gradual shift towards stronger constitutional protection for press freedom. The advanced standards attempt to build stronger democratic values instead of allowing one to completely override the other.²⁷

Democratic Concerns and Chilling Effect on the Press

In a constitutional democracy, press freedom is not just a legal right but a necessity to maintain democratic values. The press freedom acts as a crucial part in ensuring transparency, accountability and informed public participation. In India press freedom becomes especially important in the context of National Security Laws where the power of the authorities is often exercised with limited transparency and accountability. While the government has genuine responsibility to protect national security, they often exercise broad interpretation of security laws which raises democratic issues. The result of this legal framework is the "chilling effect" and fear of legal actions on the press.²⁸

Chilling Effect of on Investigative Journalism and Media Trials, Self-Censorship, and State Pressure

"Chilling effect" is a term which leads to a situation where one is restricted from exercising their constitutional rights due to fear of legal consequences. In the context of the press freedom can be seen clearly during reporting on sensitive areas like security, defence, or internal conflict due to fear of prosecution under National Security Laws. Investigative journalism exposes corruption, human rights violations and misuse of power. In India, many cases related to public interest were revealed through investigative journalism. However, chilling effect has been prevailed on such journalism.²⁹ As an outcome, journalist avoids deep investigation of cases that involve high profile individual or recognized institutions. This self-restraint by the journalists limits the quality of journalism and left the public unaware of the critical information.

One more democratic concern emergence from national security laws is incident of media trials and self-censorship. Media trials take place when certain sections of the media situated closely with official narratives, generally depicting individuals guilty before judicial decisions. In national security cases this liability is especially pronounced, chronicle of patriotism and national interest are often invoked. Due to fear of legal action, regulatory scrutiny first journalist exercises excessive cautions or practice self-censorship whereas some media houses actively participate in such trials. Pressure by the state on the media is not always direct but it often operates through indirect mechanism such as refusal of Axis to information, selective leaks, pressure from law enforcement agencies or the use of regulatory bodies. In furtherance of limiting independent reporting, State force compulsion on digital media platforms to takedown their content or internet restriction.³⁰

²⁶Anuradha Bhasin, (2020) 3 SCC 637 (India).

²⁷P. Ishwara Bhat, Freedom of Speech and Expression 389–94 (2d ed. 2016)

²⁸Upendra Baxi, Freedom of Expression and Democratic Governance, 42 J. Indian L. Inst. 1, 7–10 (2000).

²⁹Gautam Bhatia, Offend, Shock, or Disturb: Free Speech under the Indian Constitution 162–66 (Oxford Univ. Press 2016).

³⁰Anuradha Bhasin v. Union of India, (2020) 3 SCC 637 (India).

Comparative and International Perspectives

The traction between national security and freedom of the press is not restricted to India. Across boundaries democratic countries have also fought to accommodate the need to protect sovereignty, public order and security with the foundational role of free press in maintaining democratic accountability. Comparative constitutional understanding and international Human Rights standards provide valuable perception of how this balance can be structured within legal requirements. Analysing foreign jurisprudence, international rules and global accountability mechanisms helps understand India's approach and focuses on route for strengthening constitutional protections for freedom of the press without compromising legitimate security concerns.³¹

International Human Rights Standards on Press Freedom

On the international stage, freedom of expression including press freedom is accepted as a foundation of democratic governance. Article 19 of the Universal Declaration of Human Rights, 1948 signifies the right to freedom of opinion and expression encompass the freedom to "seek, receive and convey information and ideas through any media and regardless of frontiers."³² Although, the UDHR is not legally binding, it has positively influenced binding international implementations and domestic constitutional interpretation worldwide. The most authentic obligatory standard is found in article 19 of the International Covenant on Civil and Political Rights (ICCPR), 1966, to which India is a member state. Article 19 (2) specifically protects freedom of speech by article 19 (3) allows restrictions only if they are provided by law and are necessary for specific legitimate objective such as national security, public order or the rights of others.³³ International Human Rights jurisprudence has repeatedly emphasized that these restrictions must fulfil the test of legality, necessity and proportionality, and must not be unreasonable or vague.³⁴ The Human Rights committee (HRC) in its General Comment number 34 clear has clearly stated that a free, uncensored or unhampered press is mandatory for ensuring transparency and accountability in public matters.³⁵ States are vigilant against invoking national security as a soul justification to suppress conflicting opinions aur investigative journalism, especially when reporting on government misconduct Human Rights violations.

These measures emphasize that while national security is a genuine concern it cannot be used as a systematic censorship or penalisation of journalistic activities. Instead, International standards require a narrow, evidence based and context specific assessment for any restriction imposed on press.³⁶

United States

In United States, the very First Amendment provides one of the strongest constitutional protections for freedom of speech and the press. The US Supreme Court has originally ratified a cynical approach towards governmental assertion of national security when they threaten press freedom. A landmark illustration is the Pentagon Papers case (*New York Times Co. v. United States*, 1971), where the court rejected to permit prior restraint on the publication of classified documents related to Vietnam war. The court concluded that the government carries a "heavy burden" to justify any prior restraint, and uncertain claims of harm to National Security are insufficient.³⁷

Applicability of ICCPR and UN Special Rapporteur Reports

India's commitments under international law goes beyond treaty ratification to embrace good faith implementation of international legal frameworks in domestic law and practice. As a member to the ICCPR, India is presumed to ensure that its National Security laws observe article 19 (3) requirements. Reports issued

³¹David Kaye, *Speech Police: The Global Struggle to Govern the Internet* 23–25 (Columbia Univ. Press 2019).

³²Universal Declaration of Human Rights art. 19, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).

³³International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171.

³⁴Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* 444–46 (2d ed. 2005).

³⁵U.N. Human Rights Committee, General Comment No. 34, ¶¶ 13–15, U.N. Doc. CCPR/C/GC/34 (2011).

³⁶Thomas I. Emerson, *The System of Freedom of Expression*, 6–8 (1970).

³⁷*New York Times Co. v. United States*, 403 U.S. 713 (1971).

by the Special Rapporteur highlight that ambiguous laws on sedition, terrorism and Unlawful activities are particularly vulnerable to misuse against journalist, media houses and whistleblowers.³⁸

These reports underline various key principles relevant to Indian context:

1. National security must be narrowly defined and laws should clearly differentiate between legitimate security threats and authorized journalistic activity.
2. Journalists should not be penalized for reporting on security matters, unless there is an immediate and direct risk of serious harm.
3. Criminal punishment should be a last resort measure, with priority given to less restrictive alternatives and civil remedies.
4. Pre-trial detention and prolonged investigations against journalist have a chilling effect on the freedom of the press and has tendency to diminished democratic discourse.³⁹

Although US Special Rapporteur report are not legally binding in nature but Indian Courts have relied on international human right rules, multiple time, as instructive tools. Therefore, these reports sustain significant persuasive value and acts as guiding norm for both judicial interpretation and legislative reform.

Critical Analysis of the Existing Legal Regime

India's legal framework formula recognises the press freedom as an integral component of the right to freedom of speech and expression under Article 19(1)(a) of the constitution. Simultaneously, Article 19(2) allows the state to impose reasonable restriction in the interest of, in particular, national security, sovereignty and public order. As theoretically, this balance seems constitutionally sound, it's practical operation through Nation Security Laws exposes deep structural concerns. The prevailing legal framework often leans in favour of executive authority, releasing serious issues about democratic accountability, judicial oversight and the protection of press freedom.⁴⁰

Balancing National Security and Press Freedom

The Indian judiciary has established that national security and freedom of the Press or not mutually exclusive but must co-exist within the boundaries of constitution. In *Romesh Thappar v. state of Madras* (1950), the supreme court asserted that the freedom of expression plays foundational role of a democratic society and cannot be infringed merely on speculative grounds of public disorder. The court clarify that restrictions must have a reasonable connection with the threat sought to be addressed.⁴¹

Similarly, in *Brij Bhushan v. state of Delhi* (1950), the court nullify pre-censorship of newspaper, retreating that prior restraints on publication are particularly dangerous to democratic discourse.⁴² These judgements established that freedom of the press requires enhanced constitutional protection, even in sensitive political contexts. This reflects judicial heart shaped to maintain balance between recognising states duty to protect national security and protection of democratic function of the press.⁴³ One of the major concerns with India's national security laws is their ambiguous and expansive language. Laws such as Unlawful Activities (prevention) Act, The Official Secrets Act and the colonial-era sedition provisions have been condemned for their extensive definitions and lack of appropriate approach for criminal liability.

³⁸U.N. Special Rapporteur on Freedom of Opinion and Expression, Report, U.N. Doc. A/HRC/38/35 (2018).

³⁹U.N. Special Rapporteur on Freedom of Opinion and Expression, Report, U.N. Doc. A/70/361 (2015).

⁴⁰H.M. Seervai, *Constitutional Law of India* 701–05 (4th ed. 2013).

⁴¹*Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

⁴²*Brij Bhushan v. State of Delhi*, AIR 1950 SC 129.

⁴³Granville Austin, *Working a Democratic Constitution: The Indian Experience* 182–85 (1999).

The Supreme Court's decision in *Shreya Singhal v. Union of India* (2015), even though delivered in the context of section 66A of information technology Act but relevant to the press freedom and security laws. The court overturned the provision for being vague and expansive, emphasizing that laws limiting speech must clearly define prohibited conduct to get rid of arbitrary enforcement. The Court observed that vague laws have chilling effect, provoking journalist to self-censor out of fear of prosecution.⁴⁴ Terminology such as "threat to sovereignty", "disaffection" or "unlawful activity" are generally loosely defined, providing wide space for interpretive discretion.

Law Reform and Policy Recommendations

The continuous conflict between national security laws and freedom of the press in India showcase the urgent need for systematic legal reform. Constitutional jurisprudence has frequently asserted the importance of press freedom, Legal statute, executive actions have not always evolved in step with these judicial principles. Legal reform not only focuses on amending outdated statute but also on boosting institutional safeguards that prevent abuse of power. The rights-oriented approach to National Security rather than a purely deference based one, is important for preserving democratic accountability.⁴⁵

Re-examining the Official Secrets Act and Strengthening judicial oversight

Judicial supervision plays a crucial role in ensuring execution of national security law within constitutional limits. While Indian Courts have involved in individual cases to protect press freedom, this required a need of more stringent and consistent judicial scrutiny of security related measures. Various laws allow wide discretion to the executive with minimal ex ante safeguards, left Courts to intervene only after rights have been infringed.⁴⁶ Special procedures could be developed for evaluating security related activities affecting the press, such as time-bound judicial review of internet shutdowns, surveillance permissions or press restrictions would take in consideration, exceptional measures should not be normalized. Courts could also demand timely reporting by the executive on the subsequent necessity of such measures.⁴⁷

Simultaneously, safeguards should be introduced to prohibit the misuse of arrest, detention and surveillance powers against journalists. Stringent guidelines restricting the application of security laws to journalistic activity would decrease arbitrary enforcement. Fast-track judicial remedies for journalist facing prosecution under National Law statutes could further alleviate chilling effect on press freedom.⁴⁸

Harmonizing National Laws with International Standards

Adaptation of international standards does not involve abandoning national security concerns rather it requires adjusting domestic laws with globally applied principles that recognize the press as a public watchdog. International jurisprudence emphasizes that reporting on security matters should not be criminalised unless the actions lead to a real and immediate threat to National safety.⁴⁹ India can seek guidance from International best practices including continuous review of security legislation, independence oversight mechanisms, transparency and accountability in decision making. UN Special Rapporteur Report on freedom of expression draws attention to the importance of decriminalising journalistic activity and put forward the provision of civil remedies were possible. Indian courts have already signified they are willingness to apply International Law as an interpretive aid. By applying this approach lawmakers and policy makers should deliberately blend international norms into legislative drafting and policy formulation.⁵⁰

⁴⁴*Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

⁴⁵H.M. Seervai, *Constitutional Law of India* 703–08 (4th ed. 2013).

⁴⁶Granville Austin, *Working a Democratic Constitution: The Indian Experience* 182–86 (1999).

⁴⁷*Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

⁴⁸*Manohar Lal Sharma v. Union of India*, (2021) 10 SCC 1.

⁴⁹International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171.

⁵⁰U.N. Special Rapporteur on Freedom of Opinion and Expression, Report, U.N. Doc. A/HRC/38/35 (2018).

CONCLUSION AND FINDING

The balance between national security laws and freedom of the press in India is one of the most sensitive constitutional challenges in a democratic society. While the state has a legitimate responsibility to protect a sovereignty, integrity, and public order, the press has equally important function of informing public, analysing powers, and activating democratic participation. This research has analysed how Indian constitutional provisions, judicial participation and legislative practices interacts in this context. The study reveals that although constitutional framework for press freedom is perfectly build in theory, but their real-life implementation continues to face severe challenges, raising various democratic concerns.

Findings and Democratic Implications

The findings of the study hold significant constitutional and democratic implications. A democracy cannot function effectively without free and independent press. Journalist plays the role of intermediaries between state and the public converting complex government policies and issues into accessible information and exposing misuse of power. Whenever, journalist functions under expected fear of prosecution, surveillance or prolong investigation the quality of news deteriorates. Citizens are deprived of necessary information to develop public opinions, to receive informed knowledge leading to weakening democratic participation.⁵¹

From a constitutional point of view, excessive reliance on national security justifications also challenges the doctrine of separation of powers. When executive actions of security are accepted without strong judicial scrutiny, Courts risk surrendering their role as guardian of fundamental rights. This breach not only affects press freedom but also sets a precedent for infringing other civil Liberties. The democratic perspective lies beyond the media community. Restrictions on the press freedom often improperly affect marginalised voices, regional reporters and journalists covering sensitive issues such as Human Rights violations or internal security operations. As a result, particular narratives are silence leading to insufficient and distorted public discourse. Ultimately, erosion of transparency weakens public trust in governance. Significantly, this research highlights that national security and press freedom are not inherently conflicting in nature. Instead, a press freedom can attribute to National Security by revealing corruption policy failures and governance gaps that is left overlooked, may itself threaten stability and public order.⁵²

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