

# PRESS FREEDOM IN INDIA AFTER INDEPENDENCE

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## **CONTENTS:**

- 1..PREFACE
- 2.INTRODUCTION
- 3.OBJECTIVE
- 4.CRITICAL APPRAISAL OF PREVIOUS CASE STUDIES
- 5.CONTENT ANALYSIS
6. ILLUSTRATIONS AND PLATES
- 7.SCOPE OF RESEARCH
- 8.CONCLUSION
- 9..BIBLIOGRAPHY & REFERANCES

## **PREFACE:**

Certain trends in communication & journalism throughout the modern world prompted several sociologists & media experts to discuss the desirability of re-examining the trends in the light of basic issues. In other words, 'back to the basics' say the experts. This is where Gandhi becomes relevant. High technology is good, but if it does not enable us to solve basic problems confronting to succeed in catering to the greed of a few to the exclusion of the need of the many- as it has done through the recent decades and in all countries that experienced colonial subjugation in the past.

Any discussion of freedom of the press must distinguish freedom in fact from legal freedom. The principle of freedom of the press as a constraint on government actions against the press can differ from the amount of freedom the press actually exercises at a given time. On the one hand, various social, political, and economic forces may serve to make the press freer in fact than it is in law. Conversely, those same forces may substantially curtail the exercise of a legal freedom.

This thesis mainly relies heavily on the history of the Indian newspapers while illustrating how constitutional guarantees are sometimes not enough to ward off threats to the freedom of the press.

It not only traces the struggle of the press right from the colonial era to the present, but it also explores the scope and nature of the freedom. Is the freedom of the press the freedom of the proprietor, the editor, the individual journalist or the reader? Unlike in the U.S., where the First Amendment specifically guaranteed freedom of the press, in India, the press derives its freedom under the right to freedom of speech and expression available to every citizen. Thus, the freedom of the press is no different from the freedom available to the people, and is tied up with commitment to public interest.

Although the press does not have a constitutional mandate, unlike the three 'pillars of democracy' — the legislature, the executive and the judiciary — it, like the others, has the same objective: making democratic governance successful. The press is another pillar of democracy, but it often finds itself in confrontation with the other three. While referring to instances of such confrontation, he touches on the need for codification of the privileges of the legislature, and for changes in the law of contempt of court.

But the state is not the only source of threat to the freedom of the press. This thesis also deals with pressures from short-term, profit-minded proprietors, big business, advertisers, and terrorists. Sometimes, even survival appears possible only by sacrificing freedom. Over the years, each newspaper has had to earn its own freedom overcoming such pressures.

## **INTRODUCTION**

The Indian Press has a long history right from the times of British rule in the country. The British Government enacted a number of legislations to control the press, like the Indian Press Act, 1910, then in 1931-32 the Indian Press (Emergency) Act etc. During the Second World War (1939-45), the executive exercised exhaustive powers under the Defence of India Act & enforced censorship on press. At the same time the publication of all news relating to the Congress activities declared illegal.

In the Post-Constitutional Era, there is a change in the outlook. The Constitution of India in Article 19(1) (a) lays down that "All citizens shall have the right, to freedom of speech & expression." Unlike, the U.S. Constitution, the Indian Constitution does not expressly provide freedom of press. However, it is now well settled that the words "speech & expression" in Article 19(1) (a) includes freedom of press also.<sup>2</sup> The freedom of press means freedom from interference from authority which would have the effect of interference with the content & circulation of newspapers.<sup>3</sup> The Article 19(1) (a) of the Constitution is subject to certain restrictions laid down in Article 19(2) of the Constitution.

Freedom of expression has always been emphasized as an essential basis for the democratic functioning of a society. The reasons for this are: the right of an individual to self-fulfillment,

which right requires the communication of thought; the importance of constantly attempting to attain the truth, an attempt which is frustrated if information is suppressed or comment blocked; the inherent democratic right to participate in decision-making, which obviously implies the freedom to obtain, communicate and discuss information; and the practical importance of maintaining the precarious balance between healthy cleavage and the necessary consensus; "coercion of expression is likely to be ineffective (and)... Conceals the real problems confronting a society... It is likely to result in neglect of the grievances which are the actual basis of the unrest and thus prevent their correction". Especially because we are compelled to operate our democracy indirectly, it is of great importance that the citizens should be enabled to know what is happening in different regions and different sectors of the functioning of the society, and to listen to different and alternative approaches and comments, so that they can effectively participate in the process of self-government. If facts cannot be freely presented and comments cannot be freely exchanged, there is no way in which the citizens can even attempt to hold the rulers to account.

Freedom of the press is guaranteed by Article 19 of the Constitution of India, which articulates the right to freedom of speech and expression. While press freedom has been much flaunted in India, the proviso to Article 19 – where ‘reasonable’ restrictions can be imposed in the interests of ‘the sovereignty and integrity of India’, the security of the state, friendly relations with foreign states or public order— was more in evidence in 2002, a year of intense social and political upheaval.

It has been frequently alleged, especially in India, that the freedom of the Press is in danger because of the ownership of the newspaper industry and the predominance of some newspaper groups and chains. It is also suggested that the editors and journalists cannot have adequate freedom of collecting and disseminating facts and offering comments as they are under the pressure of the capitalist owners. It is further pointed out that free collection and dissemination of facts is not possible in the case of newspapers which depend to a large extent on revenue from advertisements as the advertising interests cannot but influence the presentation of news and comments. Unless this whole structure of ownership and control in the newspaper industry, and also the manner of the economic management of the Press, is changed, it is therefore suggested, the Press cannot be really free.

## **AIMS AND OBJECTIVES:**

The objective of this research study is to provide with an indepth analysis of the freedom of press that existed in India right from the post-independent era and its plight at present. This study also highlights upon the restrictions those were imposed upon this freedom from time to time owing to various legislative case studies. Alongwith this I, also wish to prioritize on how the press should function in the years to come so as to emerge as a responsible and just “forth pillar of democracy ”What should never be overlooked when thinking of the Press in the Indian context is that it is only a free Press which can help develop a body of citizens who are well informed both regarding current events and also about the problems the country is facing; and the alternatives available for tackling them. It is only such a Press that can enable a young democracy like India to survive, and also help its development in a manner where social justice is ensured and the interests of the common people served.

## **CRITICAL APPRAISAL OF PREVIOUS CASE STUDIES:**

The constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1)(a) of the Constitution. Thus the press is subject to the restrictions that are provide under the Article 19(2) of the Constitution. Before Independence, there was no constitutional or statutory provision to protect the freedom of press. As observed by the Privy Council in Channing Arnold v. King Emperor: “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, but apart from statute law his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject”. The Preamble of the Indian Constitution ensures to all its citizens the liberty of expression. Freedom of the press has been included as part of freedom of speech and expression under the Article 19 of the UDHR. The heart of the Article 19 says: “Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without

interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The Supreme Court observed in *Union of India v. Assn. for Democratic Reforms*: “Onesided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions”.

In *Indian Express v. Union of India*, it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are: 1. freedom of access to all sources of information, 2. freedom of publication, and 3. freedom of circulation.

In *Romesh Thapar v/s State of Madras*, Patanjali Shastri, CJ, observed that “Freedom of speech & of the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.” In this case, 5 entry and circulation of the English journal “Cross Road”, printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as “without liberty of circulation, publication would be of little value”.

The Hon’ble Supreme Court observed in *Union of India v/s Association for Democratic Reforms*, “One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce.

There are many instances when the freedom of press has been suppressed by the legislature. In *Sakal Papers v/s Union of India*, the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2). Similarly, in *Bennett Coleman and Co. v/s Union of India*, the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Court holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court also rejected the plea of the Government that it would help small newspapers to grow.

## CONTENT ANALYSIS

The most important ingredient of democracy is the existence of a free and fearless press. In a democracy like that of India, the press must enjoy complete freedom and should not be subjected to any restriction. The voice of the press is the voice of the people. Censoring the press means the suppression of people's voice. So the very survival of democracy inevitably depends on the freedom of the press. But at the same time, the press must not fail to follow its code of conduct and misuse the freedom.

There are different systems with different perspective about the issue of global freedom. The states are accessing the formulation of the press. The press freedom is about the power being centred in the specific issue that is supported by different technological aspects in bringing the information and communication. The freedom of expression is an evolving issue around the world.

The Indian press is more than two centuries old. Its strengths have largely been shaped by its historical experience and, in particular, by its association with the freedom struggle as well as movements for social emancipation, reform, and amelioration. The long struggle for national emancipation; controversies and battles over social reform; radical and revolutionary aspirations and movements; compromising as well as fighting tendencies; and the competition between self-serving and public service visions of journalism – these have all found reflection in the character and performance of the Indian press over the long term. In the first place, the close association between modern India's struggle for political and social emancipation from

imperialist thralldom and oppression and the origins and development of the Indian press accounts for the seriousness, relevance, and public-spirited orientation of the older media tradition at its best. Secondly, part of the historical legacy is some diversity and pluralism and a certain space for the expression of divergent opinions. Diversity and pluralism in the Indian press can be said to reflect the vast regional, linguistic, socio-economic, and cultural heterogeneity of a subcontinent. Within the Indian newspaper tradition, there has long been an awareness of the need for greater diversity and pluralism.

Thirdly, there have always been sharp ideological and political divides within the Indian press tradition. In a sense, the contemporary differentiation between newspapers that broadly take a secular-democratic stand and those that have come increasingly to support the ideology, politics, and policies of the Hindu Right – the Sangh Parivar and some of its allies – can be said to be analogous to the divide between the ‘nationalist’ and ‘loyalist’ press during the freedom struggle. But such categorization, while valid, is hardly sufficient. Within the ‘secular’ press as much as within the ‘nationalist’ press of the pre-Independence period, there are significant divides on a number of ideological and political issues, and these manifest themselves in differentiated news coverage and editorial attitudes towards the ruling Congress and other parties at the national and regional level.

Oftentimes, as Press Council of India chairman Markandey Katju has pointed out in his recent critique of media performance, the losers are the people of India – the working people and the hundreds of millions who suffer under multiple deprivations.

Involvement in great social and political campaigns, or other exciting events, during the freedom struggle fuelled newspaper growth and circulation and built up the credibility and image of particular publications. ‘Literacy, basic communications and adequate technology’, notes Robin Jeffrey, a political scientist who has done valuable scholarly work on the Indian language press, are essential to the development of a daily newspaper culture. But momentous events provide the link between these developments and politics – the link that seems to send circulations shooting upwards. People need the stimulus of exciting times to hook large numbers of them on the daily newspaper habit’

The dramatic expansion of the Hindi daily press over the last quarter-century, partly in response to the political and social upheaval generated by Ayodhya-centred communal mobilization by the Sangh Parivar, is a strikingly different case, and one that underlines the link between political excitement and newspaper circulation. It can be seen that this politics-driven growth of newspapers can be for better or worse. But a public that tracks major events through the media must be counted as a positive development, even when it is encountered in the context of a socially and politically disastrous movement.

In 1947, the major English newspaper in India were the Times of India (Bombay), Statesman (Calcutta), Hindu (Madras), Hindustan Times (New Delhi), Pioneer (Lucknow), Indian Express (Bombay & Madras) Amrita Bazaar Patrika (Calcutta), National Herald (Lucknow), Mail (Madras) & Hitavada (Nagpur). Of these, the Times of India, Statesman & Pioneer were under British ownership till 1964, when it came under a group of Indian business.

During the long struggle for India's Independence, the major English newspaper that served the national cause were the Hindu (1878), Amrita Bazaar Patrika (1868), Bombay Chronicle (1913), Free Press Journal (1930, it became Indian Express) & Hindustan Times (1924). Among the Indian language newspapers, the prominent ones were Aaj (1920), Ananda bazaar Patrika (1922), Sakal (1931), Swadeshmitran (1882), Mumbai Smachar (1822), Malayala Manorama (1890) & Mathrubhumi (1930). Even in the pre-Independence context, the press learned to act like a player in the major league political and socio-economic arena, despite its well-known limitations in terms of reach in society, financial viability, professional training, and entrepreneurial and management capabilities. The First Press Commission estimated that the total circulation of the 300 or so daily newspapers being published in India in 1953 was 2.53 million. This worked out to 5.40 copies per 1000 in the population against the backdrop of an all-India literacy level of 16.40 per cent. From such a low base, India's daily newspaper circulation climbed slowly to 3.15 million in 1957 and 5.11 million in 1962. It would take the press three decades after the attainment of Independence to cross the 10 million mark and, in a manner of speaking, join the ranks of the 'mass media'. It would take thirty-two years of Independence for the total circulation of Hindi daily newspapers finally to overtake the total circulation of English language newspapers in India.

Journalism is flourishing in India today. The Indian language newspapers have overtaken the English newspapers in number & circulation. The highest circulation till the 1990's was enjoyed by the English newspapers despite the fact that less than 5 percent of the population of India claim English as their mother tongue. English is still the medium of instruction in colleges & many prominent schools. It is also the language of administration, although state governments have introduced legislation in favor of the local government.

## **Two central functions:**

The long-term Indian press experience, set in a broader framework, suggests two central functions or roles that newspapers have played in modern and contemporary times. These functions may be designated as (a) the credible informational and (b) the critical-investigative-adversarial. An accompanying condition – which evolves over time, typically as an outcome of a democratic or working people's struggle – is that the political system, for whatever reason, gives newspapers free or relatively free rein, and a public culture of valuing these functions develops. Analytically, the two central functions are closely related, in fact, twinned. They need

to be considered together, for the following reasons. In the first place, the credible-informational function can be seen as a prerequisite for the second function. In India, the former has something to do with a rule of law tradition that managed to take root despite the oppression, racism, inequities, and barbarities of British colonial rule (in contrast to another country under a different colonialism where nothing comparable might have happened historically). The credible-informational function is also capable, it must be assumed, of being acquired or 'learned' in a non-colonial or post-colonial context. Secondly, it is the critical-investigative-adversarial function that gives the credible-informational function a new, substantive content in relation to society. The more progressive second role that the press may be able to play, at its best, with respect to, say, public policy relating to food, hunger, and multiple deprivations. I use these terms, functions and roles, which in other contexts might carry different connotations, interchangeably, to avoid linguistic infelicity and in defence of mass entitlements and their expansion needs much stronger ideological and political nourishment than the credible-informational role. In fact, if the critical-investigative-adversarial function weakens or gets eroded for whatever reason, the credible-informational function might fade away through sheer disuse.

Another point needs to be made about the second function. It can also, inter-alia, be conceptualised as a 'watchdog' role, which is to say it can involve either constructive cooperation or adversariality in the public interest. Under ideal circumstances, the purpose and tendency of press reporting, criticism, investigation, and even watchdogism may be to improve the government or reform the system; this may be characterised as the latter-day Walter Lippmann vision of an informed and enlightened free press intervening continuously to

improve governance in society. It is only in this sense that an independent press, by exposing facts on the ground relentlessly and by providing some kind of hunger-related discourse with policy implications, can prevent a government from pursuing disastrous policies and thus, in concert with other democratic institutions, can, in the Amartya Sen theoretical scenario, 'guarantee...the avoidance of acute starvation and famine' Thus, in a deeper sense the adversarial or destabilising role makes for the relative stabilisation of crisis-averting policies if the democratic rules of the game work reasonably.

## **Pastime function**

A third function may now be posited. It occupies a bashful, somewhat nebulous position when we speak of the high-minded, serious, 'quality' cohorts of the press but is out in the open in the 'popular' press and on television, often in a flagrant way. At its worst, it seeks to purvey escapist entertainment, celebrity worship, vapid talk shows, scandal, and even voyeurism at the expense of everything else. But it can be something quite different – engaging, entertaining, delving into life's small pleasures, covering hobbies and recreation, pandering to crossword and sudoku addicts, mixing in humour and satire, lightening solemn, heavy, ponderous journalism, and in

general serving the 'pleasure principle' as the French use that term. This can be designated the pastime function of the news media.

Since its inception the press played a very positive and constructive role in a democracy like India. It kept the people informed of the national and international news and happenings. It brought to the notice of people the programmes, policies and activities of the government. Similarly, it kept the Government in the know of the people's problems, difficulties, hopes and aspirations. Thus the press always played a dual role. Since Independence It served as a bridge between the Government on the one hand and the people on the other.

During the era when the press council in India felt anxiety the birth of the media law was implemented and followed by the press regulations that significantly had an impact on the publishing industry. Next is the introduction of the compulsory licensing for owning and running the printing presses which is typically empowered by the government. The action simply meant to prohibit the circulation or publication of any newspaper, book, or other printed material. The banning of the publication or dissemination created a commotion against the government that effectively weakened the power of authority. This process continued and through the years brought a significant change in the constitution. The entire developed article in the institution of the country speaks about the freedom to express and expression and the birth of the press council in India.

### **The status of media freedom in India**

There are differing views of the status of press and media freedom in India. Some external observers consider the Indian news media to be in an enviable position in the developing world, their freedom, space, stability, and security derived from history, constitutional protection, the workings of a democratic political system, and their own rapid growth and expansion over the past quarter-century. Others, mostly media insiders, believe these advantages are offset to a considerable extent by an illiberal framework of laws, dating back to the British Raj, which cover criminal and civil defamation, contempt of court, legislative privilege, official secrecy, national security, and incitement to offences – and have a chilling effect on freedom of expression. Further, media freedom in India is considered 'incomplete' because the print media and the broadcast media have not been placed on an equal constitutional and legal footing. Freedom of the press is a fundamental right not explicitly mentioned by the Constitution of India. Fortunately, judicial interpretation has derived it from Article 19 and placed it on firm ground. Specifically, the Supreme Court of India has held that freedom of the press is a combination of two freedoms, Article 19(1)(a), 'the freedom of speech and expression', and Article 19(1)(g), 'the freedom to practice any profession, or to carry on any occupation, trade or business'. The first is clearly the principal component. It is subject to reasonable restrictions' that can be imposed by law for the purposes specified under eight heads in Article 19(2) – and for no other

purpose. Article 19(1)(a) is, however, subject to ‘reasonable restrictions’ that can be imposed by law ‘in the interests of the general public’. It has also been held that the restrictions must meet judicial standards of reasonableness. No such protection has been conferred on television and radio, whose status within the Article 19 framework can only be described as nebulous, insecure, and yet to be settled. Secondly, newspapers in independent India function within a benign system of registration; since there is no licensing, they cannot be de-licensed. By contrast, while terrestrial television is a state monopoly and All India Radio alone is allowed to do news and current affairs radio broadcasts from within India, private television channels and FM radio stations function under a licensing system and can be taken off the air for alleged serious transgressions of the rules. Paradoxically, in practice, while the press has a statutorily established watchdog, the Press Council of India, in place, there is no legal regulatory framework for private satellite television channels, which have attracted growing public complaint that they are a law unto themselves. This paradoxical situation demands well-considered, progressive reform. The aim of such reform must be to expand the scope of media freedom – but also to ensure professional and social accountability.

The primary duty of the press has been objective reporting of the news and views on a calm and dispassionate manner. Sometimes certain newspapers indulged in ‘Yellow Journalism.’ They gave out biased and coloured news. Their aim was simply to indulge in sensationalism. Sometimes they also spread rumours. They went to the extent of indulging in character assassination, mudslinging and blackmailing. These activities are against journalistic ethics.

The press serves as the defender and the protector of the rights and liberties of the people. But it can perform this role only if it enjoys freedom in publishing news, views and reporting. It can function effectively only in an open society, where decisions are made in a democratic manner.

In India, presently most of the newspapers are controlled by business magnates. Such newspapers, therefore, promote the interest of the capitalists by given tainted news. They pay no heed even to the genuine problems of the worker^ farmers, artisans and other weaker sections of the people.

### **Who Threatens Freedom? Owners Structure**

Having accepted that the freedom of the Press is of vital importance especially in our contest, the question arises: is this freedom threatened and, if so, by whom?

It has been frequently alleged, especially in India, that the freedom of the Press is in danger because of the ownership of the newspaper industry and the predominance of some newspaper groups and chains. It is also suggested that the editors and journalists cannot have adequate

freedom of collecting and disseminating facts and offering comments as they are under the pressure of the capitalist owners. It is further pointed out that free collection and dissemination of facts is not possible in the case of newspapers which depend to a large extent on revenue from advertisements as the advertising interests cannot but influence the presentation of news and comments. Unless this whole structure of ownership and control in the newspaper industry, and also the manner of the economic management of the Press, is changed, it is therefore suggested, the Press cannot be really free.

## **Restrictions on Freedom of Press in India**

The freedom of press comes within the ambit of freedom of speech & expression. In a democracy, freedom of press is highly essential as it (the press) acts as a watchdog on the three organs of a democracy viz. the legislature, the executive & the judiciary. But, the freedom of press is not absolute in nature. It is subject to certain restrictions which are mentioned in Article 19(2) of the Constitution. The following are the grounds of restrictions laid down in Article 19(2) :-

- 1) Sovereignty & Integrity of India
- 2) Security of the State
- 3) Friendly relations with Foreign States
- 4) Public Order
- 5) Decency or Morality
- 6) Contempt of Court

The grounds of 'Public Order' & 'Friendly relations with Foreign States' was added by the Constitution (First Amendment) Act, 1951. While the ground of 'Sovereignty & Integrity of India' was added by the Constitution (Sixteenth Amendment) Act, 1963. Reasonable restrictions on these grounds can be imposed only by a duly enacted law and not by executive action.

Security of the State: Reasonable restrictions can be imposed on the freedom of speech and expression, in the interest of the security of the State. All the utterances intended to endanger the security of the State by crimes of violence intended to overthrow the government, waging of war

and rebellion against the government, external aggression or war, etc., may be restrained in the interest of the security of the State. It does not refer to the ordinary breaches of public order which do not involve any danger to the State.

**Friendly relations with foreign States:** This ground was added by the Constitution (First Amendment) Act of 1951. The State can impose reasonable restrictions on the freedom of speech and expression, if it tends to jeopardise the friendly relations of India with other State.

**Public order:** This ground was added by the Constitution (First Amendment) Act, 1951 in order to meet the situation arising from the Supreme Court's decision in *Romesh Thapar, s case* (AIR 1950). The expression 'public order' connotes the sense of public peace, safety and tranquillity.

In *Kishori Mohan v. State of West Bengal*, the Supreme Court explained the differences between three concepts: law and order, public order, security of State. Anything that disturbs public peace or public tranquillity disturbs public order. But mere criticism of the government does not necessarily disturb public order. A law punishing the utterances deliberately tending to hurt the religious feelings of any class has been held to be valid as it is a reasonable restriction aimed to maintaining the public order.

It is also necessary that there must be a reasonable nexus between the restriction imposed and the achievement of public order. In *Superintendent, Central Prison v. Ram Manohar Lohiya*, the Court held the Section 3 of U.P. Special Powers Act, 1932, which punished a person if he incited a single person not to pay or defer the payment of Government dues, as there was no reasonable nexus between the speech and public order. Similarly, the court upheld the validity of the provision empowering a Magistrate to issue directions to protect the public order or tranquillity.

**Decency and morality:** The word 'obscenity' is identical with the word 'indecent' of the Indian Constitution. In an English case of *R. V. Hicklin*, the test was laid down according to which it is seen 'whether the tendency of the matter charged as obscene tend to deprave and corrupt the minds which are open to such immoral influences'. This test was upheld by the Supreme Court in *Ranjit D. Udeshi v. State of Maharashtra*. In this case the Court upheld the conviction of a book seller who was prosecuted under Section 292, I.P.C., for selling and keeping the book *The Lady Chatterley's Lover*. The standard of morality varies from time to time and from place to place.

**Contempt of court:** The constitutional right to freedom of speech would not allow a person to contempt the courts. The expression Contempt of Court has been defined Section 2 of the Contempt of Courts Act, 1971. The term contempt of court refers to civil contempt or criminal contempt under the Act. But judges do not have any general immunity from criticism of their judicial conduct, provided that it is made in good faith and is genuine criticism, and not any attempt to impair the administration of justice. In *In re Arundhati Roy*, the Supreme Court of

India followed the view taken in the American Supreme Court (Frankfurter, J.) in *Pennekamp v.* in which the United States Supreme Court observed: “If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise”. In *E.M.S. Namboodripad v. T.N. Nambiar*, the Supreme Court confirmed the decision of the High Court, holding Mr. Namboodripad guilty of contempt of court. In *M.R. Parashar v. Farooq Abdullah*, contempt proceedings were initiated against the Chief Minister of Jammu and Kashmir. But the Court dismissed the petition for want of proof.

**Defamation:** The clause (2) of Article 19 prevents any person from making any statement that injures the reputation of another. With the same view, defamation has been criminalised in India by inserting it into Section 499 of the I.P.C.

**Incitement to an offence:** This ground was also added by the Constitution (First Amendment) Act, 1951. The Constitution also prohibits a person from making any statement that incites people to commit offence.

**Sovereignty and integrity of India:** This ground was also added subsequently by the Constitution (Sixteenth Amendment) Act, 1963. This is aimed to prohibit anyone from making the statements that challenge the integrity and sovereignty of India.

In the opinion of Brajesh Rajak, author of ‘Pornography Law: XXX Must not be Tolerated’ “Freedom of speech and expression can not be an excuse for distribution of indecent and immoral content to average person of the society”.

## Sedition

Section 124A of the Indian Penal Code deals with the offence of sedition. It lays down that, “Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine”. But Explanation 3 says “Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence

under this section". In *Devi Saran v/s State* AIR 1954 Pat 254, the Court has held that Section 124A imposes reasonable restriction on the interest of public order & therefore it is protected under Article 19 (2) of the Constitution.

## **Current Scenario of Press & Its Achievements**

As discussed earlier, press is regarded as one of the pillars of a democracy as it acts as a watchdog of the three organs of democracy. Though, freedom of speech & expression (including of press) is enjoyed by the citizens but there are many instances where the press has to face difficulties as well. In the recent past, in the *Tehelka Case*, the portal *Tehelka.com* was forced to shut down completely & its journalists were continuously harassed as the journalists exposed the 'scam' in the defence ministry involving Ex-Defence Personnel & Central Government Ministers. There are many instances where journalists were threatened & even assaulted at times.

Despite of these difficulties the press has achieved a lot of success in the recent past. In *Jessica Lal's case*, *Manu Sharma*, son of a Haryana minister, killed *Jessica* on April 29, 1999, because she refused to serve him liquor in the restaurant where she was working. The case was closed and all the accused were freed due to lack of evidences, but finally, the case was reopened after media and public outcry, which led to *Sharma's* conviction. In *Priyadarshini Mattoo's Case*, *Santosh Kumar*, son of an IPS officer raped and killed his colleague, *Priyadarshini Mattoo*, a law student in 1996, after she refused his proposal. Ailing and aged father of *Priyadarshini* got judgment in October 2006, after a long run trial. The Delhi High Court rebuked lower courts and authority under investigation for acquittal of accused. The media played a significant role in this case as well. Similarly, in *Nitish Katara's* case the media played an important role. In *Aarushi Talwar's* murder case, media played an important part by highlighting the loopholes in the case owing to which the police was forced to take some action. *Aarushi's* father is the prime suspect in this case. Recently, in *Ruchika's Case*, *Ruchika Girhotra*, a 14-year-old tennis player, was molested by then Haryana police IG *S.P.S. Rathore* in *Panchkula* in 1990. Three years later, *Ruchika* killed herself, which her friend and case witness *Aradhana* attributes to the harassment of *Ruchika* and her family by those in power. Nineteen years later, *Rathore* walks away with six months of rigorous imprisonment and a 1000-rupee fine, reportedly due to his old age and the "prolonged trial". This led to public outrage & media played a significant role in it. Later on the Government of India asked the Central Bureau of Investigation to re-investigate the case & the police medals awarded to *S.P.S. Rathore* was also stripped. A case of Abetment of Suicide under Section 306 of the IPC was also filed against *S.P.S. Rathore*. In 2005 news channel *Aaj-Tak* carried out *Operation Duryodhana* which revealed 11 MP's of the *Lok Sakha* accepting cash for

asking question in the Lok Sabha. Later on an Investigation Committee was set up headed by Senior Congress MP Pawan Kumar Bansal. All the 11 MP's were found guilty & were sacked from the Lok Sabha.

## **SCOPE OF RESEARCH**

But what is the possible remedy? Does Public ownership of newspapers in effect mean State ownership? Is that what will ensure the freedom of the Press?

The idea has merely to be put forward to see how suicidal such a solution can be. Cooperative ownership could be a possible alternative; but there are few examples anywhere in the world of successful cooperative management of large newspaper organisations, or of any large business establishments. A newspaper industry is an increasingly large, technically complex and managerially challenging industry. Unless we want the newspapers to be poorly produced as a result of continuous inefficiency in their management, we can not but permit good and vigorous managers to control major units in this industry. The choice is between having good newspapers even with the shortfalls inevitably arising out of the inadequacies mentioned earlier, or having poor quality newspapers.

What is therefore of real importance is to ensure that a certain minimum degree of competition exists in the newspaper world. It is true, as mentioned earlier, that, as in many other industries, technology and other aspects give a significant advantage to large scale organisations in the press industry. It is no longer possible for the number of successful newspaper ventures to be very large. We can only have a limited degree of competition and not anything approaching perfect competition. But this is the difficulty in all modern industries. All that can and should be emphasised is that a reasonable degree of competition should be attempted to be maintained.

This can be done in two ways: Firstly, in any effective circulation area which forms a single market for newspapers, careful watch should be kept on dominant newspapers who control a large proportion of the circulation. In the case of such newspapers the normal provisions of the MRTP Act such as special permission being required for their major expansion or setting up of new papers by them etc. should apply. Careful watch should also be kept on the possibility of their indulging in monopolistic and unfair trade practices. It has been already held that the MRTP Act applies to the newspaper industry. What is necessary is to make sure that the provisions of the Act are streamlined and its instruments given adequate teeth so that the anti-monopoly provisions can effectively operate. This is necessary not only in the newspaper industry but in all industries. The difficulty is that throughout the last ten years since the MRTP Act was put on the statute book, the Government has not rally bothered to see that anti-monopoly provisions become effective. In fact, the tendency of Government has been in opposite direction, Viz, to favour the monopoly organisations.

## IMPORTANCE OF CONSTITUTIONAL AMENDMENTS

All these difficulties in the way of ensuring that the Press can have the maximum freedom to carry out its function of collecting facts about different facets of national life, analysing them and commenting upon them so as to keep the general body of citizens in our young democracy well informed show that the Press requires some special protection. Many authorities have held that the Right to Freedom of Speech conferred by Article 19(1) of the Constitution is adequate to protect the freedom of the Press. Judicial decisions have however made it clear that the Fundamental Rights are conferred only on citizens and not on associations of citizens. In the present times, no newspaper or other periodical can normally be brought out by individuals; it can only be brought out by corporate bodies. Moreover, it has also been held by Courts that, in view of the limitations put under Article 19 (2) etc., pre-censorship can be imposed on newspapers even when the country is not faced by an Emergency due to external aggression or internal rebellion or similar circumstances. That governmental authorities can be tempted to use such powers purely for partisan purposes was adequately proved in 1975-76 and, more recently, in Assam. There is also some uncertainty about whether some provisions in the Indian Penal Code cannot be used as a coercive instrument against the Press. It appears therefore necessary that a specific Constitutional amendment so as to confer the right of Freedom on the Press in particular and on media of communication in general needs to be taken up in right earnest. If the general body of citizens in a vast country like ours is to be kept adequately informed both about the actual events and about alternative approaches to meeting the country's problems, it is essential that the freedom of the communication media is protected by a specific Constitutional provision to that effect.

### THE PRESS NEEDS TO IMPROVE

The inadequacies of the Indian Press need not be connived at. There is no doubt that private business- and those who control it- are treated by most newspapers with kid-gloves. This is partly because of the ownership of many newspapers and therefore the philosophy of those who are appointed to senior journalistic positions. The trade union side of industrial disputes, the approach of the political parties on the left side of the political spectrum and the difficulties of the unprivileged and the dispossessed have received far less attention than other smaller but influential sections and vested interests in the vast bulk of our newspapers. It should, however, be said that the situation is changing for the better. Competition and also the increasing influence of professional journalists, are making it difficult for newspapers to ignore these various aspects.

Press needs to be Responsible

Though, the press has played significant roles for public welfare but at times it act irresponsibly. For instance the electronic media hyped the Abhishek Bachhan and Aishwariya Rai wedding in such a way that other important news were neglected. In Prof. Sabharwal's case, when Prof. Sabharwal was killed by ABVP activists, there were a number of news channels & newspaper correspondent were present & they had evidence of the murder but the media acted irresponsibly & the police called it an 'Open & Shut Case'. Recently, when Mumbai was under terror threat in 26/11 the media acted irresponsibly by telecasting live the long sixty hour Operation Black Tornado by the security forces to combat the attack at The Taj Mahal Palace Hotel & Nariman House. It included live feed of air dropping NSG Commandoes on the rooftop of Nariman House. At times news channel covers news such as 'Bollywood Gossips' & 'Page 3' etc which has reduced them to a mere 'Entertainment Channel'. There are many important issues which should be covered by the media but unfortunately it does not. In April 2009, Union Home Minister P.Chidambaram was addressing the media at a press conference a journalist threw show at the minister on protest of acquittal of a Congress leader accused of leading Anti-Sikh riots in 1984. The journalist named Jarnal Singh was a reporter of Dainik Jagran, a local newspaper. Later on he apologized to the Union Home minister for his act. This was one of the most condemnable act which showed the ugly side of the press.

CONCLUSION:

The Indian situation cries out for such an independent, comprehensive, hard look into the culture, practices, and ethics of the news media and into questions of what kind of regulatory and governance mechanisms need to be put in place. The object must be the same: to support integrity and freedom of the media while encouraging the highest ethical standards and best practices. For too long have India's news media got by on the strength of empiricism and animal spirits, an inchoate realization of their own history, accumulated strengths, capabilities, weaknesses, vices, and unrealized potential, and an approach that is ad hoc and, on most issues, hit-or-miss. They have travelled quite a distance since Independence, with the pace accelerating over the past quarter-century. What they need to acquire in order to develop further is an active consciousness, a coherent theory of their own role in society, higher professional norms and standards and benchmarking, a better-informed socio-political and ethical side to their practice, a systematic critical monitoring of their own performance, a break with the illusion of self-sufficiency, an internal accountability to higher intellectual standards, a whole-hearted acceptance of social responsibility, a more precise and less breathless style, and a sober advocacy of their own role as an indispensable part of the striving for a democratic and just system. Nobody knows what the long term holds for India's news media. But if they do not shy away from these challenges and go about these tasks earnestly and intelligently, their immediate and medium-term future can be considered secure and bright.

The press should never shirk from its responsibility. It should always act like an impartial judge. It should criticize the Government for its acts of omission and commission and pat its back for any worthwhile achievement. The press should not be scared of influential people. The press should consider it their duty to protect the right of the workers and other downtrodden sections of the people.

While the press should enjoy freedom to perform its role effectively, it should not treat such freedom as a licence to defame anybody. It should not publish any views or support any movement which violates our Constitution or is against the territorial integrity and unity of the country.

In words of the Father of the Nation Mahatma Gandhi, "The role of journalism should be service. The Press is a great power, but just as an unchained torrent of water submerges the whole countryside and devastates crops, even so an uncontrolled pen serves but to destroy." There are three pillars of a democracy viz. the legislative, the executive & the judiciary. The press acts as the fourth pillar of a democracy. The press has played many significant roles in delivering justice, public welfare etc.

The National Commission to Review the Working of the Constitution (NCRWC) has in its final report submitted to the Government recommended that Article 19(1)(a) which deals with “freedom of speech & expression” must expressly include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas.

It has been sixty years since India became Republic & commencement of the Constitution there is been a lot of ups & down in our democracy & the press also has come across age. As being a subject of the largest democracy of the world we should remember the words of our former Prime Minister Rajiv Gandhi, “Freedom of Press is an Article of Faith with us, sanctified by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation.”

Thus, we can conclude that the time has come for the press of largest democracy of the world to work with hand-in-hand with judiciary for the welfare of its subjects. The day is not far away when there will be no eclipse of injustice & the sun of justice will shine brightly forever.

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