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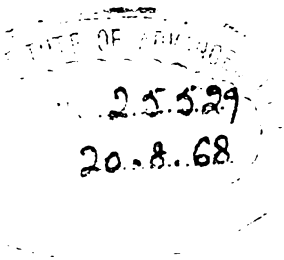

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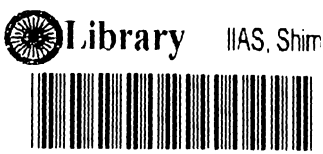

Preface

This book, as now published, differs somewhat from what was originally conceived. We had thought of an interpretive handbook to which harried people in newspapers could turn for guidance about the mines the law has laid on the track used by publishers. What has emerged from the seminar held jointly by the Press Institute of India and the Indian Law Institute in April 1966 is a more comprehensive work which goes into the fundamentals of the laws governing, for instance, privilege, contempt, official secrets, criminal acts, the Emergency, employment and so on.

There are not many books which deal with the rigours of the law as they affect the Press and we hope that this one will prove useful. The seminar was stimulating and it is pleasant to be able to record our thanks to Dr. G.S. Sharma, Director of the Indian Law Institute, and his colleagues for their very willing cooperation. The Faculty of Law, Delhi University, was also most helpful and some of the participants came from Lucknow University. The Indian Law Institute is, however, in no way responsible for any blemishes the book may have. We are grateful to Mr. Norman Hardy for having edited the manuscript for publication.

Press Institute of India
New Delhi
March, 1968

CHANCHAL SARKAR

Contents

FREEDOM OF EXPRESSION AND THE PRESS

D. K. SINGH

TO preserve the democratic way of life it is essential that people should have the freedom to express their feelings and to make their views known to the people at large. The press, a powerful medium of mass communication, should be free to play its role in building a strong viable society. Denial of freedom of the press to citizens would necessarily undermine the power to influence public opinion and be counter to democracy.

Freedom of the press is not specifically mentioned in Art. 19(1) (a) of the Constitution[1] and what is mentioned there is only freedom of speech and expression. In the Constituent Assembly Debates[2] it was made clear by Dr. Ambedkar, Chairman of the Drafting Committee, that no special mention of the freedom of the press was necessary at all as the press and an individual or a citizen were the same so far as their right of expression was concerned.

The framers of the Indian Constitution considered freedom of the press as an essential part of the freedom of speech and expression as guaranteed in Art. 19(1) (a) of the Constitution. In this respect the Indian Constitution followed the law of England where it is recognised that the law of the press was merely a part of the law of libel[3].

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1. Art. 19 runs as follows:
   (1) All citizens shall have the right—
   (a) to freedom of speech and expression...
   (2) 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.
2. Vol. VII No. 17, pp. 712-716; No. 18, p. 780.
3. See Dicey, *Law of the Constitution* (9th ed.) p. 241; *Arnold* v. *King Emperor* A.I.R. (1914), P.C. 116.

In *Romesh Thapar* v. *State of Madras*[4], and *Brij Bhusan* v. *State of Delhi*[5], the Supreme Court took it for granted the fact that the freedom of the press was an essential part of the right to freedom of speech and expression. It was observed by Patanjali Sastri J. in *Ramesh Thapar* that freedom of speech and expression included propagation of ideas, and that freedom was ensured by the freedom of circulation.[6]

It is clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and other views with complete freedom and by resorting to all available means of publication.

The right to freedom of speech and expression is not absolute and its exercise is subject to the limits permissible under Cl. 2 of Art. 19 of the Constitution; these limits apply equally to freedom of the press. The Union Parliament or State Legislatures may validly pass a law which places restrictions on the right to freedom of speech and expression provided such restrictions are related to one or more of the purposes mentioned in Cl. (2) of Art 19.

The courts in India, have no discretion to evolve new limits as exceptions to this constitutional freedom, and the constitutionality of a law abridging this freedom has to be tested only by reference to the permissible limits.[7]

The right to freedom of the press includes the right to propagate ideas and views and to publish and circulate them.

II

The extent of this right came up for discussion recently before the Supreme Court in *Sakal Papers* v. *Union of India*.[8] Justice Mudholkar, speaking for the court, observed: "The right to propagate one's ideas is inherent in the conception of freedom of speech and expression...every citizen is entitled to do so

4. A.I.R. (1950) S.C. 124
5. A.I.R. (1950) S.C. 129
6. A.I.R. (1950) S.C. 124, 127
7. For a critical analysis of the right to freedom of speech and expression as provided in Art. 19 of the Constitution see P.K. Tripathi, *India's Experiment in Freedom of Speech: The First Amendment and thereafter*, Supreme Court Journal (1955), 106; *Cf. Express Newspapers* v. *Union of India* A.I.R. (1958) S.C. 578, at pp. 615, 616. Also refer to P.K. Tripathi; *Free Speech in the Indian Constitution: Background and Prospect* 67 Yale Law Journal (1957-58) 385.
Srinivasa v. *State of Madras* A.I.R. (1951) Madras 70; *M.S.M. Sharma* v. *Srikrishna Sinha* A.I.R. (1959) S.C. 395, at p. 415.
8. A.I.R. (1962) S.C. 305.

either by word of mouth or by writing... In other words, the citizen is entitled to propagate his views and reach any class and number of readers as he chooses subject of course to the limitations permissible under a law competent under Art. 19(2)."[9]

In *Sakal Papers* a matter of far reaching importance affecting the freedom of the press was raised by questioning the constitutionality of the Newspaper (Price and Page) Act, 1956, and the Daily Newspaper (Price and Page) Order, 1960. Their effect was to regulate the number of pages of a newspaper according to the price charged, prescribe the number of supplements to be published and prohibit the publication and sale of newspapers in contravention of any Order made under S. 3 of the Act; the Act also provided for regulating the sizes and area of advertising matter in relation to other matters contained in a newspaper. The petitioners, the owners of *Sakal* newspaper argued that the Act and the Order were designed to curtail the freedom of the press, and as such were violative of the right guaranteed under Art. 19(1)(a) of the Constitution. In reply it was submitted that the legislation was to prevent unfair competition amongst newspapers and to prevent monopolistic combines so that newspapers might have fair opportunities of freer discussion. The Order was said to promote and encourage healthy journalism. The Court accepted the argument of the petitioners.

The Supreme Court held: Firstly, as the Act regulated the allocation of space to advertisements the area for advertisements was curtailed and the price of the newspaper was to be forced up in order to make up the loss. That would directly affect the freedom of circulation.

Secondly, the advertisement revenue of a newspaper was proportionate to its circulation. If a newspaper raised its price, its circulation would drop with loss of advertisement revenue. The newspaper had either to close down or to raise its price.

If the price was raised it would bring down the circulation ultimately resulting in the closure of the newspaper. If the space for advertisement was reduced, the earnings of the newspaper would go down again resulting in the closure of the paper. Either way the legislation would be a direct interference in the right to freedom of speech and expression.[10]

The activity of newspapers has two aspects—freedom of speech and expression and freedom of trade and profession,

9. *Ibid.*, at p. 310.
10. *Ibid.*, at pp. 312, 313.

and they are inextricably mixed. The aspect of dissemination of news and views can be restricted only within the permissible limits as provided in Cl. (2) of Art. 19. The commercial aspect may be restricted in the 'interest of general public' a ground set out in Cl. (6) of Art. 19.

Such restrictions may be regarded as unconstitutional from the point of view of regulating the news and views aspect. Mudholkar J. explained that under Art. 19 a citizen was entitled to enjoy each and every one of the freedoms together and Cl. (1) did not prefer one freedom to another. He believed that the legislation was an encroachment on the right to freedom of the press; a device to encroach on the right to freedom of the press under the guise of placing restrictions on the commercial aspect of the newspaper activity.[11]

One way of approaching the problem may be to examine it from the citizen's point of view.[12] The freedom which provides greater scope for the citizens' activities should be preferred to one which provides for greater regulation of the citizens' right. The impugned legislation was perhaps too drastic a step to meet the crisis of 'unfair competition' in the newspaper industry. The concept of the 'interests of the general public' is fairly extensive so as to give a lever to the State to control and regulate the freedom of the press to a great extent, so much so that the newspaper establishments may even be asked to close down.[12a]

An example of a regulation interfering with the commercial aspect of the activity of newspapers may be found in *Express Newspapers* v. *Union of India*.[13]

In that case certain provisions of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, whose object was to secure the amelioration of conditions of the working journalists and other persons employed in newspaper establishments, was challenged as interfering with the right of the freedom of the press. It was urged that the provisions had

11. *Ibid.*, at p. 313, 314.

12. The provisions in the Constitution touching fundamental rights must be construed broadly and liberally in favour of those on whom the rights have been conferred; *Dwarkadas Shrinivas* v *Sholapur Spinning and Weaving Co.* A.I.R. (1954) S.C. 119, at p. 138; *Hamdard Dawakhana* v *Union of India* A.I.R. (1960) S.C. 554, at p. 566.

12.a. See *W.N.S., E.N. Pvt. Ltd.*, v *E.N. Ltd.* A.I.R. (1961) Madras 331; *Arunchala* v. *State of Madras* A.I.R. (1959) S.C. 300; *Narendra* v. *Union of India* A.I.R(1960) S.C. 430; *Rahman* v. *State of A.P.* (1961) S.C. 1471.

13. A.I.R. (1958) S.C. 578.

the effect of imposing a direct and preferential burden on the press and had a tendency to curtail circulation and thereby narrow the scope of dissemination of information.

This contention was not accepted by the Court.[14]

Here again the Court was faced with the problem of choosing between the two competing freedoms—freedom of the press and freedom of trade and profession.

Perhaps the Court was convinced that the working conditions in the newspaper industry were not satisfactory, and the lot of working journalists had to be improved. The closing down of the marginal newspaper establishments was noticed only as a *possible* eventuality and its impact on the right to circulate was a remote consequence. This gives to the problem involved here a turn different from the one involved in *Sakal Papers.*

It is arguable whether the impugned legislation in *Sakal Papers* would have passed the scrutiny of the Supreme Court if it had provided only for the regulation of advertisements. An advertisement is a form of speech, but every advertisement is not a matter dealing with the freedom of speech or the expression of ideas.

In *Hamdard Dawakhana* v. *Union of India*[15], the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, whose object was to prevent self-medication and self-treatment, and to prohibit advertisements commending certain drugs, and medicines, was held as not abridging the freedom of speech and expression under Art. 19(1)(a). The advertisement concerned formed a part of the business activity and had no relationship with the essential concept of freedom of speech and expression.

III

The freedom of the press means *principally* the right to publish without any previous licence or censorship.[15a] Prohibition of entry and circulation or pre-censorship of a newspaper or a journal may mean a restriction on the freedom of the press.

In *Romesh Thapar* v. *State of Madras*[16] an Order issued

14. *Ibid.*, p. 620.
15. A.I.R. (1960) S.C. 554.
15.a. *Virendra* v. *State of Punjab* A.I.R. 1957) Punjab 1.
16. A.I.R. (1950) S.C. 124.

under Section 7A[17] of the Madras Maintenance of Public Order Act, 1949 banning the entry and circulation of a journal *Cross Roads* in the State of Madras, was held as imposing an unconstitutional restriction on the freedom of the press as guaranteed in Art. 19(1)(a) of the Constitution. It was observed by Patanjali Shastri J. that "there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation".[18] Also in *Brij Bhushan* v. *State of Delhi*[19] an Order issued under S.7(1)(c)[20] of the East Punjab Public Safety Act, 1950, imposing pre-censorship of a journal *Organiser* was held unconstitutional. Patanjali Shastri J. reiterated that there could be little doubt that

17. It authorises the Government "for the purpose of securing the public safety or the maintenance of public order, to prohibit or regulate the entry into or the circulation, sale or distribution in the Province of Madras or any part thereof of any document or class of documents" is a "law relating to any other matter which undermines the security of or tends to overthrow the State".

    The Order runs as : "In exercise of the powers conferred by S. 9(1-A). Madras Maintenance of Public Order Act, 1949 (Madras Act XXIII of 1949), His Excellency the Governor of Madras, being satisfied that for the purpose of securing the public safety and the maintenance of public order it is necessary so to do, hereby prohibits, with effect on and from the date of publication of this order in the Fort St. George Gazette in the entry into or the circulation, sale or distribution in the State of Madras or any part thereof of the newspaper entitled Cross Roads an English weekly published at Bombay."

18. A.I.R. (1950) S.C. 127.

19. A.I.R. (1950) S.C. 129.

20. It provides as: "The Provincial Government or any authority authorised by it in his behalf if satisfied that such action is necessary for the purpose of preventing or combating any activity prejudicial to the public safety or the maintenance of public order may, by order in writing addressed to a printer, publisher or editor require that any matter relating to a particular subject or class of subjects shall before publication be submitted for scrutiny."

    The Order runs as: "Whereas the Chief Commissioner, Delhi, is satisfied that ORGANIZER, an English weekly of Delhi, has been publishing highly objectionable matter constituting a threat to public law and order and that action as is hereinafter mentioned is necessary for the purpose of preventing or combating activities prejudicial to the public safety or the maintenance of public order.

    Now therefore in exercise of the powers conferred by S. 7 (1) (c), East Punjab Public Safety Act, 1949, as extended to the Delhi Province, I, Shankar Prasad, Chief Commissioner, Delhi, do by this order require you Shri Brij Bhushan, Printer and Publisher and Shri K.R. Malkani, Editor of the aforesaid paper to submit for scrutiny, in duplicate, before publication, till further orders, all communal matter and news and views about Pakistan including photographs and cartoons other than those derived from official sources or supplied by the news agencies, viz., Press Trust of India, United Press of India and United Press of America to the Provincial Press Officer, or in his absence, to Superintendent of Press Branch at his office at 5, Alipur Road, Civil Lines, Delhi, between the hours 10 a.m. and 5 p.m. on working days."

the imposition of pre-censorship on a journal was a restriction on the press which was an essential right to freedom of speech and expression declared by Art. 19(1)(a).

An examination of the opinions delivered in *Romesh Thapar* and *Brij Bhushan* cases disclose that the impugned Acts were held unconstitutional not because prohibition of entry and circulation, and pre-censorship *ipso facto* made the Acts bad but because they could not be related to one of the purposes mentioned in Art. 19(2).

The impugned legislation in both the cases referred to "security of the public safety or the maintenance of public order".

"Public Order" is of wide connotation and implies the orderly state of society or community in which citizens can peacefully pursue their normal activities of life.[21] It may not necessarily be restricted to the aggravated forms of prejudicial activity which are calculated to endanger the security of the State or overthrow it.

Art. 19(2), as it was then worded, gave protection to a law relating to a matter which undermines the security of, or to overthrow, the State, and not relating to 'public order'. Art. 19(2) has since then been amended by the Constitution (First Amendment) Act, 1951, so as to extend its protection to a law imposing "reasonable restriction in the interest .. public order .." The consequence is that the mention of different grounds in Cl. (2) which could be brought under the general head 'public order' in its most comprehensive sense, indicates that they must be ordinarily intended to exclude each other. In this context 'public order' would be understood in the limited sense excluding all other purposes and synonymous with public peace, safety and tranquillity.[22]

Art. 19(2) in its original form did not have the word "reasonable" before the word "restriction", and it was inserted by the Constitution (First Amendment) Act, 1951. What is 'reasonableness, has been explained' by the Supreme Court in *State of Madras* v. *V.G. Row*.[23]

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21. *Superintendent Central Prison* v. *Ram Manohar Lohia*, A.I.R. (1960) S.C. 633, at p. 637.
22. *Ibid.*, at p. 637.
23. A.I.R. (1952) S.C. 196, at p. 200.

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases.

"The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, and entry into the judicial verdict."

Concept of 'reasonableness' implies that the restraint that may be placed on the right of the individual should not be arbitrary or of excessive nature and the proper balance has to be drawn between the freedom guaranteed by Art. 19(1)(a) and the protective provisions of Art. 19(2).

All citizens are guaranteed the right to freedom of the press. However, the press has the potentialities of being abused or used for anti-social purposes. It is for this reason that certain restraints on the exercise of this right are provided in Cl. 2 of Art 19.

In *Virendra* v. *State of Punjab*,[24] the Supreme Court was faced with the question whether pre-censorship of a newspaper could be justified as a reasonable restriction on the right to freedom of speech and expression in the interest of public order.

Secs. 2[25] and 3[26] of the Punjab Special Powers Press Act,

24. A.I.R. (1957) S.C. 896.

25. It runs as: "2(1) The State Government or any authority so authorised in this behalf if satisfied that such action is necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order, may, by order in writing addressed to a printer, publisher or editor:

(a) prohibit the printing or publication in any document or any class of documents of any matter relating to a particular subject or class of subjects for a specified period or in a particular issue or issues of a newspaper or periodical;
Provided that no such order shall remain in force for more than two months from the making thereof;
Provided further that the person against whom the order has been made may within ten days of the passing of this order make a representation to the State Government which may on consideration thereof modify, confirm or rescind the order."

26. It runs as: "3(1) The State Government or any authority authorised by it in this behalf, if satisfied that such action is necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order, may, by notification, prohibit the bringing into Punjab of any newspaper, periodical, leaflet or other publication".

1956 were challenged as unconstitutional because they infringed the right of the petitioner under Art. 19(1)(a) and were not saved by the protective provisions of Cl. 2 of Art. 19.

A notification[27] under Section 2 Cl. 1(a) was issued against the editor, printer and publisher of *Daily Pratap* published from Jullundur prohibiting him from printing and publishing any article etc. relating to or connected with the 'Save Hindi Agitation' for two months.

Another notification[28] was issued under Sec. 3 against the editor, printer and publisher of *Daily Pratap* and *Veer Arjun* published from Delhi, prohibiting the bringing into Punjab of the newspapers printed and published in Delhi.

It was argued that the restrictions were not reasonable. The problem was whether the prevailing circumstances required some restrictions to be placed on the right to freedom of the press and to what extent. The impugned statute was enacted for preserving the safety of the State and for maintaining the public order.

The Supreme Court held Sec. 2 as imposing reasonable restric-

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27. It runs as: "Whereas I, Ranbir Singh, Home Secretary, Punjab Government, authorised by the said Government under section 2(1) of the Punjab Special Powers (Press) Act, 1956, on examination of the publications enumerated in the annexure relating to the "Save Hindi Agitation" have satisfied myself that action is necessary for combating the calculated and persistent propaganda carried on in the newspaper the 'Pratap' published at Jullundur to disturb communal harmony in the State of Punjab:

    And whereas the said propaganda by making an appeal to communal sentiments has created a situation which is likely to affect public order and tranquillity in the State;
    And therefore in pursuance of the powers conferred under sub-clause (a) of clause (1) of section 2 of the said Act, I prohibit Shri Virendra, the printer, publisher, and the editor of 'Pratap' from printing and publishing any article, report, news item, letter or any other material of any character whatsoever relating to or connected with 'Save Hindi Agitation' for a period of two months from this date.

28. It runs as: "Whereas, I Ranbir Singh, Home Secretary, to the Government, Punjab, authorised by the said Government under section 3 of the Punjab Special Powers (Press) Act, 1956, have satisfied myself that it is necessary to combat and prevent the propaganda relating to "Save Hindi Agitation" carried on in the Pratap with the object of disturbing communal harmony in the State of Punjab and thereby affecting public order;

    Now therefore, in exercise of the powers conferred by section 3(1) of the said Act, I do hereby prohibit the bringing into Punjab of the newspaper printed and published at Delhi, from the date of publication of this notification."

tions on the exercise of the rights guaranteed by Art. 19(1)(a) in the interest of public order.

It was noticed that it was not an unfettered or uncontrolled discretion that was given to the government as it could only be exercised for a purpose mentioned in the Act.

Further the notification to be issued under S.2. (1)(a) could remain in force for only two months, and the aggrieved person was given an opportunity to make a representation to the government.

The absence of those safeguards would have rendered S.2 (1)(a) unconstitutional. Such safeguards were not provided in S. 3, and it was, therefore, held to be an unreasonable restriction.

Censorship being an extreme form of restriction may be justified only if there is disorder of a serious nature and when all means short of censorship have been found inadequate to meet the situation.[29]

Before the impugned statute was enacted Akali Party had started a campaign of hatred threatening the peace. There was a strong opposition to that proposal and it was likely that Hindus would have indulged into counter propaganda.

Amidst this ideological war between the Hindus and Akalis it was found necessary to pass the Act to prevent and combat any possible activity prejudicial to the maintenance of communal harmony. Censorship should be resorted to only when the fabric of society is in jeopardy. Such circumstances did not seem to prevail at the time of the passing of the impugned Act so as to have warranted such a drastic step.

IV

The judgment in *Sakal Papers* might have been somewhat disappointing to those who took the cause of small newspapers. The Newspaper (Price and Page) Act, 1956, gives an impression that the regulation of price and pages of a newspaper was not properly related to meet the crisis of 'unfair competition' prevalent in the newspaper industry.

It did not seem certain whether the proposed measures would

29. 'Preventive detention' is not suggested here as an alternative: *Cf. Ram Singh* v. *State of Delhi* (1951) S.C.R. 451.

have achieved the desired results. Perhaps, if the Court was convinced that the activity of newspapers was faced with an acute crisis vitiating the growth of free journalism in the country, its attitude might have softened down in favour of the press. It is for the Courts to say what is "public order", and to what extent the freedom of speech and expression may be subjected to "reasonable" restrictions in the interests of "public order."[30] It is true that the fundamental rights set out in Art. 19 should be interpreted so as to subserve the interests of citizens, but they are subject to limitations which are for the general welfare of all citizens as a whole, and, therefore, in the interests of general public.

The Enquiry Committee on Small Newspapers suggested an amendment to Art. 19 as one of the ways to get over the decision in *Sakal Papers.*

The tendency to amend the Constitution simply to get over legal difficulties created by a judgment of the Supreme Court is not a very happy one. The process should be invoked only in extreme cases. Such matters should be left to the judiciary which might give a second thought to the problem, and it is likely that it may change its opinion.

Much depends on the problem approach, but the Courts should be aware of all socio-economic-political aspects of the problem in a proper perspective.

In an emerging and developing democracy like India the press has a special role to play. Its function is to collect news and disseminate it, and to provide a forum for free discussion and comments. Because of its special role and also its future power potential it may have to be subjected to restraints which may not be either necessary in the case of individuals. However, Art. 19 of the Constitution gives the same status for both. They are subjected to the same kinds of limitations. It is agreed that the right to freedom of speech and expression of an individual has to be zealously guarded against any encroachment which goes strictly beyond the limitations permissible by Cl. 2 of Art 19. But the same treatment need not necessarily be accorded to the press which may, within the framework of Cl. 2 of Art. 19, be recognised as an institution having a role different from that of an individual.

30. Similar observations may be noticed in the exposition of another purpose "obscenity" provided in Cl. (2) of Art 19 by Hidayatullah J's opinion in *Ranjit D. Udeshi* v. *State of Maharashtra* A.I.R. (1965) S.C. 881, at p. 887.

OBSERVATIONS

P. K. TRIPATHI

The provisions in the Constitution of India relating to freedom of speech and expression are based on the American law as it was understood to be in the years 1947-49 when the Indian Constitution was being drafted.

Apart from non-political matters such as morality, defamation or contempt of court, the principle provision in clause 2 of Article 19 permitted restrictions on freedom of speech in regard to any matter "which undermines the security of, or tends to overthrow, the State". The courts were to judge.

Since not the overthrow, nor the attempt, but *tendency* to overthrow the State was made the test, it could have been possible for the courts to evolve judicial tests for distinguishing permissible restraint on freedom of speech from restraint which must constitutionally be struck down.

As I had the occasion to explain in one of my articles[1] written about a decade ago, the amendment of clause 2 of Article 19 of the Constitution was unnecessary and was the result of lack of experience of government and courts.

The Supreme Court in the *Romesh Thapar* case[2] appeared to adopt an attitude similar to that of a chemist in a laboratory who would decide the nature of a compound on the basis of colour matching. The court held that since the phrase 'public order' occurring in the impugned legislation was different from and wider than the expression 'security of state' provided in the Constitution, the legislation must be declared invalid.

Nowhere in the *Romesh Thapar* opinions does one read any description of what the *Cross Roads* had been publishing

1. P.K. Tripathi, *India's Experiment in Freedom of Speech : The First Amendment and thereafter*, 1955, Supreme Court Journal, Madras, P. 106.

2. A.I.R. 1950 S.C. 124.

and whether the matter it was publishing did have a tendency to undermine the security of the State or to overthrow it.

Attempts on the part of the legislature to go on adding category after category of public interests to be balanced against freedom of speech are bound to prove futile because it is not possible to give an exhaustive list of such public interests.

Also, in the effort to give such an exhaustive list dangerous exceptions may be stated in the Constitution lending themselves to abuse.

The decision in the *Ram Manohar Lohia* case[3] illustrates how futile it is to rely upon an exhaustive list of categories of public interests in clause 2 of Article 19.

The formal constitutional requirement of incitement to an offence can be easily satisfied by first creating a certain act to be an offence and then prohibiting its advocacy.

Such a law which on considerations of substance and constitutional policy should be regarded obnoxious, will, nevertheless, be entitled to protection under clause 2 of Article 19 if only formal logic were applied.

Constitutional amendments should not be made in a rush; the courts and the society should be given time to appreciate the various implications of the provisions of the Constitution.

There is evidence already of a greater appreciation by the courts of their role in this regard. They have, lately, shown a tendency not to be hidebound.

In the *Searchlight* case[4], as it is known, the Supreme Court recognised the privileges of the Parliament as constituting a legitimate social interest to which freedom of speech and expression must give way.

The Court was not impressed by the argument that clause 2 of Article 19 is exhaustive and freedom of speech and expression of the individual could not be restricted for any purpose not expressly specified in that clause.

Recently in the *Chamarbaugwala* case[5] the Court has held

3. A.I.R. 1955 All. 1935; also see, A.I.R. 1960 S.C. 633.
4. A.I.R. 1959 S.C. 395.
5. A.I.R. 1957 S.C. 628.

that the protection of Article 19 does not extend to betting and gambling because gambling is not 'commerce', it being 'res extra-commerciam'.

On the analogy of that argument it is hoped the court will also see that incitement to offence or abetment through the spoken words is a 'res' which is outside the scope of Article 19(1) (a) and, therefore, there is no relevance of the exception mentioned in Article 19 in clause 2 in the case of such utterances.

I do not believe that it is possible for a court to treat the facts of the *Sakal Newspaper*[6] case as attracting only the right to 'business' and not affecting freedom of speech and expression.

Such a view if ever entertained by court will be an unfortunate attempt at hoodwinking the Constitution. It is important to discern a vital difference between legislation affecting the price, advertisements, and number of pages of a newspaper such as was involved in the *Sakal Newspaper* case, and legislation merely affecting the wages payable to employees of a newspaper.

Legislation involved in the *Sakal Newspaper* case had the delicate element of choice on the part of the government as to which newspapers should have more circulation than what they actually have and which should have less.

The making of such a choice has a direct impact of freedom of speech and of the press and on the advocacy of political and social ideas and programmes. The State here was trying to achieve a preference through regulating the price.

Perhaps the only way open to the State when, moved by sympathy towards the less provided newspapers, is to give adequate financial assistance to these favoured newspapers. If the State does not have finances to do so that does not give it a right to achieve the same result by curbing the constitutional rights of others.

The State here was not encouraging newspapers on the basis of their views and perhaps that is the only saving grace in the kind of legislation involved in the *Sakal Newspaper* case.

Freedom of the press is not expressly mentioned in our Constitution. If it is thought that the press needs some special protection because it is in a position different from that of an

6. A.I.R. 1962 S.C. 305.

individual, there is nothing to prevent the courts from reading that special protection for the press in the existing provisions of the Constitution.[15]

The courts are free to accord the press such freedom as is appropriate to its special status and peculiar needs. But again, no purpose will be served by rushing any amendment to the Constitution.

THE LAW OF PRIVILEGE AND THE PRESS

V. S. REKHI

IN a democratic society, the Press provides the media of mass information and general discussion of issues of public importance. It is for this reason that the struggle for self-government has gone hand in hand with the fight for freedom of publication.

I

Freedom of Press in our country is available only to the extent it is implicit in the freedom of speech and expression guaranteed by Art. 19(1)(a) of the Constitution to all citizens subject to reasonable restrictions in respect of matters enumerated in Cl.(2) thereof. This tacit conferment raises two questions:

(i) if the freedom of expression is confined to the expression of one's own ideas no freedom at all can be claimed in respect of publication of the views of other persons without the permission of such others, and

(ii) if it is only available to citizens the freedom is not available to corporation engaged in publication of news.

This possibility was envisaged but not considered in the *Searchlight* case[1]. In support of his right to obtain information the petitioner in that case relied upon certain observation made in Srinivas *v.* State of Madras[2] which included the right to print material borrowed from another or under the direction of another in the freedom of speech and expression guaranteed by Art. 19(1)(a). These do not help us as they imply the existence of permission of such other person.

The real question is whether Press can claim, as a right, access to information of public importance.

Justice Bhagwati in Express Newspapers Ltd. *v.* Union of India and others, seemed to imply the existence of such a right.

1. M.S.M. Sharma *v.* Shri Krishna Sinha, A.I.R. 1959 S.C. 395.
2. A.I.R. 1951 Madras 70, p. 73.

The meaning given to 'freedom' by His Lordship extends the power of expression, and as it is necessary for the citizen to have the required information before he can express his views upon an issue of public importance, it seems to imply a right to that information[3].

The same can be arrived at in a different way by examining the purpose of the freedom of speech and expression. It is guaranteed 'to foreclose public authorities from assuming guardianship of the public mind'[4] and if the citizen cannot claim information upon issues of public importance as a matter of right, if it is to be doled out by the government the very purpose of the guarantee is frustrated. Considerations, different from those arising in respect of private matters, arise from information of public interest.

In matters relating to the public at large all persons are equally interested in and affected by such matters, and self-government implies the right of every one to have a say in matters which relate to all. Before he can do so he must know what he is to talk about. The Press is one of the means and institutions that are important to the formation of public opinion. Moreover, it is the duty of the courts to interpret the Constitution in a manner most conducive to the enjoyment of the right approach by the citizen in its fullest measure,[5] which will not be otherwise possible. Thus it appears that the citizen, and the Press, has a right to obtain information upon public matters built in their freedom of speech and expression.

The second issue has arisen out of certain recent pronouncements of the Supreme Court[6] denying the rights guaranteed by Art. 19 of the Constitution to corporations upon the ground that they are not citizens within the intendment of that article; and so it may appear in future that these bodies cannot claim the freedom of speech and expression for themselves though in the past the Courts have admitted such claims[7]. Yet the manager, or the reporter, or the editor may well claim immunity.

The Press operates as a medium of expression and the only

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3. To be free is to have the use of one's powers of action (i) without restraint or control from outside and (ii) with whatever means or equipment the action requires. Bhagwati J. in A.I.R. 1958 S.C. 578, p. 614.
4. Thomas *v.* Collins, (1944) 323 U.S. 516, p. 545.
5. *Cf.* Sakal Papers Private Limited *v.* Union of India, A.I.R. 1962 S.C. 305, p. 311.
6. State Trading Corporation *v.* Central Tax Officer, A.I.R. 1963 S.C. 1811.
7. See *op. cit.* 4 and 6, *ibid.*

difference which employment makes is the right of exclusive publication which the enterprise obtains, the expressions remaining the acts of the citizens concerned.

II

This brings us to the relations of freedom of Press with the law relating to privileges of the Legislature. Privileges are certain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions[8].

Both for Parliament and the State Legislatures, the third clause of Art. 105 and 194 of the Constitution[9] provides that the powers, privileges and immunities of the Houses shall be such as may be defined by a law made by the appropriate legislature and until so defined shall be those enjoyed by the House of Commons of the United Kingdom; this gives rise to serious difficulties in respect of the rights of Press because the Commons has an absolute privilege to control publication of its deliberations untrammelled by constitutional restrictions, but in India the Press enjoys a freedom upon which no restriction on ground of Parliamentary privilege is envisaged by the Constitution in its Art. 19(2).

From this two extreme considerations arise: that the freedom is not subject to any restraint whatsoever; and that the whole-

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8. T.E. May, *Parliamentary Practice*, 16th edn. p. 42.

9. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

   (2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

   (3) In other respects, the powers, privileges and immunities of each House of Parliament and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, *until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.*

   (4) The provision of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

   (Art. 105 of the Constitution. The same provision is made with suitable verbal alterations by Art. 194 in respect of State Legislatures. The underlining is mine.)

sale transplantation of the privileges of the Commons absolutely takes away the freedom in respect of speech and expressions pertaining to the deliberations of the Houses.

Both these extremes were canvassed before the Supreme Court in M.S.M. Sharma *v.* S.K. Sinha[10] where the editor of the daily *Searchlight* was cited to appear before the privileges committee of the Bihar Legislative Assembly for an alleged breach of privilege consisting of publication of certain portion of a speech, delivered by a member in the legislative assembly of Bihar, expunged by the Speaker. The majority of the Court, speaking through Chief Justice S.R. Das, Subba Rao J. dissenting, came to the conclusion that there was an irresoluble conflict between the freedom of Press and the proved privilege of the House to exercise absolute control upon publication of its deliberations to which it is entitled under the terms of the latter part of Art. 194(3), and as such the rule of harmonious construction requires the court 'to read 19(1)(a) as subject to the latter part of Art. 194(3)' [11].

This conclusion of the majority is capable of two diverse meanings: either that restrictions may be imposed on the freedom of Press in exercise of the privilege of the House to control publication, or that no freedom of Press can at all be claimed in respect of the proceedings or deliberations of the House. The vital difference between the two will be the requirement of prior permission of the House if the latter position be true.

All that the case can be taken to lay down is that under the latter part of Art. 194(3) of the Constitution the House is entitled to a control of publication of reports of its deliberations as the same privilege has been proved to be enjoyed by the House of Commons at the adoption of our Constitution.

Nonetheless the case has been repeatedly relied on for the proposition that the privileges conferred by the latter part of Art. 194(3) of the Constitution exclude the provisions of Part III of the Constitution.

Clause (3) of Art. 194 is not in terms subject to other provisions of the Constitution, yet the Court has failed to realise the transitory character of the provision made by latter part of Art. 194(3). It was made to play a special role in the growth of healthy traditions during a period of transition. The entitlement

10. See *ibid* note 2.

11. *Op. cit. ibid* note 2, p. 410.

of absolute power proceeded on a misconception of the purpose of the provision. Once obtained such title makes it impossible to condescend later on to any attenuated, truncated, and restricted part of it.

The privilege of absolute control of publication was claimed by the Commons in England to avoid persecution by the Lords and the Monarch. It was continued by a non-representative Parliament to save itself from the pressure of its electorate as Lecky observes: 'The theory of the statesman of the first half of the 19th century was that the electors have no right to know the proceedings of their representatives.' [12]

Even if the privilege be taken as existing, the next question which we must consider is whether we can say that the framers of the Constitution intended to import it. The continued enjoyment of the right to choose by all is implied in the Constitution and as such anything which seeks to impair that cannot be said to have been envisaged in the Constitution. If the people have no right to know what their law-makers are doing they are denied the right to self-government. It is impossible to say that people in a state of equal liberty could have agreed to such a situation and that is the basic tenet of our Constitution.[13] The guarantee of freedom of expression is a recognition of the right of a person to make his own choice.

All the privileges of the House of Commons could not have been intended to be imported for reasons of their basic incongruity and resultant impossibility[14]. It has also been stated by the Supreme Court that in the *Blitz* case the concession admitted only related to the facts of the case and not to propositions of law[15].

No claim to an absolute prohibition has been made by any legislature in this country. The earliest stage at which control begins is the system of accreditation whereby the Presiding Officer of each legislative body issues passes to regulate the entry of the representatives of the Press. The passes are liable to be cancelled in case of unfair or incorrect reporting[16]. Accredi-

12. *A History of England in the Eighteenth Century*, Vol. I, p. 442, Longmans Green & Co., London, 1878.

13. 'See Justice as Fairness', John Rawls, 67 *Philosophical Review*, 164ff, and the Preamble to our Constitution.

14. Special Reference No. 1 of 1964, A.I.R. S.C. 745, p. 764.

15. *Ibid op. cit.* 17, p. 766.

16. See direction No. 129 of the Procedural Instruments of the Uttar Pradesh Legislative Assembly.

tation may also be withdrawn if a newspaper fails to apologise for a breach of privilege[17]. This system of virtual licensing has far reaching effects as the Houses claim an absolute privilege to control the entry of strangers in the House.

It is almost impossible to state categorically the circumstances in which a publication may constitute a breach of the privilege, but action has been taken only in the following type of cases:

(i) where the reporting was inaccurate[18],

(ii) where the reported account was a distorted, unfair, wilful, or mendacious rendering of the proceedings or was a wilfully suppressed account of it[19],

(iii) where portions of proceedings of a House which were expunged by the Presiding Officer of that House were published[20], and

(iv) where reports or proceedings of sub-committees of the House, or resolution, questions, or motions were reported or published before they were brought before the House.[21]

The third type has given rise to some controversy. The Press Commission of India was of the view that publication of such expunged portions should not be treated as a breach of privilege if the expunction had not been communicated to

17. The *Times of India* case, *Journal of the Society of Clerks at the Table of Empire in Parliament*, Vol. XXIII, p. 133.

18. *J.S.C.* Vol. XXVI, 118.
J.S.C. Vol. XXIX, 113.
J.S.C. Vol. XXVI, 119.
Privileges Digest Vol. 1, No. 1, p. 5
Privileges Digest Vol. 1, No. 3, p. 1
Privileges Digest Vol. 2, No. 3, p. 99
Privileges Digest Vol. 3, No. 1, p. 2
Privileges Digest Vol. 1, No. 3, p. 29

19. *Privileges Digest* Vol. 2, No. 2, p. 56
Privileges Digest Vol. 2, No. 4, p. 17
Privileges Digest Vol. 3, No. 1, p. 16
Privileges Digest Vol. 3, No. 4, p. 2

20. *J.S.C.* Vol. XXIX, p. 202

21. Parliamentary Debates Vol. 1, No. 489, p. 1318.
Privileges Digest Vol. 1, No. 3, p. 7 and 10.
Privileges Digest Vol. 2, No. 1, p. 3 and 4.
Privileges Digest Vol. 2, No. 4, p. 158.
Privileges Digest Vol. 3, No. 1, p. 5.
J.S.C. Vol. XXIII, p. 136 and 138.
(*J.S.C.* stands for the *Journal of the Society of Clerks at the Table of Empire in Parliament*)

the Press before the reports have gone out[22]. It would be better if a distinction were made between expunction ordered on the day of the proceedings and an order passed later.

The fourth category was regarded by the Press Commission as based upon a 'wholesome practice in consonance with the dignity of the legislature' [23].

III

Contempt is a broad and vague category into which fall the cases of breach of privilege as well as any other indignities suffered by members of the House, committees of the House or the House collectively.

Theoretically the causes for it are well defined for the House of Commons cannot create any new cause for punishment as contempt.

In India the power has been exercised in respect of newspapers either to punish breach of privilege of controlling publication of the deliberations of the House in cases enumerated earlier or to penalise for casting aspersions upon the Presiding Officer[24], members[25], committees, or the House collectively[26]. The test is whether publication lowers the House, or its members, or its committees in the estimation of the people. Truth of such statements is not always a defence.

The Press Commission of India arrived at the conclusion that oversensitiveness has been exhibited by certain Houses, and quotes action because a newspaper described a Ministers' statement before the House as intriguing; because the circumstances in which voting took place were described as 'confusing',

22. *Report of the Press Commission*, para 1101, p. 424, published by Manager of Publications, Govt. of India, 1954.

23. *Ibid* para 1102, p. 424.

24. *Privileges Digest* Vol. 1, No. 1, p. 1
Privileges Digest Vol. 1, No. 3, p. 17 and 42.
Privileges Digest Vol. 2, No. 1, p. 56
Privileges Digest Vol. 2, No. 2, p. 86
Privileges Digest Vol. 3, No. 1, p. 6
Privileges Digest Vol. 3, No. 2, p. 87

25. *Privileges Digest* Vol. 1, No. 1, p. 9
Privileges Digest Vol. 2, No. 1, p. 20 and 47.
Privileges Digest Vol. 2, No. 4, p. 158
J.S.C. Vol. XIII, p. 23
J.S.C. Vol. XXIII, p. 137.
J.S.C. Vol. XXIV, p. 140,

26. See *Special Reference No.* 1 of 1964, *Ibid* note 17.

and because a newspaper published a speech which criticised a bill pending before the House. In the last case the remarks actually made are not reproduced in the report[27].

The punishments which the House can impose for its contempt are admonition, reprimand, and imprisonment though the Houses have generally resorted to the first two only. But as the House can issue a warrant for the arrest and production of persons alleged to be guilty of such contempt the question about the applicability of Articles 20-22 of the Constitution arises.

The *Searchlight* case[28] does not clarify the matters any farther and the Supreme Court has recently pointed out that the question is still open to debate.[29]

A House's power to detain for contempt was debated at length recently when Keshav Singh was jailed for seven days for contempt of the U.P. Legislative Assembly. This was challenged by a writ of *Habeas Corpus* upon which a *rule nisi* was issued by the High Court and Singh was admitted to bail. The House regarded this as contempt and issued warrants for the arrest and production of the judges who then moved the High Court to get the warrants quashed.

At this stage the President of India referred the matter to the Supreme Court which observed that the court has a power to look into the validity of the cause of contempt if the commitment is by speaking warrant.

Commitments for contempt on a general warrant produced a difference of opinion in the Supreme Court. The dissenting judge, Justice Sarkar, said that the power to commit by a general warrant is not a privilege but a power which is also imported by Art. 194(3) of the Constitution and another that it can be taken as settled that the provisions relating to fundamental rights do not supersede legislative privileges and powers.

To the majority of judges the exclusion of the power of the court was adroitly based by Sir Edward Coke upon a supposed ignorance of the Law of Parliament ascribed by him to the royal judges. The exclusion came to be based upon the superior status

27. *Report of the Press Commission of India*, para 1120, p. 430.

28. See *Ibid* note 2.

29. See *op. cit. Ibid* note 17, p. 766, "In other words, the question as to whether Art. 22(2) would apply to such a case may have to be considered by this Court if and when it becomes necessary to do so."

(Gajendragadkar C.J.)

accorded to the Commons as the highest court in England by the judges of the tradition begun by Sir Edward.

The reason behind it was the desire to save the Commons from interference by the Lords because the Lords formed the highest court of appeal from the Courts in England.

Obviously all this cannot be relevant to our constitutional set up.

It is argued that if the judges are guardians of individual liberty the legislatures can also be so trusted. This overlooks the difference in the training and equipment of the two bodies. The judges are trained to look upon matters objectively and moreover, there is a hierarchy of Courts leaving less chance of victimisation.

DEMAND OF PRIVILEGE—A STEP BACKWARD

G. K. ARORA

THE meaning of the word 'Freedom' is not the same for all. It changes according to the status of one using the word. For the holder of political power it signifies political domination. For the subject of political power freedom means the absence of such domination. A further confusion arises because the members of society are not one or the other only but both at the same time.

Freedom of speech and expression may be looked at from two angles: the absence of any prior restraint upon the publication; as an ideal in itself, i.e., as absence or removal of restraints for all, from time to time, on the achievements of certain social ideals.

When we say that our Constitution guarantees freedom of speech and expression we tend to think that either a country has freedom or it does not. But every country has some freedom of speech. The difference lies in the nature of the right of its citizens.

If it is a public right we call that country a free country, and if it is a private right alone we say that there is no freedom there.

Something can be said by all at some time and at some places without prior consent and also without any fear of punishment. But in no country one has freedom to say anything at any time and in any place.

Our Constitution does not specifically mention freedom of press as a fundamental right. However, it has been accepted 'as a species of which freedom of expression is a genus'.[1] Freedom of press and circulation is included under Art. 19(1) (a).[2] The content of the expression—Freedom of Press—has been variously understood as has been pointed out by the Press Commission.[3]

1. Press Commission Report Vol. 1, p. 357
2. 1950 S.C.J., p. 418
3. Press Commission Report Vol. 1, p. 357

It means freedom to hold an opinion, to receive or to impart information without interference from public authority. It does not mean that everybody's opinion shall be published by a newspaper, or that the newspaper should be free from the domination or influence of the proprietor or the financier or the advertiser.

Speech and Press are different not only in form and character but also in their impact on their audience.

It is true that there is no such thing as a right of the freedom of the press over and above the universal right of free expression. Freedom of the press does not mean a demand for any privilege of the journalist. The press is open to all who have anything to say and the publisher accepts it, whether they are journalists or not. To claim any privilege would mean to be under a corresponding obligation to the authority from which it is derived.[4] But its importance as such cannot be overlooked.

The demands of the democratic, social and political order require that the people have full knowledge and information about what the law-makers and the courts of law do and what exactly transpires at their public sessions. The press, an instrument for the development of democratic process, is responsible to the subscriber.

The reader being entitled to be informed of all matters of public interest, the journalist should be unobstructed in the exercise of his function.

The democratic doctrine of freedom of speech and of press rests on certain assumptions. One 'assumption is that from this mutual toleration and comparison of diverse opinions the one that seems the most rational will emerge to be generally accepted'[5]. This is the theory that is written in the American Bill of Rights and must also be presumed to be at the base of our Fundamental Rights. Democratic Constitutionalism means the creation of various sets of devices to subject the political freedom of the holders of power to institutional limitations and legal controls.

One of several such problems which affects us directly at the moment is the claim of our Legislatures under Art. 194(3) of our Constitution, and obviously also under Art. 105(3).

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4. Dermot Morrah, Editor of *The Round Table.*
5. *Freedom & Responsibility*—by Carl L. Becker, p. 33

The claim is that the legislatures have all privileges, powers and immunities, as they conceive and interpret them, as the House of Commons in England had on 26th January 1950. So the first part involves no controversy. The difficulty in the latter is that the extent of these powers, privileges and immunities is the same as that of the House of Commons in U.K.

This assertion has created disputes between the fundamental rights of the citizens and the fundamental rights of the legislatures, and the jurisdiction of the legislature to decide and punish a citizen for its contempt or for breach of its privilege.

Every member of a legislature must enjoy freedom from any fear of action against them for anything said or done in performance of their duty—facilities without which they cannot discharge their functions. Such facilities are grouped together as 'privileges, powers and immunities'.[6]

The points should be made:

Legislature alone has the right to frame its own rules of procedure and is also free to follow or not to follow those rules.

Legislature itself is the exclusive judge of the question of the legality of its own proceedings.[7]

Even if a member misuses his right of free speech and comments upon the judiciary in contravention of Article 211, there is no remedy outside. It is for the Speaker to see that the members do not misuse their right of free speech.[8]

The Court has no jurisdiction to issue any writ to the Speaker for any orders issued or rulings given in that capacity to regulate the conduct of the business of the legislature. The Court is not competent to say whether a ruling is right or wrong.[9]

It is recognised that the legislature has the power to ban even a true report of proceedings in the House.[10]

The Press comes in contact with the legislature by reporting

6. Privilege means that the acts which might be unlawful are allowable in certain circumstances—Paton, p. 256
7. A.I.R. 1954 All., p. 319
8. A.I.R. 1958 Orissa, p. 168
9. A.I.R. 1952 Or., p. 234
10. A.I.R. 1959 S.C., p. 395

the debates; by interpreting the proceedings, by criticizing the decisions of the legislature. The accepted rules for this are:

Publication of evidence taken before a select committee until it has been reported to the House is a breach of privilege.

Indignities offered to the character of the members or to the legislature by defamatory reflections is a breach of privilege. What is indignity is to be decided by the legislature.

Reflections on the character of the Speaker or accusation of partiality in discharge of his duty is a breach of privilege.

Difficulties have arisen in respect of the second claim that the extent of these privileges, powers and immunities is exactly the same as of the House of Commons in the U.K.

The claim is more dogmatic than reasonable for it is obvious that some of the privileges of the House of Commons can have no meaning with reference to our Constitution.

This point was raised before Allahabad High Court but that was not squarely answered.[11] However, the Supreme Court has now clearly declared that the broad claim that the latter part of Art. 194(3) provides expressly that all powers vested in Commons at the relevant time would vest in the State legislature cannot be accepted in its entirety[12].

Our Constitution is not the result of the laws that a sovereign legislature passes from time to time. The powers of the legislatures are based on the Constitution.

The legislatures have been given power to punish for their contempt committed outside their Chambers.

Where the Speaker has taken some steps against the writer of an offending article, whether the procedure adopted by him is regular or irregular, it is not the concern of the court so long as his acts are confined to the enforcement of the well established rights and privileges of the legislature.[13] But this right does not oust the jurisdiction of the court to see if any remedy is available to the citizen or the action is within the 'well

11. A.I.R. 1954 All. p. 319
12. (1965) 1 S.C.J., p. 847 (865)
13. A.I.R. 1958 Ass., p. 165

established rights and privileges' of the legislature.[14]

It is here that the controversy regarding 'speaking warrant' and 'general or non-speaking warrant' has cropped up.[15] The claim of the legislature that once a warrant against a citizen signed by the Speaker is issued the court is stopped from enquiring further cannot be accepted in India.

In India, in contrast to England, the judiciary decides whether the Constitution has been rightly interpreted. In England, Parliament is superior to all courts.[16]

The claim of the legislature is against the concept of Rule of Law itself. Privilege is always at the expense of others.

Provisions of facilities for functions to be performed by different bodies is one thing. The claim of certain privilege—political or otherwise—is another. The value attached to the idea of privilege tends to increase the area of privileges.

It is argued sometimes that these powers, privileges and immunities are necessary for the existence of the parliamentary democracy:

If the Court were to act over the Parliament then the Court would prescribe what the Parliament has to do, the Court will direct the Parliament to function in a manner it desires to do it.[17]

But the power to adjudicate for its own contempt without regard to the rights of citizens to seek remedy in a court and without considering that the courts are under a duty to find out if a remedy is available, is not necessary for the functioning of a democratic legislature. The American pattern is an example and it cannot be said that American Congress is less efficient in its task of legislation than the British Parliament.[18]

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14. '.....neither House of Parliament have power, by any vote or declaration to create to themselves any new privilege.....'Resolution passed by House of Lords in 1704 and assented to by House of Commons, *vide* May's *Parliamentary Practice*, pp. 48, 50.

15. When the legislature adjudges an act to be an act of contempt and the Speaker as the chief functionary of the legislature signs a warrant stating such adjudication generally without particulars of circumstances and reasons it is known as general warrant. And when particulars are also given it is known as speaking one.

16. (1965) 1 S.C.J., p. 847 (892)

17. 'Shall Parliament be Suppliant to Courts?' by G.S. Pathak, *The Working Journalist*, Nov. 61.

18. While the American Congress can punish its own member for contempt as it relates to keeping order in the House, contempt committed by a citizen outside the House who is not a member is outside the jurisdiction of the Congress and the matter is referred to the court for adjudication.

All that the court can do is to announce its considered view about the validity or otherwise of the acts of legislature. In the same way with contempt. It would enquire whether the type of privilege is available to the legislature and whether the action taken is for contempt.

If the answers are in the affirmative the court would withdraw as it has done in many cases. In India it is the Constitution and not the legislature that is sovereign.

It is interesting to note that while the Indian legislature is claiming to possess certain absolute rights under the title of privilege to adjudicate and punish for contempts committed by a non-member and outside the chambers in Great Britain these privileges are being criticised as being too sweeping. There a view is developing that except in cases of contempt in the face of Parliament the whole question of privilege or contempt should be handed over to the court of law.[19] There seems no reason why a similar view is not acceptable to our legislatures.

A possible reconciliation between the fundamental rights of the citizens and the fundamental rights of the legislature may be found in the method of ordering the Advocate-General to launch a proper prosecution. The Court will enquire about the existence and the extent of the privilege claimed by the prosecution, and if the claim is established the court will withdraw leaving the punishment to the wishes of the legislature.

This method if adopted will ensure against any recurrence of the ugly situation that developed in U.P. It will keep the right of the legislature intact to punish for its own contempt. It will remove the controversy about the speaking warrant and the general warrant.

It will retain the right of the court of law to be the sole adjudicator of law of the land. And it will ensure to the citizen that his fundamental rights shall not be affected for any political reasons.

The question of privileges, powers and immunities of the legislature has become a political question—a question between the rights of the citizen and the rights of his elected representatives who possess power by virtue of their position. The solution also can only be political.

The Press as the spokesman of the elector can by a more purposeful functioning convince the holders of political power, the futility of the conflict and can also convince the citizen of the desirability of showing due respect and recognising the dignity of the legislature.

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19. *Hindustan Times*, July 6, 1958.

CRIMINAL LAW AND THE PRESS

LOTIKA SARKAR

FREEDOM of the Press, though not specifically guaranteed in the Indian Constitution[1] is included in the Fundamental Right governing freedom of speech and expression[2]. In law, therefore, the Press in India enjoys no special privilege[3] and has to work under the same legal restraints which control an individual's freedom of speech and expression.

Criminal law expects the Press to observe the norms of behaviour. One such norm is the sanctity, reputation and continued existence of state organs, community or individual[4]. Any attempt to breach this is penalised.

Freedom of expression[5] has to be subordinated to the larger

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1. Some of the Constitutions specially guarantee the freedom of the Press and the following are some examples:
   (a) Chile Art. 10(3)
   (b) Jordan Art. 15(ii)
   (c) Peru Art. 63
   (d) Norway Art. 100
   (e) U.S.S.R. Art. 125
   (f) Yugoslavia Art. 27
2. Bhagwati J. "Freedom of speech and expression includes within its scope the freedom of the press ... and the liberty of the press is an essential part of the right to freedom of speech and expression and ... consists in allowing no previous restraint upon publication" Express Newspapers Ltd. *v.* Union of India 1958 S.C. 578.
3. Barman J. "...the freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length the subject in general may go, so also may the journalist" Gourchandra *v.* Public Prosecutor 1962(2) Cr. L.J. 617.
4. Sec 124A sedition "brings or attempts to bring into hatred or contempt, or excites. disaffection towards the Government". Sec 153A I.P.C. promote or attempts to promote feelings of enmity or hatred between different classes of the citizens of India. Sec 499 ... imputation will harm the reputation of the person.
5. Even in the Constitutions which specifically guarantee the freedom of the press there are restrictions in the larger interest of the community. The restriction may be broadly legal restraints as in the Jordanian Consti-

interest of the community. Broadly speaking, the Press is free to express opinions to "change the political and social conditions or for the advancement of human knowledge"[6]. It is entitled to point out critically the mistakes of individuals and of the State[7].

It has been said that the purpose of a newspaper is to make money and build up circulation[8], but its duty is undoubtedly to give news and views to the public[9]. In fulfilling this duty the Press will have to heed the reasonable expectation of an individual to be protected from undue harassment by publicity given to his personal and private matters.[10]

The Press is often faced with the possibility that an individual or a group of individuals, offended by publicity, bring criminal actions. Fear of criminal action often deters smaller newspapers from doing duty faithfully.

This polarisation of interest—of the public and the individual —is the special and continuing problem of the Press and also its perpetual headache. An individual does not face this problem and therefore it appears unfair to apply the same laws to both.

The Press (Objectionable Matter) Act 1951, an omnibus statute dealing with all objectionable matters including incitement to

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tution "within the framework of the law" or Chile "without prejudice to the liability of answering for offences ...committed in the exercise of this liberty" or it may be like the Norwegian Constitution which enumerates the restraints "...incites others to disobedience to the laws, contempt of religion or morality or the constitutional powers .. or false and defamatory accusations" the third type is the Soviet Constitution which envisages the freedom of the press as being free from capitalist control as it guarantees the freedom "in conformity with the interests of the toilers and in order to strengthen the socialist system."

6. Hidayatullah J. in Ranjit Udeshi *v.* State of Maharashtra 1965 S.C. 885.

7. Vyas J. "...unless mistakes of individuals and State are criticized and commented upon by the press...a democracy cannot function" Durgaprasad Prasanna Kumar *v.* State 1956 Cr. L.J. 704.

8. Widgery J. in Mason *v.* Associated Newspapers 1965(2) A.E.R. 954, 958

9. According to one of the editors of the *London Times* the duty of a good newspaper is to gather and make known news of public interest.

10. Goodman " ...middle course to procure that no scandal can legitimately be concealed, no matter of public concern removed from public vigilance and no inoffensive and law abiding citizen to be pilloried and lampooned for the cruel delictation born or assiduously schooled to love sensation". "Defamation and Freedom of Speech 1960 Current Legal Problems."

crime[11], has been recently repealed. Section 3 of the Act under six different heads enumerated restrictions which were deemed objectionable. These provisions, governing the freedom of the Press, are now found largely in the Indian Penal Code, and the Criminal Procedure Code[12].

The recent enactment of great relevance is the Criminal Law Amendment Act 1961 which prohibits the questioning of the territorial integrity or the frontiers of India "in a manner prejudicial to the safety and security of the country".[13] Similarly, it prohibits the publication or spreading of rumours likely to be prejudicial to the maintenance of public order, or to the essential supplies or services in India in a notified area[14]. It authorises the State and Central Governments to forfeit copies of the issue of the newspaper or book or document in which such writing has appeared[15]. This Act was necessary because of the developments in the border regions[16].

Judges have held that to be a threat to public order, there has to be a "proximate connection or nexus to the public order" and one should not read into its consequences which are "far fetched[17], hypothetical or problematical".

Guidance on the interpretation of the Criminal Amendment Act 1961 can be best sought from cases dealing with offences against community and religion. Writing in the papers on those subjects is unfortunately not rare. Trouble in the border areas can be compared to the communal troubles which India has witnessed in the last few years.

In *Ramji Lal* v. *State of U. P.*,[18] the Supreme Court made it clear that, even though Section 295A of the I.P.C. was an offence against religion, the effect of the offence was a threat to public order and therefore it punished "the aggravated forms of insult to religion which is clearly to disrupt the public order."[19]

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11. An Act to provide against the printing and publication of incitement to crime and other objectionable matter.
12. See some of the more important sections: Sec. 124A, 153A, 295A, Sec. 499—502 I.P.C. and Sec 108 Criminal Procedure Code.
13. Sec. 2.
14. Sec. 3.
15. Sec. 4.
16. Statement of Objects & Reasons 1960 Gazette Part II Sec 938.
17. Superintendent of Central Prison v. Dr. Lohia 1960 S.C. 633, 640
18. 1957 S.C. 620.
19. On p. 623

The case was one to determine the constitutionality of the section 295A and the only facts one gathers from the case are that the matter was written in a journal called *Gaurakshak* devoted to the preservation of the cow and was written in language which was clearly meant to insult and outrage the sentiments of the Muslims.

In a case from Patna, the High Court[20] had also to interpret the scope of Section 153A. In this case the editor, publisher and printers of the weekly *Sangum* were being prosecuted for an article, which had appeared on the eve of Bakrid. The writer criticised the nebulous attitude of the Government on the question of cow slaughter. In the writer's view such confusion led inevitably to trouble.

The judge reiterated an earlier view[21] that a balance has to be drawn between the undesirability of strife between communities and the undesirability of preventing bonafide criticism to bring about reform. And the writer was found not guilty because the article read as a whole was merely a suggestion that something should be done to improve the situation.

Judging from these cases there is no yardstick by which one can be certain, what will be construed as "prejudicial to the safety and security of the country" and what will be taken as mere critical writing.

In *Durgaprasad Prasannakumar* v *The State*[22], a Marathi weekly called *Hindu* had used a commonplace incident to write a tirade against the Muslim community. A Hindu girl, having been converted to Islam, had married a Muslim boy who had without any prior intimation or even a hint sent her one morning a *talaqnama.*

From the purely human angle, the girl's bitter statement warning Hindu girls from not committing her type of mistake was understandable. But this weekly made a vicious attack upon the Muslim community referring to its traditions of treachery as also the practice followed by them of putting their fathers in jail.

It went on to lament the creation of Pakistan which was consistently referred to as Papstan—the land of sin—and ended with a critical comment on the selfish, suicidal policy of the Government in accepting secularism. The defence of the writer

20. State of Bihar *v.* Ghulam Sarwar 1965(2) G.L.5 401
21. Annie Besant *v.* Advocate General 461A 176.
22. 1956 G.L. J. 704. This case would today be under Sec 295A I.P.C.

that it was seeking to reform the policies of the government was rejected by both Dixit and Vyas JJ. The former made the point that even when the writer was right in his opinions, the only yardstick was whether the article was likely to have a bad effect on the mind of the average reader.

In a second case[23] under the title *Pant Sarkar ki Rajdhani— Janaza Nikal Gaya* the newspaper *Millat Jadid* had printed an article severely criticising the actions of the police in seizing printing plates, handbills and stopping the work of the press.

Randhir Singh J. said the intention was not to incite any one to violence but to criticise the high-handed action of the police and was a justifiable use of the right of freedom of expression[24].

Offences against the reputation of the State and community, are offences because they are likely to lead to a disturbance of public order; hence no factors such as expense will stand in the way of prosecution of a journalist or a newspaper.

An individual's reputation is regarded as a matter which concerns him alone and, the individual therefore, has to fight a newspaper which will usually have more resources than the citizen. Further, the publicity and the expense of fighting an action will usually deter an individual from going to court. The remedy lies not in compelling an individual to bring actions but in providing facilities for him to do so. An enlightened judiciary should realise that a deterrent punishment is necessary to prevent newspapers from using this powerful medium of publicity to the detriment of the individual.

Even when a journalist has taken all reasonable care to verify allegations he must prove that publication was in the public interest, or prove good faith and for the public good.

How does one prove public good? A judgement from Kerala[25] gives an indication how the judiciary would interpret such a phrase.

Some teachers from a secondary school had been dismissed by the management and, in sympathy, the other teachers as well as the students were on strike. Various political parties had

23. Niaz Mohd Khan *v.* The State, 158 Cr. L.J. 7.
24. The case today would come under Sec 108 Cr. P. Code.
25. Kuttysankaran Nair *v.* Kumaran Nair 1965 Kerala 161.

issued statements urging the public to help in the reinstatement of the teachers.

At this stage a leaflet was issued giving the background of the case which was that the manager usually held back a certain portion of the teachers' salary which he misappropriated. While the allegations were proved to be true, Govinda Menon J. said "no amount of truth will justify a libel unless its publication was for the public good". He, however, held that a publication would be considered to be in the public interest even if a section of the public become interested in it.

Similarly the Supreme Court in *Harbhajan Singh* v. *The State of Punjab*[26] gave a liberal interpretation to good faith. This was a case where Harbhajan Singh, the Secretary of the P.S.P., had made a statement that Kairon's son was "not only a leader of smugglers but is responsible for a large number of crimes being committed in Punjab."

The statement had been published in full in the *Blitz* and extracts in *The Times of India*. Public good was more or less assumed. The fact that similar statements had been made in the Legislative Assembly (which had been reproduced in the Press) as well as the reluctance of persons to give evidence for fear contributed to the Supreme Court deducing that the statement was in good faith and without malice.

Both these cases fall in a category where there can be no two opinions that publicity should be given by the papers to this type of incidents.

In the hands of the Press publicity is a powerful weapon, but in awarding punishments for defamation, the judiciary seems not to regard it as a factor determining the punishment.

If a paper has a history of irresponsible writing, then, bearing in mind the inbuilt inhibitions in India in bringing cases of defamation, a judge should award a sentence of imprisonment which would be a deterrent.

A case involving a public servant was from Orissa[27] and the printer and publisher of *Matribhumi* were convicted for criminal defamation of the Governor.

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26. 1966 S.C. 97.

27. Gaur Chandra *v.* Public Prosecutor 1962(2) Cr. L.J. 617.

The defamatory report was a press conference given by Dr. Lohia in which he attacked the Governor for not accepting the resignation of the Congress Ministry after its defeat, owing to the Governor being under an obligation to the Congress Ministry as some one had secured a job for a near relation of his in the Assam Oil Company.

Investigation showed that no near relation of the Governor was employed in the Assam Oil Company but his son was in a British firm, Andrew Yule and Co. There was no evidence to prove that influence had been used to secure the job.

To expect a daily newspaper working under great pressure, and reporting the press conference of an important political leader, to make a thorough investigation would be well nigh impossible. Evidence that influence has been used to secure a job is rarely available and a mistake between one British company and another would normally be a common slip.

To conclude that truth could not be a defence because the statements were untrue and the ruling out of the defence of fair comment on the ground that no other paper had printed this part of the conference was to apply a very exacting standard to a printer and publisher.

Another statutory limitation on free reporting and commenting by the Press is the Contempt of Courts Act 1952. This Act does not define contempt but, says the Supreme Court, it includes any "disparaging statement... calculated to interfere with the due course of justice or proper administration of law by a Court..."[28]

Contempt of court will also include aspersions cast on parties in a criminal case, which are likely to prejudice the public against them[29]. This is a field in which there is a conflict between two important rights—the right of the press and the right of free judicial process. Between the two "a free judicial process is of greater importance.. for it is only through a free judicial process that the freedom of the press can, if necessary, be vindicated..."[30]

Much damage can be done by the Press publicity in damaging the reputation of persons being tried or the witnesses to a case. The fear of such publicity would often hamper the parties from going through with the case.

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28. 1953 S.C.R. 1169, 1179
29. Padmawati *v.* Karanjia (1963) Cr. L.J. 61
30. Naik J *ibid.*

Whether there is a contempt or not will be judged objectively by the court: Is the writing likely to prejudice a fair trial? The second factor is that the case does not have to be pending but it will attract the penal provision even if it is 'imminent', which, in the view of Naik J, is as soon as suitor has taken "effective steps manifesting his intention of getting it adjudged in a Court of law[31]".

However, the Act provides that an apology tendered to the court by the accused will suffice and there need be no punishment. It is, however, of interest that contempt being an offence against the judicial process, the judges have adopted a strict test for an apology and have not accepted any apology which in their opinion is not a genuine one and is not an "expression of contrition."

Therefore both in the case from Madhya Pradesh and another from Bombay[32,33] recently, the apologies have been rejected as not being genuine and the defendant sentenced to pay a fine of Rs. 1,000 in the first case and undergo imprisonment for one month and pay a fine of Rs. 1,000 in the other.

A very different type of restraint placed on the Press is the prohibition from publishing anything which as Kailasham J. said, is grossly indecent and scurrilous[34].

The only danger for the Press or even an individual lies in the fact that it will be the job of the Court to decide what is obscene. No newspaper will know beforehand which review or which advertisement of a book will fall foul of the law.

It is essential for the Press to realise its responsibility especially in a time of a crisis. Inflammatory writings likely to lead to incitement are matters which should be avoided. The misuse of the freedom guaranteed by the Constitution in the case of the Press will have a far reaching effect, as a curtailment of their freedom will have on the smooth working of a democracy.

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31. Note 29, On p. 66

32,33. Kotual J in The State of Maharashtra *v.* Perspective Publications Private Limited report in *Mainstream* February 5, 1966.

34. In re Ramanathen 1965 (2) Cr. L.J. 285

PROFESSIONAL SECRECY AND OTHER RIGHTS

C. P. GUPTA

Professional Secrecy and the Law: The press in almost all the free countries of the world has of late demanded a legal recognition of its right to professional secrecy as an essential aspect of the freedom of press.

The reasons for and against such extension have been succinctly summarised in the excellent study by the International Press Institute "Professional Secrecy and the Journalist" published from Zurich in 1962.

The reasons for in part include:

(1) That the journalist has a moral and ethical duty to protect the anonymity of an individual who gives him information with the understanding that it is to be regarded as confidential as to source.

(2) That the journalist must protect his sources as a practica. assurance that he will continue to receive information in confidence, if need be, and make it possible for the newspaper to publish information that should be made known to the public.

(3) That the press contributed to the public welfare and performs an essential public service in presenting information that should be made known to the public.

(4) That the journalist serving the public welfare, is as much entitled to special privilege under the law as is the doctor or clergyman or lawyer.

(5) That, if a journalist can obtain information, the public agencies—including the police and the courts—should be able to obtain the same information without putting pressure upon the individual journalist to do their work for them and, in the process, betray a trust.

Arguments against include these points:

(a) That the function of the courts in the preservation of law and order must take precedence over any claim of privilege by the journalist.

(b) That the journalist receives information with the specific understanding that it is to be made known, whereas the doctor, lawyer, clergyman receive it with the express understanding that it is not to be made known.

(c) That a journalist, given a legal right to withhold source, could publish any sort of assertion or charge actually made up by the journalist to serve some purpose contrary to the public interest, or be used for that purpose.

(d) That there is no evidence to show that the press performs any better or any worse, whether or not it operates under law granting protection.

In spite of the demand for legal protection to professional secrecy, few countries have provided it, and in varying measure.

"Journalists in Austria enjoy the almost complete legal right to protect confidences. That right is virtually complete, also under the law in effect in the Philippines. Journalists in the United States are protected... by laws in 12 States, while judicial rulings in two other States provide an effective protection. Circumstances in Sweden, in Norway, in the German Federal Republic, and in Switzerland are almost as favourable under existing laws. This, however, represents the total protection under the law accorded to journalists in the world today in the area of professional secrecy".[1]

There is no unanimity among the journalists about the scope of the protection sought and they are not agreed whether it should be absolute or qualified.[2]

In India there is no legal protection given to professional secrecy of the press. Statutory protection has been to communications passing between the lawyer and his clients, between the husband and wife, between the officials of the State, and to communications received from others by Magistrates, police and revenue officers, about the commission of certain offences.[3]

1. *Professional Secrecy and the Journalist*, p. 233.
2. *Ibid.* 235. Mr. Y. Kumar in his paper has taken almost the same view.
3. The Indian Evidence Act, 1872, ss. 122 to 129 and 132.

Although the press in India has not enjoyed any legal protection to professional secrecy the cases in which the journalists have been compelled by the courts to disclose the sources of their information, or where the journalists have been penalised for non-disclosure, are very few indeed, if any at all.

In the absence of any cases or field study, it is difficult to say whether the few cases should be ascribed to the self-restraint by the journalists or to the indulgence of the courts towards them. Nor can it be said with any certainty as to how far the responsible journalist has been hampered in the discharge of his functions by the absence of statutory or legal protection to professional secrecy.

That the rules of professional ethics prevent the journalist from disclosing his sources is widely recognised. The demand is for legal protection on the parallel of protection to other professions.

The reason for treating communications between husband and wife as privileged, is, because it is considered "necessary to preserve the peace of the families", and there is a natural repugnance to compelling a wife or husband to be the means of other's condemnation.

On grounds of public policy public officials are not compelled to disclose communications made to them in official confidence and when they consider that public interests would suffer by such disclosure. The question whether the disclosure is in public interest or not has been left to the discretion of the executive officers and the courts will not enquire into it.

Similar reasons operate between the magistrates and police officers But the protection given to communications between the lawyer and his client is for somewhat different reasons. The idea of protection is to encourage the client to consult the professional experts unhampered by any fears about the disclosure of his communications.

It may be pointed out here that whereas in the case of other professional communications privilege enjoyed, by and large, is to keep confidential the contents, in the case of the press the demand is for the privilege to keep confidential the source of the published communications.

In the absence of any cases of hardship, not only the social necessity has to be demonstrated but its urgency has to be proved

to secure a priority in the programme of the over-busy legislatures.

Several speakers have said that in the matter of professional secrecy they were thinking of protection against the officials who often compelled the journalist to disclose the sources of his reports, and in the event of his refusal to do so, subjected him to various pressures and extra legal sanctions, such as, refusal of entry to offices. It would hardly serve any purpose to issue a general fiat in a statute, that no officer will ask a journalist about the sources of his published reports, for, if an official was displeased with the publication of a report, he could always withdraw from the journalist the concessions made to him without asking him to disclose the sources of his reports.

The real problem was of legal protection against the legal compellability of disclosing the sources of published information in a court of law, and it is this problem which was studied by the International Press Institute.

The right of the press to publish whatever it likes is, in a way, hampered by the law of defamation. The right to freedom of speech and expression, of which the freedom of press is a part, has been specifically subjected under our Constitution, to the law of defamation.

The civil law of defamation may be a greater and more effective check on the freedom of press than even the law of criminal libel. Heavy damages in a few cases may even force a newspaper to close down.[4]

The law of defamation in this country is based on the principles of the English common law.

Until recently, the freedom of the press in England came in for much trouble at the hands of the common law of defamation. If a paper published a photograph of X & Y, with the caption, even at the suggestion of X, that their engagement has been announced, it was made to pay damages to the plaintiff, who, unknown to the defendant, was the wife of X, not divorced, but living separately.[5]

Again, the papers were made to pay damages even for state-

4. In the recent case of Thackersay *v.* R.K. Karanjia, editor of *Blitz*, the Bombay High Court has granted a sum of rupees three lakhs as damages to the plaintiff. It is not proposed to deal with the case in any detail as an appeal from the judgment is pending before the Supreme Court.

5. *Cf.* Cassidy v. *Daily Mirror*, (1929) 2 K.B. 331.

ments in their humorous columns, if some person, unknown to the writer, could prove that the description given of the supposed fictitious figure tallied with his own and that the statements made in the column were defamatory of him.[6]

And that was not all. Damages were to be paid even for publishing a factual news item, such as, A.B. convicted of bigamy and sentenced to imprisonment, if there happened to be two A. Bs. in the town answering the same description, the statement being true with regard to one but not the plaintiff.[7]

It was only the Defamation Act of 1952, which helped in reconciling the conflicting claims of an individual to his reputation and that of the press to its freedom, by providing that in case of unintentional publication of defamatory statements a proper offer of amends, which, besides apology, includes an offer to join in publishing a correction, could be treated by the courts as a defence to an action of defamation.

The Defamation Act of 1952, obviously, does not apply to India and theoretically the law here is what it was at common law. Our courts have repeatedly stated that in the matter of making defamatory statements the press enjoys no privilege and is exactly in the same position as any other person. Some of them have gone to the extent of saying that not only a journalist "is not specially privileged as to what he must say. But on the other hand he has a greater responsibility to guard against untruths, for the simple reason that his utterances have a far larger publication than have the utterances of the individual and they are more likely to be believed by the ignorant by reason of their appearing in print."[8] Whenever libellous statements have been published in the press deliberately the courts have taken a serious view and granted damages for the defamatory statements. For example, in *The Englishman Ltd.* v. *Lajpat Rai*,[9] when the defendant, appellant newspaper, published the defamatory statement about the plaintiff, L. Lajpat Rai, that "he has been guilty of tampering with the loyalty of sepoys", Harrington, J., of the Calcutta High Court, held that the statement, deliberately published, in the context did amount to "an imputation that he (the plaintiff) has been guilty of offences under sections 124A and 131 of the Indian Penal Code" and was defamatory. The Court rejected the plea of privilege advanced by the defendants on the basis that similar statements about the plaintiff had been

6. *Cf.* Hulton v. Jones, (1910) A.C. 20
7. *Newstead* v. *London Express*, (1940) 1 K.B. 377.
8. Khair-ud-Din v. Tara Singh, AIR 1927 Lah. 20.
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9. I.L.R. XXXVII Cal. 760.

made in Parliament, because the publication in question was not a fair and accurate report of parliamentary proceedings contemporaneously published but a republication by the paper as a statement of its own.

But apart from deliberately made defamatory statements, the position of defamatory statements made in the press inadvertantly, is different. In this regard, our law is not likely to develop on the lines English common law did. The courts seem to be on the guard. For example, in *Nagantha* v. *Subramania*,[10] the *Madras Standard* had published a letter from the defendant in which the writer had cast reflections on the conduct of a case by the plaintiff as a lawyer. Dismissing the appeal of the plaintiff against the reduction of damages by the Subordinate Judge's court below, Sadasiva Aiyar, J., speaking for the High Court, observed: "The appellant's lawyer referred to the House of Lords' cases in *Hulton & Co.* v. *Jones*, to support his position that whether the plaintiff was intended or not intended to be attacked, the defendant would be liable if an ordinary reader would reasonably come to that conclusion. Supposing that the English Law as developed by the English precedents is to that effect, I do not see why the Indian law should follow suit unless the doctrine is in consonance with justice, equity and good conscience. I am strongly of opinion that the dissenting opinion of L. Fletcher Moultan, J., on the question (an opinion which was expressed in the same case when it was before the Court of Appeal) [*See Jones* v. *Hulton & Co.* (1909) 2 K.B.444] is much more in consonance with justice and equity than the law as now settled in England on this point".

It may be argued, as it has been, that because of the requirement of expeditious publication the press people have to work under a great strain and that they do not have the time and leisure to verify the accuracy of every statement that goes to the press for publication. But it has to be remembered that the public interest in free and expeditious flow of news and views has to be balanced with the public interest in an individual's reputation. It will be tilting the balance too much on one side if the individual is to have no remedy for the gravest harm done to his reputation and interests by the published defamatory statements in the press. The English Defamation Act of 1952, protects the publication only of unintentional statements in the press. With regard to such defamatory statements in the press, the trend of the judges in this country, as disclosed by the very few cases that have come before them, is to grant no damages at all or only nominal ones.

10. AIR 1918 Mad. 700.

In the absence of any hard cases, such as the ones at English common law, to which reference has been made above, there does not appear to be any particular need here of an Act such as the Defamation Act of 1952, in England. There is hardly any reason to doubt the capacity of our judges to provide justice in the particular facts of the cases and their knack to develop the law on progressive lines. From the legislatures' point of view, it is also a question of priorities. The over-busy legislatures find it hard to cope with the more pressing social demands. For example, it took the Parliament about a decade to try to implement the recommendations of the Law Commission in the first of its reports in 1956, about the governmental liability for the torts of its employees, a matter, undoubtedly of much greater practical and social importance.

Right to Comment : To the press it is not only the right to gather and publish news but the right to express its views and to comment on matters of public interest, is an equally dear and important right. At common law an individual has the right to express a fair opinion, whether true or false, on a matter of public importance. Following the opinions of English judges our courts have expressed the view in a number of cases that the press has no special privilege to comment on matters. In spite of these general observances, the courts have been quite indulgent towards the press in upholding the defence of fair comment. Of course, the courts have intervened to grant damages for libel where defamatory statements were made in the name of comments. For example, in Subhas Chandra *v.* Knight & Sons[11] where the *Statesman*, purporting to comment on the speech of Lord Lytton, the Governor General, dealing with the arrest of certain persons under the Regulations of 1898, wrote in its leading article to the effect that Subhas Chandra Bose was not arrested because he was a Swarajist but because he was a terrorist, the Court granted damages to the plaintiff holding that it was not a mere comment but a statement of fact and that a libellous statement of fact was not a comment. In the course of his judgment, Rankin, C.J. observed, "In such a matter a journalist who does not exercise a reasonable degree of care and skill to make plain the limits of his intention may quickly drift into a repetition of the accusation into a suggestion that it must be true into an opinion to that effect. If he has done so and if the fair meaning to the ordinary reader, as put by a jury upon his words, is to present the reader with or commend to him a conclusion that the plaintiff has been guilty of a crime, it is in my opinion erroneous to say that he is merely commenting upon the statement of another".

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Likewise, in Tushar Kanti Ghosh *v.* Bina Bhowmick,[12] where, in certain statements published in the *Amrita Bazar Patrika*, in the course of a dispute between the paper and some of its workers, allegations were made against the plaintiff that she as leader of her union, "has employed hirelings or has been concerned in the commission of daylight robberies or that she got her union affiliated to the B.P.N.T.U.C. as a subterfuge", the Court refused to treat them as mere comment and held them to be defamatory statements of fact. But in M.T.P. Publishing Co. *v.* Rodgers,[13] where the *Madras Times*, while commenting on the conduct of the plaintiff, had called him a "born agitator", and who, in the opinion of the paper, in misleading the workers to strike was serving his own interests rather than of the workers, the Madras High Court while accepting the appeal of the respondents observed: "The language, no doubt, is strong, but if the writer believed that Mr. Rodger's activities were mischievous, he was entitled to express himself forcibly with a view to dissuading the men from following him and so averting a strike". In fact, hardly have the courts ever held a comment in the press unfair because of the strong language used. The courts have gone to the extent of saying : "While a journalist is bound to comment on public questions with care, reason, and judgment he is not necessarily deprived of his privilege merely because there are slight unimportant deviations from absolute accuracy of statement, where those deviations do not affect the general fairness of the comment."[14] In Rama Krishna Pillai *v.* Karunachari Menon,[15] the defendant, editor of the *Indian Patriot* had written in his paper a number of articles justifying the action taken by the Maharaja of Travancore against the plaintiff's tri-weekly, the *Swadeshabhimani*, banning it in public interest. Dealing with defence of fair comment, the court observed that "there can be no doubt that fair comments upon any matter of public interest in which are included the publications in a newspaper are protected publications in the absence of malice". The court further observed that "No suit for defamation will lie against a person for comments made in a newspaper upon matters of public interest unless he has exceeded the bounds of fair comment or has been actuated by malice". In coming to the conclusion whether a comment is unfair or not, the courts do not apply their subjective standards of fairness but judge it from the broad angle of the critics and would hold the comment unfair only if it would be so regarded by the critics in their particular area. The cases do not point to any particular

12. 57 C.W.N. 378.
13. AIR 1917 Madras 854.
14. Suraj Mal *v.* Horniman, AIR 1917 Bom. 62.
15. (1913) 25 M.L.T. 476.

hardship suffered by the press in its freedom to comment and there does not appear to be any need for any statutory modification of the law in this regard.

Right of access to court proceedings and to publish the same : As in the matter of publishing defamatory statements so in the case of access to court proceedings, the press here does not enjoy any special privilege. The journalist has the same right to attend the proceedings of a court of law as any other member of the public. Based on the English common law tradition, justice is administered in the open courts. But as, at common law, the judges have the inherent jurisdiction to try some exceptional cases in camera, keeping out the press, as any member of the public. In other cases they may admit the press to the proceedings but may prohibit the publication of the whole or a part of it if in their opinion it was in the interests of justice to make such an order.

Recently, in the so-called Tarkunde's case, i.e. Naresh Sridhar Mirajkar *v.* The State of Maharashtra & another,[16] was witnessed a debate in the Supreme Court on the side issue whether the categories of in-camera proceedings were predetermined by law and closed or was it open to the judges, in their inherent jurisdiction, to prohibit the publication of proceedings if in their opinion it would not be in the interests of justice. Of course, from the lawyers' point of view, the main and important issue involved in that case was whether any errors of judgment on the part of judiciary while exercising their judicial functions in making orders even on matters, in a sense collateral to the dispute in hand, but which the judge considered necessary to do full justice in the case, could be said to involve the infringement of fundamental rights of a citizen calling for an interference by the Supreme Court under article 32 of the Constitution by the procedure of the writs. The court, with one dissenting voice, has answered the question in the negative. On the side issue of prohibiting the publication of court proceedings by the judges, an issue which was not relevant for the decision of the case, the Chief Justice speaking for the majority, while emphasizing the great role of trials held subject to public gaze, acting as a "check against the judicial caprice or vagaries" and serving as a "powerful instrument of creating confidence of the public in the fairness, objectivity and impartiality of the administration of justice" had "no hesitation in holding that the High Court has inherent jurisdiction to hold trials in camera if the ends of justice clearly and necessarily require the adoption of such a course."

Because of a certain statement of the witness, Mr. Goda,

16. Not yet reported.

in the original suit of Mr. Krishanraj M.D. Thakersay, where the plaintiff had claimed Rs. 3 lakhs as damages for publishing malicious libel, requesting the court to prohibit the publication of his statement in the court as the publication of an earlier statement in the court had caused him considerable loss in his business, a misleading impression is likely to be caused in some circles that the order of Mr. Justice Tarkunde prohibiting the publication of the statement sacrificed the public interest in knowing the truth about a matter to the narrow, selfish business interests of an individual. In fact this is not so. The Supreme Court has treated the order of Mr. Justice Tarkunde as one made in the larger interests of justice and not merely to protect the individual's interests, and that only is the correct legal view of the matter and will be so treated by the courts.

The question may now be considered whether the experience of the press in the matter of access to judicial proceedings and their publication, points to the need for a specific statutory guarantee to the press in order to enable it to discharge its functions properly in the welfare state. The reported cases do not point to any capricious exercise of the inherent jurisdiction of the courts to hear cases in camera. The powers have been exercised by the courts cautiously. They have not been eager to add to the categories of cases to be held in camera, and have not added any.

Conclusion : The general conclusion of this paper is that in the areas of professional secrecy, publication of information and expression of comment, access to judicial proceedings and the publication of the same, the present law of the land does not hinder the press in the discharge of its obligations to a free and democratic society. If statutory protections are desired in these areas, not only the need has to be demonstrated by citing clear cases of hindrances in the discharge of its functions by the press, but the journalists have also to prove the social urgency of the matter in order to deserve a high priority in the overcrowded legislative programme.

A NOTE ON THE OFFICIAL SECRETS ACT, 1963

C. P. GUPTA

THE Official Secrets Act, 1923, which consolidates the law relating to Official secrets, deals with two kinds of offence: (1) Spying: (2) Wrongful communication etc. of secret information.

Under section 3 of the Act, it is an offence if any person for any purpose prejudicial to the safety or interests of the State— (a) approaches, inspects, passes over or is in the vicinity of, or enters any prohibited place; or (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly, useful to an enemy[1]; or (c) obtains, collects, records or publishes or communicates to any other person any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

On a prosecution for an offence punishable under the above mentioned section with imprisonment for a term which may extend to fourteen years it is not necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and notwithstanding that no such act is proved against him, he may be convicted, if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose

1. In the parallel provision of the English Statute (The Official Secrets Act, 1911) on which the Official Secrets Act, 1923, is patterned the reference to "enemy" has been interpreted not in the technical sense of a country at war, but to include a potential enemy country i.e. a country with whom there might be a war, R.V. Parrott, (1913)8 Cr. App. R, 186.

was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State. In *State* v. *Captain Jagjit Singh*[2] where the accused was charged with communicating military secrets to a foreign secret agency, the Supreme Court has taken such a grave view of the offence that they held that in the circumstances of the case the discretion vested in the High Court under S. 498 of the Criminal Procedure Code to release an accused on bail, should not have been exercised in favour of the accused.

Under section 5 of the Act, it is an offence if any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, or note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act or which has been entrusted in confidence to him by any person holding governmental office, *wilfully communicates* the same to any person other than a person to whom he is authorised to communicate or it is his duty to communicate.

It is also an offence under the same section if any person *voluntarily receives* any secret official code or pass word or any sketch, plan, model, article, note, document or information, knowing or having reasonable ground to believe, at the time when he receives it, that the same has been communicated in contravention of the Official Secrets Act. In *State of Kerala* v. *K. Balakrishna and another*[3], the Kerala High Court held that the publication of the budget, a secret document in a newspaper (*Kaumadi*) before its presentation to the State Assembly, was an offence committed by the newspaper, its editor, printer, publisher and the correspondent, under this provision of the Act.

Under the provisions of the Act any publication by a newspaper of an official secret, whether in the form of a note, document code or pass word, sketch, plan or model, makes not only the correspondent, editor, printer and publisher, liable to punishment but also every director and officer of the company or corporation with whose knowledge and consent the offence was committed becomes guilty of a like offence.

In *R. K. Karanjia* v. *Emperor*[4], The Bombay High Court, while rejecting the petition of *Blitz* to set aside an order of the

2. A.I.R. 1962 S.C. 253.
3. A.I.R. 1961 Kerala 25.
4. A.I.R. 1946 Bombay 322.

Government of Bombay requiring the petitioner to deposit a sum of Rs. 3000/- as security under S. 7 Sub-S. (3) of the Press Emergency Powers Act, 1931, held that to publish in a newspaper a notice inviting people to offer "official secrets" in return for handsome remuneration, amounted to inciting or encouraging people to commit an offence within the meanings of the Press Emergency Powers Act, 1931, as it was an offence under the Official Secrets Act to convey or publish official secrets.

In another matter also, the press is affected by the Provisions of the Official Secrets Act, 1923. Under Section 14 of the Act, powers have been vested in the Courts, "in addition and without prejudice to any powers which a court may possess", to exclude all or any portion of the public from any proceedings under the Act, if an application is made in the course of proceeding by the prosecution on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State. Thus, if the above mentioned conditions are satisfied the press may be excluded from the court proceedings under the Act.

PROFESSIONAL SECRECY, PRIVILEGES AND RIGHTS

Y. KUMAR

ANY reference to "secrecy" and "privilege" indicates an approach which suggests that the journalist pursues an avocation placing him outside the social order.

The public responds to any such suggestion with suspicion and hostility. Why is this group claiming to keep its operations secret and above the reach of law?

The term "privilege" is an inheritance of the days when royal despotism was resisted by the representatives of the people with the cry of "privilege, privilege"—the rallying call of the Commons to work untrammelled by Royal pleasure. Privilege suggests medievalism as against modern concepts of democracy.

The first question therefore is whether the Press claims a "privilege" to be placed above the law and immune from its operation? Does it assert a right to "secrecy" of the sources of its information because it is engaged in some conspiratorial functioning and does not wish to assist the Courts of Justice?

The formulation by the press of its claims has suffered both for historical and political reasons. Historically the struggle for freedom, of which freedom of the press is an essential part, has been one against autocratic government and organs of the State controlled by a small minority.

The battle for freedom inevitably took the form of opposition to all law and regulation and the assertion of rights by individuals and organizations.

The basic and fundamental claim of the journalist is for the "freedom of the press". Its validity and urgency have been repeatedly emphasised by the Courts, Legislators and the community.

Freedom of the press to be real must exist where there is positive law to ensure the freedom and not just an absence of law.

The claim therefore is not for an abolition of laws affecting the press and the journalist but the framing of laws which may make it possible for him to act in accordance with the standards demanded by the community.

Such a claim is largely recognised by the community. A lawyer is protected against disclosure of information given to him by his client; communications between husband and wife are placed above enquiry by courts, in several countries the clergy and the medical profession are given similar protection by Law.

Government agencies are given the right to claim privilege from disclosure of documents.

The journalist today enjoys the benefit of several such regulations. He may attend the sessions of the Legislature and the Press Gallery is reserved for him; normally he gets invitations to all gatherings where matters of public interest take place; the Press is given a quota of paper to enable it to publish information; it can make use of telegraph, cable and postal facilities at reduced rates; a journalist enjoys some priority in getting a car or a telephone etc. These regulations recognize that the press pursues a function that is sufficiently important to society to require special regulations.

To assess the requirements of the Press in terms of law and social regulation consider:

1. What function does the community demand of the Press ?
2. What duties have to be performed by the journalist in enabling the press to perform its function ?
3. What is the extent to which the existing framework of law and social regulation impedes the journalist in the proper discharge of his duties ?
4. What changes are required in law or what further legislation is necessary to ensure the conditions in which a journalist may carry out his duties ?

The compelling function of the press is that it shall supply information on all matters which may be of interest to the community provided that the information is accurate and fair. The community wants information not only of tangible facts happening round the corner, but of facts and opinions from all parts of the world. It is not satisfied in knowing merely that a Minister was removed from office, but even more interested in why

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he was removed and what is the truth behind the allegation that his sister's son was given a contract to build an atomic research station on terms which would make the jeep scandal child's play.

With the increasing complexity and diversity of world-wide socio-economic relations, the journalist can no longer rely merely on his own or directly verifiable sources of information, but must collect it from diverse sources, which involves:

(i) Obtaining information from different sources;

(ii) Ensuring that it is fair and accurate;

(iii) Publishing the information.

The gathering of facts is the most difficult part of a journalist's functions. There are facts and events which a journalist may observe himself and some others which he can verify on proper enquiry. He can make sure that reports of these are accurate and fair, but a paper which carries only directly observed matter would be an extremely poor one.

So we must consider :

1. Collection of information from sources by direct knowledge such as presence at the place of occurrence or examination of a record.

2. Collection of information from indirect sources, news agencies, foreign sources, statements made by official and public authorities, by leading persons, public meetings, persons specially qualified or otherwise placed in a position to know the facts, or have access to police records and so forth.

To do this there must be :

i. Right of access to official, semi-official and other places.

ii. Right of access to records of government, public bodies, courts, tribunals, local authorities.

iii. Right of receiving communication by post, telephone, radio and all other means.

These rights must be safeguarded by law, regulation or convention subject only to the condition that access may be denied on grounds of paramount public interest—the decision to rest in a designated authority and subject to appeal.

The right of publication must be reviewed in this way :

The Press must have freedom to select and publish the information collected and this implies absence of any pre-censorship, no pressures on publishing or withholding from publication.

Publication may be withheld by law or regulation on considerations of public interest. The recent case of Justice Tarkunde banning publication of the statement of a witness on the ground that it would harm his business requires reconsideration (ref. judgment of Supreme Court in *Mirajkar v. Karanjia*).

Publication may be penalised only on grounds which have relevance to public interest.

The present restrictions under libel; official secrets Act; contempt of Court; contempt of Parliament need re-examination.

The restrictions must be devised keeping in view the nature of the work to be performed by the journalist and so as not to stiffle the sources and impede publication.

Absolute accuracy of news cannot without exception be ensured. Penalties should be examined from this angle:

(a) Where news is given by the Press from its own sources the responsibility for accuracy should be complete.

(b) Where the news is given from sources not its own—i.e. foreign sources etc. the responsibility should be qualified—the Press should be able to show that it was acting bonafide. In such cases there should be no penalty for inaccuracy but some provisions for amends.

A major function of the press is the exposure of public evils. This can be done effectively provided that the communicant is sure that his identity will not be disclosed. Non-disclosure of the source of information has not caused any serious social evil. Disclosure should be obligatory where vital public interest is concerned.

No vital public interest is concerned in a libel case. It may be concerned in questions relating to the security of the State etc.

Non-disclosure is permitted to legal profession, in many countries to medical men; there is no reason in principle why it should be denied to journalists in all cases.

EMERGENCY LAWS AND THE PRESS

P. PARAMESWARA RAO

SOME countries such as the U.S.A. guarantee freedom of the press as a legally enforceable right, others such as Goebbels of Nazi-Germany believe, that the press must be the piano on which the government can play.[1] The Constitution of India, like the American Constitution, begins with an eloquent preamble. The two preambles subscribe to a similar political philosophy.[2] Art. 19 of the Indian Constitution guarantees to all citizens the right to freedom of speech and expression which includes the freedom of the press.

Clause (1) (a) of Art. 19 guarantees the right to freedom of speech and expression, but clause (2) *now* enables the State to impose by law reasonable restrictions on the right 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. The First and Sixteenth Amendments to the Constitution have greatly enlarged the power of the State to impose restrictions on the right.[3]

The High Courts and the Supreme Court have the power to declare a law void if it takes away or abridges any of those rights. So far as the right to freedom of the press guaranteed by Art. 19(1) (a) is concerned, the Courts can examine a law to ensure that the restrictions imposed are rationally related to at least one of the grounds specified in Cl. (2) and that the restrictions are reasonable.

It is difficult to formulate an unfailing test of reasonableness. Patanjali Sastri C.J., speaking for the Court in State of Madras v. *V.G. Row*[4] observed:

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1. Encyclopaedia of Social Sciences, Vol. XII, p. 332.
2. Justice William Douglas of the American Supreme Court, Tagore Law Lectures (1956) p. 6.
3. The First Amendment Act was passed in June 1951 whereas the Sixteenth Amendment was passed in October 1963.
4. (1952) S.C.R. 597 A.I.R. 1952 S.C. 196.

"The test of reasonableness wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases".

In *Narendra Kumar* v. *Union of India*[5] the Supreme Court declared that the word 'restriction' was intended to include cases of 'prohibition', but if a restriction reached the stage of prohibition, the Court would take special care to see that the test of reasonableness was satisfied.

The State has considerable power to control the press under the ordinary laws. Dr. (Mrs.) Durgabai Deshmukh describes the extent to which the freedom of the press could be interfered with under these laws. She says: "under the provisions relating to 'friendly relations with foreign States' included in Article 19(2), it would be possible to place substantial restraints on the discussion of the foreign policy of the government. Under the recently-inserted section 198-B of the Criminal Procedure Code, it has become easy for public servants to prosecute newspapermen for alleged defamatory statements. It is therefore probable that newspapermen may be wary in criticising public servants with the result that the public may be denied the opportunity of being informed of any facts about the public acts of public men which they ought to know. Under the Telegraphic Act, telegraphic messages may be intercepted in the interests of public safety. In case the government are not confident that legal proceedings if instituted against a newspaperman in a particular case, will succeed, they can have recourse to the provisions of the Preventive Detention Act[6]".

The freedom of the Press implicit in Art. 19(1)(a) thus appears to be adequately fenced in India, and the fence is strong enough to contain the press even during a national crisis.

The need to impose restrictions on the freedom of speech and expression in the interests of national security is universally recognised[7]. No State can afford to risk irresponsible or inflammatory utterances in a national crisis.

5. A.I.R. 1960 S.C. 430.

6. Human Rights in the United Nations Development Decade (Freedom of opinion and Press), *Justitia* Vol. X (1964-65) at pp. 118-119.

7. All the three Draft conventions on Freedom of Information and the Press prepared at the instance of the U.N. contained a clause to this effect. See the Indian Press Commission Report (1954) Part I paras 974-979.

Part XVIII of the Constitution of India contains the Emergency provisions. Only the first of the three emergencies affects the fundamental rights.

Emergency may be proclaimed by the President, and "satisfaction" that it is necessary remains in his discretion though it has to be laid before Parliament or it ceases to operate[8].

While an Emergency is in force Parliament automatically acquires under Art. 250 a paramount power to legislate even with respect to matters enumerated in the State List[9].

Thus the first fetter on the power of Parliament breaks down in emergency and a law made by Parliament affecting the freedom of the press cannot be challenged on the ground of legislative incompetency, and the right to freedom of the press remains automatically suspended for the Emergency.

The suspension of the right to freedom of the press under Art. 358 during an Emergency is total and no "Indemnity Act" is needed when it is lifted to justify acts taken while that Emergency is in force.

So long as the Emergency is in force there is no constitutional protection to the freedom of the press in India.

Clause (2) of Sec 3 of the Defence of India Act, 1962, deals with:

Prohibiting the printing or publishing of any newspaper, containing matters prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order, the

8. If the two Houses are sitting at the time it is two months. If, on the other hand, the House of the People has been dissolved or the dissolution takes place during the period of two months then till the expiration of 30 days from the date of its first sitting after its reconstitution [Art. 352(2)]. A period of six months shall not intervene, according to Art. 85, between the last sitting of a House in one Session and the date appointed for its first sitting in the next session. It is therefore theoretically possible for a Proclamation of Emergency to continue in force without the approval of the House of the People for a maximum period of nine months approximately.

9. According to Art. 353 while a Proclamation of Emergency is in operation, the executive power of the Union extends to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised. In view of Art. 365, failure on the part of a State to comply with the directions given by the Union may lead to President's rule in that State.

efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community[10].

Demanding security and forfeit of copies if any newspaper contains matter referred to above[11].

Closing down any press or any premises used for printing or publishing any newspaper[12].

Prohibiting or regulating the use of postal, telegraphic or telephonic services[13].

Regulating the delivery otherwise than by postal or telegraphic service of postal articles and telegrams[14].

The Defence of India Rules provide for the control of telegraphs[15] and postal communications[16], the imposition of censorship of postal articles including letters, post-cards, newspapers[17], and censorship of materials relating to specified subjects[18]. The rules also prohibit publication of prejudicial reports.[19]

It is hard to conceive an act that does not fall within the ambit of this dragnet provision. If all available powers were invoked they could paralyse any press or newspaper.

Lord Denning has observed: "The trouble about it is that an official, who is the possessor of power, does not realise when he is abusing it. Its influence is so insidious that he may believe that he is acting for the public good when in truth, all he is doing is to assert his own brief authority. The Jack-in-office never realises that he is being a little tyrant[20]." India faced two war-emergencies, one in 1962 and the other in 1965, but in law there has been only one Emergency since the Chinese aggression.

No sensible person will ever say that the State should not be given adequate powers to effectively deal with an emergency,

10. Sec. 3(2) (7) (a).
11. Sec. 3(2) (7) (b).
12. Sec. 3(2) (7) (d).
13. Sec. 3(2) (21).
14. Sec. 3(2) (22).
15. R. 19.
16. R. 22.
17. R. 23.
18. R. 46.
19. R. 41.
20. Sir Alfred Denning. *Freedom under the Law* (1949) p. 100.

but the question arises: Does the Constitution provide adequate checks against the abuse or misuse of emergency powers?

With the American and British systems before them Indian Constitution-makers tried to reconcile the two irreconcilables; individual rights and illimitable authority.

The political safeguard in the shape of enlightened and vigilant public opinion is not as effective as it ought to be in a democracy. Mass illiteracy and general economic backwardness are great impediments to the speedy growth of democracy, and there is virtually a one-party rule throughout the country.

When parliamentary and judicial safeguards are either absent or ineffective, the only safeguards are an enlightened public opinion, a free and vigilant press. It is imperative that the freedom of the press should be preserved.

When there is freedom it is likely to be abused. The temptation to report sensational news is great in an emergency. Abuse of the freedom at such times may be disastrous. Bismark has been quoted as saying that the peace of Europe could be preserved by hanging a dozen editors[21].

More recently, the late Sir Nevile Handerson, British Ambassador to Berlin complained that the British Press had handicapped his attempts to improve the Anglo-German relations and would have succeeded had Hitler not been so unreasonably sensitive to the criticism of British newspapers.[22] In the U.S.A. and the U.K., by and large, the press had voluntarily observed exemplary restraint during the war. We can expect the same sense of responsibility from the Indian Press. According to the Press Laws Enquiry Committee, the Indian Press has gained enormously in power and prestige.[23]

The Press Commission Report says: "There is, however, no doubt that a large section of the Indian Press is sober and responsible."[24]

The International Commission of Jurists have suggested four principles[25]:

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21. Quoted by Robert W. Desmond, *The Press and World Affairs* (1937) p. 374.
22. "*Failure of a Mission*" (1940): quoted by Mr. H.A. Taylor '*The British Press*' p. 42.
23. Report of the Press Laws Enquiry Committee (1948) para 32.
24. Report of the Press Commission (1954), Part I para 1015.
25. The Dynamic Aspects of the Rule of Law in the Modern Age (1965), p. 42.

1. A state of Emergency should be declared only where circumstances make it absolutely necessary to do so in the interests of the nation.

2. The period of emergency should not be prolonged further than is absolutely necessary.

3. Restrictions placed on fundamental rights and freedoms should be only such as the particular situation demands.

4. The legality of emergency legislation and emergency orders should be subject to review by the ordinary courts of the land.

The need to observe in India each one of these principles is indeed very great today. Resurrection of the freedom of speech and expression seems to require the repeal of Art. 358.

In India the Constitution-makers, conscious of the problems of a modern emergency, were constrained to confer enormous powers on the State to enable it to face any emergency, but they did not incorporate any legal safeguards in the Constitution against the possible abuse of those powers.

The normal powers of the State are now wide-enough to justify all necessary restrictions which are generally imposed in an emergency on the freedom of the press.

So long as Arts. 358 and 359 are in operation, the fundamental rights remain at the mercy of the Executive.

Laws generally come late, and try to live longer than they should. The more repressive a law is the greater its spillover tendency.

During the fighting in 1962 and in 1965, the press in India on the whole rose to the occasion and discharged its duty of organising and reflecting public opinion with ability and a high sense of responsibility. With the emergence of a Press Council under the new Act, the country can confidently hope that the risks of abuse of freedom by the press would be less.

That the dragnet provisions of the Defence of India Rules have not been freely used against the Press is gratifying.

But there is no justification for allowing a Sword of Damocles to hang over the press indefinitely. Existence of power has a psychological effect on those against whom it may be used.

THE EMERGENCY AND THE INDIAN PRESS

CHANCHAL SARKAR

THE State of Emergency proclaimed in October 1962 and stiffened by the Defence of India Act and the Defence of India Rules, has some pretty significant consequences for the Press in a democratic country pledged to constitutional rule.

First, the Press would like to be assured that the Emergency will be continued for only just as long as it is essential.

Second, it should feel confident that the vast and blanket powers of the Defence of India Act and Rules will be used only for the strict purpose of the Defence of India and that, in relation to the Press, the application will be only for some recognizable and even typical, offences.

The D.I.R. have been used at times for purposes which seem outside their original objective.

The powers are very wide and supersede the Fundamental Rights. Even the courts are largely excluded from the picture.

Even if the D.I.R. are to be used only for their important, but limited, purpose, a system of Press consultation and advice must be built up, because the Press will have to be nursed towards an understanding self-restraint, without surrendering its responsibility and its duty to criticise and investigate.

When the D.I.R. first went into operation even a warning under them meant the automatic withdrawal of all Government advertising. For most newspapers in India this would be a crippling financing blow and if the D.I.R. were indiscriminately used, or threatened to be used, they could reduce the Press to obsequious acquiescence.

The operation of the D.I.R. is a process of education: for the officials who are likely to start with alarmist and narrow notions about news, comment and about what is likely to disturb the public; and also for the Press which, in a competitive world, is likely to forget that restraint, double checking and a long-

term view of consequences are necessary in times of national trial.

Also something in a paper whose readers are sophisticated and have other means of information may not be prejudicial. The same thing in a strictly sectional paper read by relatively ignorant and excitable people, could well be.

II

The Central Government devised a pattern for Press relations and the Emergency, that is, broadly, a sensible one.

It asked the All India Newspaper Editors Conference (AINEC) to name a committee that would advise the Government in dealing with errant newspapers. It set up a committee of its own officials who would screen what appeared in the Press before placing it in front of the Central Emergency Press Advisory Committee.

And, after discussion with the Press, it established a working convention that cases involving newspapers with a circulation of 10,000 copies or more would be dealt with by the Centre and those with less by the States.

In the beginning, the Government (with the concurrence of the CEPAC) began issuing warnings without having given the offending newspapers a chance to explain their side of the case.

A warning *used to mean* the automatic withdrawal of Government advertising. A warning also carried the odium of having been held irresponsible during a national crisis.

So the Ministry of Law advised that 'show cause' notices ought to be issued. This was then done and the Government set up another committee of more senior officials to examine the replies by the newspapers.

Besides these two official committees, there is the Press Advisory Unit of the Press Information Bureau which also screens newspapers. The Intelligence Bureau also has its cell for screening publications, particularly from the angle of watching over the interests of the minorities.

The Central Government established two more conventions which are, in spirit, admirable:

(a) When sanctions were being discussed by the C.E.P.A.C., Government officials did not participate, and

(b) the Government never departed from the sanctions recommended by the C.E.P.A.C. except, in some cases, to make them less harsh.

In the beginning the screening committee used to think that about 30% of the items it considered objectionable were also prejudicial. The proportion fell to 15% and even to 10%. The categories of offence also shrank.

The number of cases considered by the C.E.P.A.C. between 1962 and December 31, 1965 were 77 involving 54 papers. O these, action was recommended in 16 cases. (See Table A).

The screeners, and even perhaps the C.E.P.A.C., started with a hypersensitive view of what was objectionable but after some flirtation narrowed the categories down to:

(a) To prejudice India's relations with any foreign power, or the maintenance of peaceful conditions in any area;

(b) To bring into hatred or contempt, or to excite disaffection towards the Government established by law in India;

(c) To influence the conduct or attitude of the public or of any section of the public in a manner likely to be prejudicial to the defence of India, the civil defence or to the efficient conduct of military operations.

The withdrawal of Government advertisements was, at first, automatic. Later, the Law Ministry advised that this was harsh and unfair since the connection was not immediate. Nevertheless the two punishments could still easily go together.

The C.E.P.A.C. recommended prosecution in only one case against the *Chaukhumba* of Indore where the lower court aquitted the offender and the State appealed against the aquittal. In the case of the Akali papers *Jathedar* and *Prabhat* in which Master Tara Singh wrote some remarkable articles, a security deposit was demanded by the Centre in only one case. The C.E.P.A.C. advised precensorship.

Cases considered by the C.E.P.A.C., included: Undermining defence preparation, ridiculing the integrity of the Prime Minister, alleged neglect of the Army by the Government; inciting one community against the other; story about recruitment to the Air Force; allegations of bad treatment of jawans; editorial inciting communal hatred; reproduction of Chinese note; cartoon with comments, etc.

Explanations by the editors and publishers usually rested upon three arguments (i) the journalist's right to comment, (ii) the comment was made in good faith and (iii) that the facts mentioned were true.

It seems to me that the Government and the C.E.P.A.C. must pay some heed to the timing of the comment and to its truth or untruth. If the Government has, for instance, been grossly negligent in equipping the Defence forces and in protecting the frontiers of the country, the Press cannot possibly be expected to avoid exposing such negligence. When fighting is going on it may not be the right moment for the exposure, but in time it should be exposed. A distinction should also be drawn between an account that is purely emotional or inaccurate and one that is reasoned and correct. The kind of paper also matters.

The struggle, between the Government of India and a moderate-sized newspaper would be unequal if the case were to go to Court, and so newspapers are likely to capitulate even if they believe they are right. There is also the danger of advertisements being withdrawn. So the C.E.P.A.C. and Government should be particularly careful before deciding on action.

The sanctions seem, in the case of the Centre to have worked fairly effectively. They are: Warning (informal); warning (formal); demand of security deposit; precensorship; ban on publication; proscription; arrest and detention of editors etc. prosecution.

The Chief Press Adviser seems to have been somewhat of a fifth wheel. He has no sanction in law and "informal advice" is something difficult to administer. Some senior journalists have also felt that the Chief Press Adviser should not be a permanent Government official.

III

The States present quite a different picture. For one thing not all of them have Press Advisory Committees. Some are quite recent. At the moment, there are no PAC's in Madras, Punjab, Jammu and Kashmir and Bihar and there has been trouble with newspapers or journalists in, precisely, Madras, Punjab, Jammu and Kashmir and Bihar.

Though the States have detained journalists under the D.I.R., the Central Government has not. If a Government wants to detain an individual (who also happens to be a journalist)

under the DIR, then it is not obliged to explain its reasons.

Bihar, for instance, has detained two editors. The best known case was the one where Mr. T.J.S. George, Editor of The *Searchlight*, was detained during the 'Bihar Bundh'. A 'habeas Corpus' petition was admitted by the High Court and the detention order was later cancelled by the Government. There have also been detention in Madras, Uttar Pradesh, Kashmir, and Punjab. In another well known episode the Madras Government, withdrew charges against the *Swarajya* and *Kalki*.

Some States admittedly have intractable problems. Newspapers in West Bengal have often been excited about the treatment given to minorities in East Pakistan. In Punjab, both Hindu and Sikh papers have often worked themselves into a frenzy over a Punjabi Suba. These are inflammable problems and the temptation to use DIR should be avoided.

The maintenance of public order, as the Supreme Court admitted in *Dr. Ram Manohar Lohia's* case, is very different from the maintenance of law and order.

Besides almost all States have Public Security Acts which are very potent but mean that the Government has to face the Courts which is not so with DIR. Punjab, in addition has a Press Act which is strongly inhibitory and which has quite often been invoked.

Though the Centre has kept the States informed of all its dealings with the Press during the Emergency, the States have ploughed their own furrow by and large. Some of them, like West Bengal, Madras, Madhya Pradesh, Maharashtra and Punjab have been fairly scrupulous in exchanging information. The others haven't bothered.

The record of the States is that, from 1962 to November 30, 1965, States Governments took action against 82 newspapers. In 11 cases (6 of them in the U.P.) editors were arrested or detained. (Table 'B').

Most of the cases were in Delhi (24), Uttar Pradesh (16), Jammu and Kashmir (11), Madras (8), Maharashtra (6) and Punjab (5). There were 23 prosecutions.

Some reflections suggest themselves :

(1) It is not always the State Government which should be blamed for there not having Advisory Committees. This may

have been true in Punjab under the rule of Sardar Pratap Singh Kairon. But in Madras, for instance, it is the Press which didn't have the initiative to set up a Committee.

(2) Generally, in the use of DIR against the Press the States have not been as circumspect as the Centre. But a special word is needed about Jammu and Kashmir. It is admittedly a sensitive area and one in which much is at stake. Nevertheless it is, as the Government repeatedly says, an integral part of India and so the conditions of freedom there should be no different from anywhere also. Last year 11 papers there were banned. There were no protests from the Press in the rest of India. Nor is it known that the C.E.P.A.C. was at all agitated about the suppression.

IV

I have mentioned already the pecularity of this comprehensive DIR, detention under which can seldom be questioned by the Courts, Press Advisory Committees, too, (where they exist) may examine and mitigate action but to examine detention is outside their scope too.

The Central Ministry of Law has, on the whole so far, played a liberal role, insisting on a strict and restricted application of the law, particularly applying the basis of "present imminent danger" to public order. The Government has found this narrow application inhibitory and is more keen on an interpretation which counsels actions when there is a prima facie violation.

3. There are other laws in the armoury of the Government, including State laws, which could be used in some of the cases where the DIR has been invoked. The Indian Penal Code has Sections such as 153A (which deals with the promotion of enmity among classes) and there is The Criminal Amendment Act, 1961 (which deals with the questioning the territorial integrity or the frontiers of India).

V

The Press in my opinion, has been tardy in setting up State Committees and, there has been little or no attempt at self regulation during the Emergency or even, for that matter, during the recent war with Pakistan. Other journalists who have served on earlier Press Advisory Committees have said that the relationship between the Committees, and the Government was marked by much greater respect for one another than now.

If the professional and industrial bodies of the Press were stronger and more public-spirited, if they had collaborated to enforce an agreed code of conduct and evolved conventions of behaviour then the Government's entry into the field of Press regulation could have been resisted. It would also have been largely unnecessary.

There is some evidence that the Government would have been quite happy if the Press had played a more positive role in laying down norms of behaviour. If one looks at some of the State Committees, there is a tendency by some conveners to propitiate the authorities—which is both unnecessary and unbecoming.

In the three-and-a-half years of the Emergency there have been relatively few cases about the Press before the courts. This may sound encouraging but it has to be remembered, again, that under DIR, the courts have very limited powers of interference. Also, that threats and warnings can sometimes operate quite powerfully especially if there is an economic truncheon as well.

Certainly the operation of the DIR has been a process of education and officials have learnt to look at the responsibilities of the Press as the Press itself sees them. The Press, too, has learnt to appreciate the responsibilities of Government. This has been more true of the Centre, and in a few of the States where good sense has usually ruled. Otherwise the general record of the States is not satisfactory.

I started by saying that one of the essential justifications of laws such as DIR is that they be employed for not a moment longer than strictly necessary. In ending I would suggest that the DIR, at least in relation to the Press, has outlived its purpose and the reason why it should be withdrawn was well expressed by Mr. Gajendragadkar, the former Chief Justice of India, in the case of *G. Sadanandan* v. *State of Kerala* and another:

"In conclusion, we wish to add that when we come across orders of this kind by which citizens are deprived of their fundamental right of liberty without a trial on the ground that the Emergency proclaimed by the President in 1962 still continues and the powers conferred on the appropriate authorities by the Defence of India Rules justify the deprivation of such liberty, we feel rudely disturbed by the thought that the continuous exercise of the very wide powers conferred by the Rules on the several authorities is likely to make the conscience of the said authorities insensitive, if not blunt, to the paramount require-

ment of the Constitution that even during Emergency the freedom of Indian citizens cannot be taken away without the existence of the justifying necessity specified by the Rules themselves. The tendency to treat these matters in a somewhat casual and cavalier manner which may conceivably result from the continuous use of such unfettered powers, may ultimately pose a serious threat to the basic values on which the democratic way of life in this country is founded".

TABLE A

ACTION AGAINST THE PRESS DURING THE PERIOD FROM 1962 TO THE 31ST DECEMBER, 1965, TAKEN BY THE CENTRAL GOVERNME NT UNDER THE DEFENCE OF INDIA RULES, 1962.

S. No.	Year	No. of news papers and magazines etc.consi-dered	No. of those cases in which action was proposed by C.E.P.A.C.	Action taken by the Government					
				Formal warning	Informal advice	Security	Imposition of pre cen-sorship	Imposition of ban on publication	Prosecution
1.	1962	4 (20)	4 (20)	4	—	—	—	—	—
2.	1963	38 (48)	23 (31)	7	10	1	—	—	—
3.	1964	Nil	—	—	—	—	—	—	—
4.	1965	12 (32)	6 (27)	—	1	—	2	1	—

Note: Figures given in brackets indicate the total number of issues of papers etc. considered during the year.

TABLE B

ACTION TAKEN BY THE STATE GOVERNMENTS AGAINST THE PRESS DURING THE LAST THREE YEARS (1962 TO 30TH NOVEMBER, 1965) UNDER THE D. I. R. 1962 (INFORMATION RECEIVED FROM STATE GOVERNMENTS IN CONNECTION WITH A PARLIAMENT QUESTION)

S. No.	Name of the State/ Union Territory	No. of newspapers and magazines etc. against whom action was taken	Action taken by the Government								
			Formal warning	Imposition of precensor ship	Informal warnings/ advice	Security	Proscription	Arrest/ detention of Editors etc.	Prosecution	Closure of Press	Imposition of ban on publication of paper etc.
1.	Punjab	5	1	—	—	—	—	—	4	—	—
2.	Madras	8	—	—	—	—	—	—	8	—	—
3.	Kerala	2	—	—	—	—	—	—	2	—	—
4.	Jammu & Kashmir	11	—	—	—	—	—	—	—	—	1
5.	Maharashtra	6	6	—	—	—	—	—	—	—	—
6.	West Bengal	4	—	—	—	—	3	—	1	—	1
7.	Mysore	2	2	—	—	—	—	—	—	—	—
8.	Assam	6	—	6	—	—	—	—	—	—	—
9.	Bihar	4	—	—	—	1	—	2	1	—	—
10.	Andhra Pradesh	2	—	—	—	—	—	—	2	—	—
11.	Uttar Pradesh	16	2	4	—	—	—	6	4	—	—
12.	Rajasthan	2	—	—	—	1	—	1	—	—	—
13.	Delhi	24	—	—	—	—	22	—	1	—	—
14.	Tripura	1	—	—	—	—	—	—	—	1	—

ECONOMIC AND COMMERCIAL LAWS

MEENAKSHI SUNDARAM

ON the recommendations of the Press Commission, the Government of India placed on the Statute Book in 1955 an Act to regulate certain conditions of service of working journalists and other persons employed in the newspaper establishments. This Act, called the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 45 of 1955, mainly deals with the conditions of service and terms of employment including wage rates for working journalists. It provides for the period of notice to be given for retrenchment of a working journalist, prescribes a gratuity scheme, stipulates working hours, holidays, casual and other kinds of leave. It also provides for the application of the provisions of the Industrial Disputes Act, 14 of 1947, for the settlement of disputes, and of the Industrial Employment (Standing Orders) Act, and the Employees Provident Fund Act. Other Acts, applicable to the newspaper industry vis-a-vis employees, are the Payment of Wages Act and the Payment of Bonus Act.

For a proper and correct appreciation of the effect of these laws on the newspaper industry, one should know the state of the Indian Press prior to 1955.

Considering first the daily newspapers, there were, according to the Press Commission, about 330 newspapers, inclusive of different editions, with a total circulation of over 25 lakhs. The weeklies numbered about 1,190. The Press Commission's study of 110 establishments, covering more than 80 per cent of the total circulation, disclosed that the total proprietary capital invested in the business was around Rs. 7 crores and the capital in terms of loans about Rs. 5 crores, the total working capital thus being about Rs. 12 crores. The net value of fixed assets, that is, cost minus depreciation, was estimated at Rs. 6 crores and the total circulation and advertisement revenue of daily newspapers at about Rs. 11 crores.

Before independence, the Indian Press in general had a single objective in view, namely the political emancipation of the country. Many journalists, imbued with the nationalist fer-

your of those days, were prepared to make sacrifices for the country's cause.

After independence, newspapers became vehicles for the advancement of political and business interests of newspaper proprietors, who failed to appreciate the status and role of journalists. While the Press came to be known as the Fourth Estate, this grandiloquent term had little meaning for the working journalists of the period, who, the employers felt, had no right to a decent wage and better service conditions.

This attitude of the employers literally forced the Government of India to intervene in the matter. The wages fixed for the journalists were miserably inadequate; there were no regulated hours of work and the working journalists did not have rest day for months. Any journalist who thought of asserting his rights was shown the door by the employer. Such were the conditions which led journalists to organise themselves into the Indian Federation of Working Journalists.

When the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act was placed on the statute book, protests were voiced by the employers that the provisions of the Act, if implemented, would "kill' the newspaper industry and pose a danger to the freedom of the Press. It was argued by them that "it was utterly impossible to regulate the working hours of journalists and that the provisions relating to payment of gratuity, hours of work, leave and fixation of rates of wages would have the effect of laying a direct burden on the Press. Besides they would tend to curtail circulation and thereby narrow down the scope of dissemination of information, fetter the hands of newspaper owners from choosing the means exercising their rights and possibly undermine the independence of the Press by compelling them to seek Government aid".

Subsequent developments in the newspaper industry established beyond doubt that these fears were totally imaginary. The employers attempted to scuttle the Act by challenging the validity of the Working Journalists (Fixation of Rates of Wages) Act 129 of 1958, which empowered the Government to constitute a Committee to fix rates of wages for working journalists.

The first attempt at wage control, as provided for in the Wage Order of the Government of India, did not achieve what the Journalists had hoped for, although working conditions registered some improvement. Every attempt was made by the employers to circumvent the provisions of the Wage Order and

journalists were dragged to courts. The litigation however proved beneficial to the working journalists to the extent that it helped plug the loopholes in the laws applicable to them by an amendment of the Act later. For the large majority of working journalists the new wage rates that were brought into force in 1959 brought no salary advancement worth the name.

During the period between the date of appointment of the Press Commission and the date of operation of the Wage Order, there was, as the then Labour Minister, Shri Gulzari Lal Nanda himself admitted, a virtual wage freeze in the majority of newspapers. Many of well-established principles of wage fixation, laid down by courts and tribunals and approved by the Supreme Court, were bypassed by the official Wage Committee, which adopted sub-units in the industry as criterion for fixing wages instead of taking a fair cross-section of the industry or a class of the industry divided on the basis of gross revenue. Against a minimum wage of Rs. 225, as suggested by Press Commission and Rs. 180 as suggested by the first Wage Board, the Wage Committee fixed a wage of Rs. 115 in 1959.

Though the statute enjoined upon the Wage Committee to fix wages for all categories of working journalists in the newspaper industry, the Wage Committee, without rhyme or reason, excluded a large number of working journalists employed in the periodicals other than weeklies and the editors from the purview of the order. The Committee also conveniently ignored the mandatory provision in the Act that the cost of living was one of the factors that should be taken into consideration. This factor was never considered in the right sense.

If the Wage Order is critically examined, it will be seen that the order lacked flexibility. Its definition of metropolitan areas was rigid. There was no scope left for other up and coming centres to compete with the cities mentioned in the Order. Its method of categorisation of working journalists was irrational. Its restriction of gross revenue to circulation and advertisement revenues was arbitrary. There was no legal basis for the subdivision of gross revenue for the classification of newspapers belonging to groups, chains, or multiple units.

All accepted principles were violated and the assumption of the Wage Committee that there could be a weak unit in the chain, group, or multiple unit was fallacious. If a chain was strong, a prudent employer would continue to strengthen it instead of allowing a unit to grow weak by indulging in unproductive activities. The very fact that an employer in the newspaper industry went on expanding despite avowed losses, proved that

there was something profitable in the Act, directly or indirectly. In the case of a chain, income-tax was not paid on the basis of individual units. Why then should a hue and cry be raised when it came to the question of wage fixation?

A study of the activities of chains, groups and multiple units would reveal how unfair the Wage Committee had been in respect of classification of newspaper establishments. Whenever a newspaper begins to show substantial profit or increase in revenue, the employer ventures a new edition or a new publication altogether from the same centre or elsewhere so as to divert the profits and convert these into a loss, thus depriving the employees of the legitimate share of the prosperity of the establishment. Should this kind of practice be accorded official and legal recognition?

Whatever may be the small advantages which the working journalists have obtained through the enforcement of the provisions of the Working Journalists Act, the advantages that have accrued to newspaper employers are substantial. The law has contributed to the development of the industry, since employers have begun to appreciate the dynamics of the newspaper industry. With wages pegged at the lowest levels and with spurt in circulations of newspapers of all categories, the industry's revenues have increased substantially. Fixed assets of the industry have shown remarkable increase.

Between 1959, the year in which the Wage Order came into force, and 1963, the total circulation of newspapers (according to the report of the Press Registrar) rose from 169 lakhs to 235 lakhs or by 39 per cent. The real rise was more if the fact is taken into account that the 1959 figure is based on claimed instead of verified circulation. The circulation of dailies rose, during the same period by 28.7 per cent, from 44.5 lakhs to 66.9 lakhs or by 40 per cent. Between 1963 and 1965, circulation of newspapers has recorded a further substantial increase. Between 1959 and 1965 more and more new newspapers came into existence.

The Industrial Disputes Act, made applicable to working journalists, was a comprehensive Act for settlement and adjudication of industrial disputes. Immediately after the application of the Act, there was a spate of disputes, particularly relating to victimisation of working journalists for their trade union activities. Though employers cried hoarse about the freedom of the press, they did not like their employees to have freedom to organise themselves for collective bargaining. The employers' hatred to new laws was so great that some of the employers made

journalists go to courts to depose against their own colleagues. The bait was additional increments and special promotions.

However, the unfettered system of hire and fire, which prevailed in the newspaper industry prior to 1955, no longer obtains in the industry on such a large scale. The Standing Orders helped to maintain discipline in the industry. While Courts have held that "the power of the management to direct its internal administration, which includes enforcement of the discipline of the personnel, cannot be denied" this power has been subjected to certain restrictions with the emergence of the modern concept of social justice that an employee should be protected against vindictive or capricious action on the part of the management that may affect his security of service.

Rights and duties of working journalists have been laid down with a fair amount of precision by the provisions of the laws and if points of conflicts still arise between the working journalists and the employers, it is mainly because of the employers' lack of understanding of laws relating to working journalists.

Industrial disputes machinery is still inadequate and slow in rendering justice. It takes many years to see the result of a case. The machinery suffers from various shortcomings and defects. The procedure should be simplified for quick settlement of disputes. Further, litigation which is forced on employees has become very costly. The employees cannot afford it. For instance, the Industrial Disputes Act provides for the settlement of disputes by mutual agreement and settlement under S. 12(3) and S. 18 of the said Act. Often it becomes necessary to let in as evidence settlements and agreements reached under S. 12(3) and S. 18 before the Industrial Tribunals to substantiate the claims of the employees. The agreements or settlements are not usually stamped under the Stamp Act.

Of late some Industrial Tribunals have refused to receive agreements and settlements in evidence on the ground that they are not duly stamped under the Stamp Act. These documents are impounded and forwarded to the Collector for adjudication and determination of penalty for stamping. Normally, the penalty ranges up to 10 times the value. Particularly when one has to file a large number of documents, the cost becomes very heavy which he cannot afford.

This defeats the very purpose of industrial adjudication. The appropriate Governments have adequate powers under Section 9 of the Stamp Act to exempt all documents relating to agreements and settlements from the scope of the Stamp Act prospec-

tively and retrospectively. But nothing has been done so far.

It is more than a decade now since the provisions of the Working Journalists Act and the Industrial Disputes Act were put to use. Yet the employers are not fully reconciled to these laws essentially meant for the amelioration of working journalists. The highest Court of the land has laid down the principles of industrial law and these should be accepted both by the employers and the employees in the spirit in which they were framed so that social justice and peace could be established in the newspaper industry.

The fact that the main object of the Working Journalists Act is to keep the journalist above want and to provide him with a certain measure of economic security so that he may discharge his functions efficiently and fearlessly should not be lost sight of by the employers. Francis Williams in his book "Dangerous Estate", has correctly summed up the role and status of a journalist. He has pointed out that :

> "The defence of journalism as more than a trade and greater than an entertainment technique—although a trade it is and entertaining it must be—is properly the journalist's and no one else's. It is they who are the legatees of history in this respect. They have both a professional and a public duty to look after their inheritance....The freedom of the journalist—freedom not only from censorship or intimidation by the State but from censorship or intimidation by any one including his own employer—is an essential part of Press Freedom....The freedom of the Press differs from, and ought always to be recognised as greater than, the simple freedom of entrepreneur to do what he pleases with his own property. A journalist has commitments to the commercial interest of those who employ him. But he has other loyalties also and these embrace the whole relationship of a newspaper to its public".

The Act 45 of 1955 has extended the benefits of gratuity and provident fund to working journalists. These benefits are meagre and would just enable a working journalist to live only in tolerable comfort in the evening of his life. He should also have the benefit of pension.

In this connexion it would be relevant to recall the observations of the Madras High Court in a recent case relating to working journalists. Dismissing a writ appeal filed by a newspaper establishment in Madras, the Division Bench of the Madras

High Court, as obiter, suggested to the legislature to consider pension instead of or in addition to the gratuity to working journalists who had put in long years of service as one of the principles of compensation on retirement or retrenchment. The system of pension prevails in some establishments and this system should be made applicable to all establishments. The industry can afford it.

There is also a strong case for the extension of the Workmen's Compensation Act, with suitable modification to working journalists engaged in outdoor assignments. They risk their lives to cover dangerous assignments in these days of intense political activity.

The enactment of the Payment of Bonus Act has not only solved the problems relating to bonus determination but also created new complications to the disadvantage of employees. Their existing rights and privileges were whittled down if not wiped out by this legislation. Of course the Act ensures the payment of a minimum bonus of four per cent of the annual earnings of an employee. The Act has also fixed the maximum at 20 per cent. It is common knowledge that many establishments in all industries including the newspaper industry have been paying more than 20 per cent of the annual earnings as bonus before the enactment of the Act. This existing practice is protected under the Act only in name. The provisions of the Act in this regard are vague and not specific. An attempt has been made in the Act to enable the employees in any establishment or a class of establishments to enter into agreements with the employer for granting them an amount of bonus under a formula which is different from that under the Bonus Act.

One of the immediate effects of the Act is that the minimum bonus prescribed has become the maximum bonus. Now no employer as a rule is willing to pay more than the minimum even though his capacity to pay is more. The Act provides an opportunity for an employer to argue that "all awards, agreements, settlements, or contracts of service involving bonus made before May 29, 1965 automatically become invalid because they necessarily would not be in accordance with the provisions of the Payment of Bonus Act and therefore would have to be considered inconsistent with that Act". However, the original object of S. 34 of the Payment of Bonus Act appears to be thus :

"In certain establishments the employees are getting bonus under an award, agreement, settlement, or contract of service which would be higher than that payable under the Act. The clause seeks to safeguard such employees providing that

they would get bonus either on the existing basis or on the basis of the formula provided in the Act whichever is higher".

The cumbersome provisions of the S. 34 have led to many complications like widespread industrial unrest and it is bound to continue if the defect is not cured. Different interpretations are being put on S. 34(1) and S. 34(2). Normally, from a layman's point of view, S. 34(1) must be interpreted after taking into account the original objects of the Act and particularly the object mentioned in the Statement of Objects and Reasons. If the Legislature had intended to render null and void any term for the payment of bonus in any award, agreement, settlement or contract of service, then it would have stated so specifically and unambiguously.

The entire matter about the scope of S. 34 is now before the Supreme Court and any discussion on this will be academic at this stage. However, from the employees' point of view, Section 34(1) should be amended at the earliest opportunity on the lines of S. 16 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act or Section 25J(1) of the Industrial Disputes Act. Section 34(2) is superfluous and need not be retained. However, Section 34(3) should be retained as it is, because it allows the employees to opt out of the Act with only one proviso namely that the eight of minimum bonus should remain intact.

The Newsprint Control Order, a commercial law, cannot be said to have adversely affected the newspaper industry as a whole. There should be some more flexibility to meet the needs of increased circulation. It was stated on behalf of the Government that the Order had the effect of price page schedule order indirectly. It is not known why the Government should feel shy of introducing the price page schedule directly. The judgement of the Supreme Court in the *Sakal* Case at present stands in the way. On several occasions in the past, the Constitution was amended to meet the requirements of changed conditions.

After the *Sakal* case much water has flowed under the bridge. If the newspapers do not voluntarily agree to the introduction of price page schedule, the Government should re-enact the measure after amending the Constitution for this purpose. As stated by the Small Newspapers Inquiry Committee, "both under conditions of scarce foreign exchange earnings coupled with national emergency and under normal conditions, the introduction of a statutory Price Page Schedule is an inescapable necessity".

The publication of the Draft Rules by the Central Board of Revenue limiting advertisement expenditure upset the newspaper

industry very much. Because of strong opposition from the newspaper industry and advertisers, the first draft was modified substantially. Later, the four per cent Rules were published for comments by the industry. Though less penal in general terms, it is stated, that the revised draft Rules tend to be somewhat discriminatory since they now affect only those manufacturers who operate in certain product groups. It is now fairly certain that the Rules may not be given affect to retrospectively.

In conclusion it should be stated that the economic laws meant for the welfare and amelioration of employees are only means to an end and not the end itself. They cannot provide for every contingency. Laws alone will not lead us anywhere if there is no change of heart. Employers and employees should sit across the table and devise measures to solve the problems and disputes as and when they arise to their mutual satisfaction. Suspicion and distrust should go. The newspaper industry should set an example to other industries by establishing bi-partite machinery at the Central and State levels for amicable settlement of all disputes and differences without recourse to litigation. That is the only way for the healthy development of the industry.

COMPANY LAW AND THE PRESS

N. NETTAR

WITH the rapid growth of the corporate sector the problem of the free press and the Company Law is assuming greater importance. Two factors have contributed to emphasize the role of free press in promoting and preserving a healthy atmosphere in the private sector. They are: (1) the separation of management and control from the ownership of companies, and (2) the growth of the concept of public interest in companies.

Theoretically, since the shareholders have the voting power and the power to hire and fire directors and other officers, the control of the company and its management is in the hands of shareholders. In public companies, however, several factors tend to divorce ownership from control and management. The existence of shares with varying voting rights, the wide dispersal of shares, the practice of proxy system which is weighted heavily in favour of the management and the general apathy and the low level of education of the shareholders, rob shareholders' democracy of all meaning. The system of managing agency has further accentuated this process.

This situation that cries for the watchful eye of a critical press, must be free and independent of company managements and managing agency houses, of the private sector generally, and of big business in particular.

The separation of ownership from control and the ineffectiveness of shareholders' democracy leaves the directors and the management without any incentives or pressures for efficient management and breeds irresponsibility on their part.

These tendencies are further strengthened by the following factors:

(1) the prevailing sheltered market;

(2) uneducated and uninformed shareholders;

(3) the fact that the annual accounts require some technical skill to understand them;

(4) the intricacies of the modern business organisation;

(5) the complexity of the modern large public companies; and

(6) the control of a number of public companies by a managing agency house or a group of businessmen.

Profit is the yardstick of efficiency only in a competitive market. The shareholders being what they are, a considerable portion of the very large profit which can be earned in a sheltered market can be appropriated by the management to themselves without rousing the suspicion of shareholders.

Opportunities are greater where public companies are controlled by a managing agency house, or a group of businessmen. The Report of the Commission of Enquiry on Administration of the Dalmia-Jain Companies gives a clear picture of the various devices employed by those in control of public companies, to divert to their own pockets not only the profits which should really go to the large body of shareholders, but a large part of the capital also.

It is difficult to believe that these malpractices are resorted to only by this one group, or only a few business houses. These developments throw greater responsibility on the press and emphasize its role as an instrument of control of the management of companies.

Press publicity is a powerful factor, capable of creating a climate unfavourable to an inefficient and irresponsible management and favourable to the growth of an efficient and honest management.

The journalists have their own channels of information and the various sharp practices which those in control of companies are now able to hide from exposure would be difficult to hide against the watchful eye of a vigorous press.

The financial press, if it is to perform its function properly can exert influence in at least the following ways:

1. Educating the shareholders and keeping them well-

informed. Explaining the annual accounts in all their implications. Directors in their Reports usually try to disclose as little as possible of the company's affairs. Financial columnists provide weapons to shareholders' armoury.

2. Publishing informations which may be of use to creditors, consumers, investing public, policy-makers, administrators and so forth. Here too, the field is very large.

3. Building up inhibitions in those who control the company against wasteful or irregular conduct, or activities harmful to the nation or to its industrial progress or the welfare of the people. The mere existence of a vigorous financial press not amenable to the influence of business houses, would help reduce the malpractices of the management.

The last two of those functions are further emphasized by the increasing involvement, during the present century, of public interest in the functioning of companies. Companies now are a device whereby a few individuals collect and handle a large sum of money belonging to others—the public. That alone is sufficient to sustain the claim of public interest. That apart, the activities of public companies and even of many private companies have impact on the public in very many ways, such as creating employment or unemployment affecting the cost of living or the pace of industrial growth.

In both private or public sector companies the managers are separate from the investors. The risk is borne by the public in both the cases.

While the managers of public enterprises are subject to control and ultimately by the Parliament, the managers of private sector companies are only subject to control by statute as embodied in the Companies Act. But the need for control over both management is equal.

Most of the papers in India do not appear to be operating as is essential to the proper functioning of the Corporate sector. The neglect by leading papers to carry out their functions is because they are owned or controlled by the very persons whose omissions and commissions the papers are expected to expose. Papers which are neither owned nor controlled by business houses, have not been negligent. As revealed by the Report of the Monopolies Inquiry Commission (p. 186-7) a very large section of the press is either owned or controlled by persons or corporations who are themselves big business or closely connected with big business.

As the large number of small newspapers rely upon the bigger newspapers for news as well as features the extent of big business monopoly over the Indian press is much greater than the Report reveals. Thus, except for one or two leading dailies or weeklies, the entire press in India is so placed as not to be able to perform its functions in relation to the private sector.

The situation has to be improved in the interests of journalists, because it prevents them from carrying out their public duty; and in the interests of Company Law, because the principle of disclosure which is basic to Company Law is rendered ineffective.

There is inadequate appreciation even at the highest judicial level of the true nature of the press in modern times. Through centuries the press has been transformed from a private instrument to a public institution.

Thus, the press being a mass media and not a private medium conveying the views of the person who sets it in motion it is wrong to say, that, in regulating the press, as for example, was done by the Newspaper (Price and Page) Act, 1956, the Government was infringing the freedom of the person who sets it in motion.

It is unfortunate that the Supreme Court failed to take a realistic view of the modern press as it really is—a social institution—and confused it for its predecessor of several centuries back and thus included the issue in the *Sakal* Case. Broadly speaking, the press is an instrument for promoting human welfare; and the problem of freedom of the press consists in maintaining conditions in which the press is free to carry out its functions. The solution to the problem, lies in freeing the press from the hold of businessmen.

The solution suggested by the Monopolies Commission is to help the small newspapers to establish themselves as economically viable units. The Enquiry Committee on Small Newspapers has been at work for some time and even if suggestions, when implemented, achieve a desired objective, the problem would remain unresolved.

The small newspapers would still have to depend upon advertisements from the private sector for their sustenance. Advertisers can influence the policy of a paper to a great extent. So whether small newspapers are taken over by the businessmen or not, they will not necessarily be free to carry out their duty in regard to the companies.

A take-over of the newspaper industry by the Government would make the press subserve, to some extent, the Government and the ruling party instead of the big business.

It might make the press free to discharge its functions in respect of companies, but would probably cripple papers from discharging duties to the citizens.

It is suggested that a lesson can be drawn from the device generally adopted by the Unit Trusts where management is a board of trustees of investment experts. If the management of newspapers is separated from those who own it and vested in a board of trustees drawn from experienced journalists and other interests it might go a long way in establishing the conditions necessary for the press to carry out its functions freely.

The public sector could also make some contribution to a solution of the problem by entering the newspaper industry and providing a counter-vailing force.

If the press is married to big business, the concentration of power in a few hands will be of such magnitude as to pose the greatest threat to all values of a democratic society. The danger re-inforces the argument for divorcing the mass media from the control of businessmen.

PROSPECTS FOR THE FUTURE

G. S. SHARMA

In a quickly changing society like India, with practically negligible reliable social survey data, thinking about the future will necessarily be intuitive guesses of an involved participant.

If democracy survives for the next two decades it is likely to acquire roots thus making discussion about the respective roles of law and the press possible. Democracy has to be continuously kept up through effective presentation of changing values and statistical data to help people to arrive at their own views about life and society.

This continued presentation will have to be the responsibility of two major institutions: the universities (as creating and clarifying ideological and value literature) and the press (as an effective transmission agency of facts and opinions and their interpretation and elaboration in terms of social needs of the times).

In the next generation the universities and the newspaper press will still be the two major institutions sustaining the democratic way of life.

The law affects these major institutions in two ways: first, as relating to their organization and existence and, second, as regulating the extent and nature of their functional roles in the general social interests as outlined in the Constitution.

The regulation of the universities by the Government has so far not raised many problems of conflict. But the situation is now changing and the future will see greater and greater regulation in this area. Evidence of such regulation is already appearing in the controversy over the Andhra Pradesh University Act. With the press, however, the problem of regulation and therefore of conflict with the government appears more prominently because of the great power and influence of the press on public opinion and its role as critic of social policies.

In India no special privilege or right attaches to the press.

The same rights as are available to the citizens are also available to the press.

It is possible that in view of the recent pronouncements[1] of the Supreme Court denying the rights guaranteed by Article 19 to a Corporation on the ground that they are not citizens may be applicable to the ventures but the manager, editor and the reporters are still citizens and can claim its protection.

In general the press is open to suits for defamation both civil and criminal. Generally speaking the civil suits are not major obstacles to the performance of the normal functions of the press because the trend regarding award of damages by the courts is to avoid granting heavy sums. The language press or small newspapers might feel deterred because of their poor capacity to pay.

So far as criminal action for defamation is concerned it is also rarely brought partly because of the difficulties of proof in private complaint and partly because of the functional difficulty of securing witnesses by individual defendants.

With greater popularity of the language press and with increased familiarity with and reliance on the institutions of law and order there is a possibility that civil suits for damages may increase.

It will then be necessary to have some similar adjustments as have been made in England by the Defamation Act, 1952, to give to the press greater degree of freedom by listing out subjects on which reporting would be possible without any libel suits.

It is usually the executive and sometimes the legislature which initiates restrictions and their reasonableness has to be determined normally through judicial review.

The press needs to have a point of view and this gives rise to genuine differences with the executive and the legislature on general policy formulated for the community. This inherent conflict gets magnified in a transitional society such as India, but in the near future it is too much to expect practical institutions of internal regulation to develop which will make the inter-group adjustments possible. This task of adjustment would rest on the judiciary.

1. *State Trading Corporation* v. *Central Tea Officer*, A.I.R. 1963 S.C. 1811; *Tata E. & L. Co. Ltd* v. *State of Bihar*, A.I.R. 1965 S.C. 40.

The recent U.P. case projecting the controversy between the judiciary and the legislature raises certain important issues for the future.

The legal system, particularly in a federal country, will have to rest upon two basic assumptions: first, certain rules of behaviour of the political process must be observed and not made issues for legal clarification. Secondly, the decisions of the highest judiciary must be accepted without open criticism.

The decisions of the courts relating to the press do not disclose a consistent or progressive philosophy. The notification of the Punjab Government[2] imposing a total prohibition on publishing anything on a particular topic was upheld by the Supreme Court as being reasonable, in another case[3] a Central regulation relating to price, was declared to be *ultra vires* and unconstitutional as unduly interfering with the right of freedom of speech and expression[4].

By and large the role of the press has been so far negative. For instance, it is not enough to give formal publicity to birth control news and notices and food riots.

The problem of population control and food distribution patterns are top priority problems and need a more thoughtful and creative coverage. The language press can be made effective in educating public opinion in mofussil areas towards these basic questions and in helping to develop a public conscience.

Another area in which one would expect the press of the future would be a drive against the popularly noticeable social misdemeanours. Open breaches of traffic rules, loitering on public thoroughfares, committing public nuisances on the

2. *Virendra* v. *State of Punjab*, A.I.R. 1957 S.C. 896.

3. *Sakal Papers Private Limited* v. *Union of India*, A.I.R. 1962 S.C. 305.

4. Recently the Diwakar Committee on small newspapers has, by a five to four majority, recommended "the introduction of a statutory Price-Page Schedule ... as an inescapable necessity". See *Report of the Enquiry Committee on Small Newspapers* 185 (1965). The Committee has also recommended that "the Government take steps to amend the Constitution with a view to enlarging restrictions in clause (2) of Article 19 to make possible the enactment of the Newspaper Price and Page) Act." (*ibid* at 183).

   Mr. Raj Bahadur, Minister of Information and Broadcasting assured the Lok Sabha that the Government would take a decision soon on the Report (*The Hindustan Times*, New Delhi dated March 29, 1966).

roads and on public parks, increasing tempo of eve-teasing are some instances of this evil and need a purposeful and concerted drive from the press.

Such items as are publicised are not pursued till something effective is done by those in authority.

Newspapers to be effective instruments of democratic process will have to take greater notice of the equipment and capacity of the men who man the press. There must be some process of selection through which weightage could be given to intellectual and moral equipment beyond degrees in journalism or experience of working in newspapers.

Even after proper selection has been ensured, periodic refresher courses to the editorial, reporting and news staff must be provided.

Chanchal Sarkar in *The Hindustan Times* has pointed out that special areas are developing in a vocationally disintegrating society. This vocational disintegration will mutliply. Separate specialisations will develop resulting in greater and greater heterogeneity.

The press has to be aware of the basic elements of most of the essential aspects of life in India. This can only be done through periodic refresher courses.

One of the more important roles of the Press Institute of India should be to organize courses as well as take the batches of pressmen to well-known departments of universities in India.

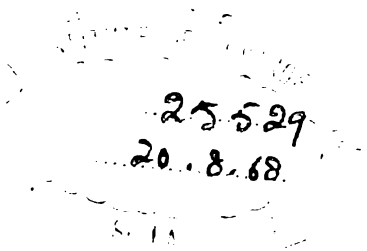
I feel that in future India the Press will have to provide not only facts and opinions but a continuing interpretation of them in terms of social needs. For this the Press would require to have experts and social scientists with an insight.

It is common knowledge that most of the important Indian dailies are controlled by men who own more than one daily and who are masters of industry. This dependance of the Press upon the financial wizards of the community limits its freedom of speech and expression.

There is a suggestion of creating a financial corporation to assist in setting up new presses and also to give to the press independence from both the government as well as the vested interests. There is a general recognition today against the monopolistic growth of industry.

It is difficult to forecast how the Press will be able to face economic pressures. If the democratic process survives and a socialistic society is fulfilled, schemes might emerge through which the finances of the press could be regulated by an independent autonomous tribunal for new ventures and the governing bodies of big business. Press could be assisted by some independent experts and some government men to keep pressure tactics in check.

One must not forget that the men in the Press reflect the general social calibre. The problem of balancing interests of the Press and those of other groups and vocations will not be solved by executive, legislative or even judicial means. The guidance required would be a continuing one and can only be given by associating experts in various areas. But certain administrative regulation can hardly be avoided.



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