**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES**
**(NUALS), KOCHI**

DISSERTATION SUBMITTED AS A PART OF THE MASTER OF LAWS IN CONSTITUTIONAL AND ADMINISTRATIVE LAW COURSE.

2020-2021

TOPIC:

# FREEDOM OF MEDIA WITH REFERENCE TO PARLIAMENTARY PRIVILEGES AND THE OFFICIAL SECRETS ACT, 1923

Under the guidance and supervision of Smt. P. B. Arya
Assistant Professor, NUALS, Kochi.

Submitted by

Rachana Pai

Reg. No. LM0120015
LL.M (Constitutional & Administrative Law)

# DECLARATION

I hereby declare that this dissertation titled "**FREEDOM OF MEDIA WITH REFERENCE TO PARLIAMENTARY PRIVILEGES AND THE OFFICIAL SECRETS ACT, 1923**" submitted to the National University of Advanced Legal Studies, Kochi as a part of my course in Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of Smt. P. B. Arya, is my original and bona fide work pursued in academic interest with utmost honesty and sincerity. This work or any type thereof has not been submitted by me or any other person for the award of any degree either in this University or any other University.

Dated this the 9th day of October at Mumbai

Rachana Pai

Roll No. 10270, Reg. No. LM0120015

LL.M (Constitutional & Administrative Law)

NUALS, Kochi

# ACKNOWLEDGEMENT

I take this opportunity to express my profound respect and deep sense of gratitude to Smt. P. B. Arya, my guide and supervisor, for her support, guidance and encouragement throughout the course of my research work. She was always approachable, respected my ideas and gave me clear, cogent and meaningful suggestions, which has aided me abundantly in completing this dissertation.

I would like to extend my gratitude to the Vice-Chancellor Prof. (Dr.) K C Sunny for his constant encouragement and support. I express my sincere thanks to Prof (Dr) Mini S who is the Director of Centre for Post Graduate Legal Studies for her support and encouragement extended during the course. I would further extend my deep-felt gratitude to all the Professors, NUALS for their guidance and support.

I would also like to convey my thanks to all the Library Staff and the Technical Staff for their timely assistance to carry out the work.

Words fall short of expressing love, appreciation and gratitude to my dear family and friends for their constant encouragement. With genuine humility, I am thankful to The Almighty for all his uncountable bounties and blessings.

Rachana Pai

# ABBREVIATIONS

| | |
|---|---|
| SCR | Supreme Court Reports |
| SCC | Supreme Court Cases |
| CriLJ | Criminal Law Journal |
| AIR | All India Reporter |
| Vol. | Volume |
| v. | Versus |
| Asst | Assistant |
| Assn | Association |
| L.I.C | Life Insurance Corporation of India |
| C.B.I. | Central Bureau of Investigation |
| U.P. | Uttar Pradesh |
| No. | Number |
| S.L.P. | Special Leave Petitions |
| Nct | National Capital Territory |
| Ors | Others |
| W. P | Writ Petition |
| ed. | Edition |
| Art. | Article |
| B.B.C | British Broadcasting Corporation |
| IPC | Indian Penal Code |

# LIST OF CASES

**21.** C.K. Daphtary v. O.P.Gupta AIR 1971 S.C. 1132

**22.** National Textile Workers Union v. P.R. Ramakrishnan AIR 1983 S.C. 759

**23.** M. R. Parashar v. Farooq Abdulla AIR 1984 SO 615 at p.p. 617 - 18

**24.** Srinivas Mohanty v Dr. Radhanath rath 1997 (84) CLT648

**25.** R. Rajagopal v. State of Tamil Nadu A.I.R 1995 S.C. 264 at p. 277

**26.** Selvi J. Jayalalithaa vs. Penguin Books India (C.S. NO. 326 OF 2011)).

**27.** Subramaniam Swamy v. Union of India (W.P. (Crl) 184 of 2014)

**28.** Swami Ramdev vs. Juggernaut Books (CM(M) 556/2018))

**29.** The Chief Election Commissioner of India v. MR Vijayabhaskar, Civil Appeal No. 1767 of 2021 (Arising out ofSLP (C) No. 6731 of 2021)

**30.** Rambabu Singh Thakur v. Sunil Arora, Contempt Pet. (C) No. 428 of 2019 in W.P(C) No. 536 of 2011 &Contempt Pet. (C) No. 464 of 2019 in W.P(C) No. 536 of 2011

**31.** Tej Kiran Jain and Others vs N. Sanjiva Reddy and Others, 1970 AIR 1573, 191951 AIR 332, 1951 SCR 74771 SCR (1) 612

**32.** Gunupati Keshavram Reddy v. Nafisul Hasan & State Of U.P, Civil Appeal No. 75 Of 1952

**33.** Pandit M. S. M. Sharma vs Dr. Shree Krishna Sinha, 1960 AIR 1186

**34.** Keshav Singh vs Speaker, Legislative Assembly, AIR 1965 All 349, 1965 CriLJ 170

**35.** RK Karanjia v. Emperor, AIR 946 Bom. 322.

**36.** State Of Kerala vs K. Balakrishna and Anr, AIR 1961 Ker 25, 1961 CriLJ 80

**37.** Nand Lal More vs The State, 1965 CriLJ 393

**38.** S.P. Gupta vs President of India and Ors, AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365

# TABLE OF CONTENTS

# CHAPTER: 1

# INTRODUCTION

A democracy rests on the ideal of public participation and undoubtedly, the media plays a pivotal role in this arena. The media is an avid propagator of the voice and choice of the people of the democracy. Moreover, the media mirrors the effectiveness or ineffectiveness, as the case may be, of the practical application of the laws.

In addition to being a provider of vital information, the media is also often branded as an influencer of public opinion. By bringing to light various atrocities, wrongdoings and mishaps, the media tends to give the necessary impetus to public sentiments and movements. The role of the media in a developing democracy like India is thus undeniably paramount.

Despite the freedom of media being safeguarded under our Constitution, there are several impediments to its functioning. Its status remains ever so precarious and loosely defined, despite the countless attempts made by the judiciary to bestow upon it a secure position.

The grant of privileges to the members of the parliament and state legislatures under Articles 105 and 194 of our Constitution respectively, directly impacts free reporting and honest publication. There have been several incidents wherein cases have been instituted against media personnel for the breach of these privileges. This is thus, in blatant violation of the fundamental right to freedom of speech and expression as well.

Moreover, the draconian Official Secrets Act of 1923 prevents the publication of government “secrets” that might be in the interest and benefit of the general public. It obstructs the free flow of crucial data and citizens’ access to information. In this manner, it acts as a

thorough antonym of the right to information and thus, in turn, is, against the freedom of speech and expression.

Hence, a critical analysis of the autonomy of the media, as against these contravening provisions in the face of increasing public participation in governance and the consequentially expanding scope of communication, is the need of the hour.

## 1.1 SCOPE OF STUDY

India has been placed at 142 out of 180 countries in the 2021 WORLD PRESS FREEDOM INDEX and this position is progressively worsening. In a country where freedom of media has been held to be a part of the fundamental rights guaranteed by the Constitution, this state of affairs is exceedingly daunting. In recent times, the media freedom to express dissent has been unabashedly suppressed. Newspapers are being censored, news channels are being dragged to court and even the social media has not been able to escape the wrath of the intolerant.

The judiciary has often stepped in as the guardian of free speech through media platforms. The right to freedom of media was, in fact, established and incorporated as a fundamental right under the right to freedom of speech and expression owing to the proactive measures and judgements of the Indian judiciary.

However, there are still certain areas, where even the judiciary is reluctant to thread. For instance, the constant tussle between the press and the privileges of the members of the legislature has been outside the judiciary's scope of review.

Moreover, the archaic Official Secrets Act of 1923 has also generated a lot of confusion and general distrust. It fails to provide any clear definition of the term "secret", thus exposing the media to numerous unwarranted proceedings for the revelation of allegedly "confidential documents".

In the light of all these impediments, lucid and unorthodox judicial pronouncements seem to be the only way of dispelling the existent uncertainty.

This dissertation aims at comprehending the hardships and obstacles faced by the media in India. It highlights the significance of the press, while bringing to light the judiciary's role, through various judgements, in safeguarding this newly established, but ever crucial pillar of democracy.

## 1.2 RESEARCH PROBLEM

The mere declaration of freedom of press as a fundamental right without its functional implementation is futile and purposeless. The voice of free media is being hushed through the privileges granted to the parliament as well as under the guise of safeguarding classified information under the Official Secrets Act, 1923.

## 1.3 RESEARCH QUESTIONS

1. Have the Supreme Court judgements on press freedom been a truthful attempt to safeguard media autonomy in India? If so, how far has their implementation aided the achievement of the same?
2. Is the provision of parliamentary privileges truly democratic in the light of the restrictions placed by the same upon publication?
3. Is the Official Secrets Act, 1923 a disguised tool to pin down the media's reach to the public?

## 1.4 OBJECTIVES THE STUDY

- To identify and highlight the various limitations and impediments to media autonomy in India, while highlighting the pivotal role played by the media in upholding the essence of a democracy.

- To trace the evolution of media freedom in India and the role played by the Indian judiciary in upholding the same.

- To critically analyze the effects of the Official Secrets Act, 1923 and parliamentary privileges on the freedom of press.

- To recommend measures to augment media freedom, while maintaining individual privacy and national security.

# 1.5 HYPOTHESIS

The inclusion of freedom of press as a fundamental freedom in the Constitution has been ineffective and insufficient in maintaining its autonomy. Impediments like Parliamentary privileges and the Official Secrets Act, 1923 have, to a large extent, nullified the freedom of the press.

# 1.6 METHODOLOGY

The dissertation is based on doctrinal research through the perusal of case laws, decided judgements, research articles and the like.

Also, it applies the historical, descriptive and analytical approach for the purpose of collection of data, study and analysis.

# 1.7 REVIEW OF LITERATURE

**BOOKS:**


1. M.P. JAIN, CONSTITUTION OF INDIA, EASTERN LAW COMPANY (2008).
2. M. LAXMIKANTH, INDIAN POLITY (5TH EDITION)
3. D.D. BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA
4. HM SEERVAI, CONSTITUTIONAL LAW OF INDIA A CRITICAL COMMENTARY (1986)
5. SRINIVASAN C.P, THE PRESS AND PRESS AND THE PUBLIC, NABU PRESS, (2011)
6. MARGARITA BARNS, THE INDIAN PRESS, G. ALLEN & UNWIN LIMITED, (1940)
7. S. NATARAJAN, A HISTORY OF PRESS IN INDIA, NEW YORK: ASIA PUBLISHING HOUSE, [1962]


**ARTICLES:**

- Govindu, V. (2011). CONTRADICTIONS IN FREEDOM OF SPEECH AND EXPRESSION. *The Indian Journal of Political Science, 72*(3), 641-650. Retrieved February 7, 2021, from http://www.jstor.org/stable/41858840

- Ram, N. (2011). Sectional President's Address: THE CHANGING ROLE OF THE NEWS MEDIA IN CONTEMPORARY INDIA. *Proceedings of the Indian History Congress, 72*, 1289-1310. Retrieved February 7, 2021, from http://www.jstor.org/stable/44145741

- Constitutional Rights and Freedom of Media in India-K.D. Gaur, 36 JILI (1994) 429

- Freedom of Press in India: Constitutional Perspectives-Mahendra Tiwari, (2006) PL December 7

- *Constitutional Rights and Freedom of the Media in India*, 11 J. MEDIA L. & PRAC. 44 (1990).


# 1.2 CHAPTERISATION

**CHAPTER-1:** Introduction.

This chapter provides an introduction to the topic, while also defining its scope, relevance and importance. It also states the research problem and questions upon which the scheme of this paper is based. Further, it lays down the hypothesis which is sought to be proved and the objectives which the current study seeks to achieve.

Lastly, this chapter is indicative of the research design and also specifies the literature, methodology and sources used for the purpose of research.

**CHAPTER-2:** The importance and role of media in a democracy.

This chapter aims at highlighting the purpose served by the media and the press in the democratic scheme of India. It lays emphasis on the indispensable nature of the media in the context of the need for an informed citizenry.

Moreover, it stresses on the freedom of media as a prerequisite for smooth working of a functional democracy and also as a means to safeguard the core essence of the same.

**CHAPTER-3:** The evolution of the freedom of media in India.

This chapter brings to the fore the history of media in India, ever since its inception. It also gives an account of the impediments to the growth of media as well as restrictions placed upon publications in the past. On the other hand, it also draws attention to various movements, efforts and attempts made in India towards the liberation of the press.

This chapter also provides an insight into the contribution of the judiciary, through various judgements and decisions, in according the media its rightful position. At the same time, the averse and orthodox stand taken by the Indian courts in a few other cases has also been accounted for.

**CHAPTER-4:** Parliamentary privileges in the light of Reasonable restrictions on the media under the Constitutional framework.

This chapter consists of an examination of the privileges and immunities enjoyed by the members of the parliament and legislatures of the states, in the backdrop of the reasonable restrictions provided for by the Constitutional framework.

Furthermore, this chapter discusses the need for clarity with regard to the scope of these privileges, its breach and the consequent punishment.

**CHAPTER-5:** Critical evaluation of the Official Secrets Act, 1923 vis-à-vis media freedom.

This chapter discusses the provisions of the Official Secrets Act, 1923, which hinder the autonomy and independence of the media. It highlights the provisions of the Act, which pose as a threat to unbiased and forthright reporting and publication.

**CHAPTER-6:** Recommendations/ suggestions

This chapter consists of recommendations and suggestions that might be of aid to augment media autonomy in India. It also consists of propositions for amendments to the current legislations as well as new and diversified interpretations of the existing provisions as a means to secure the continued existence and liberty of the press.

# CHAPTER-2

# THE IMPORTANCE AND ROLE OF MEDIA IN A DEMOCRACY

The term "fourth estate", in the sense that we know it today, was first used and attributed to the media by Thomas Carlyle[1], a Scottish historian, in his book titled, On *Heroes and Hero Worship*[2], published in 1841.

Since then, the said connotation has been applied to the media/press by many other notable figures persistently and hence, has received recognition as an inherent feature of the democratic setup.

The Merriam-webster dictionary defines media as, "a medium of cultivation, conveyance, or expression."

The Oxford dictionary, on the other hand, defines it as "the main ways that large numbers of people receive information and entertainment, that is television, radio, newspapers, and the Internet."

[1] " **Thomas Carlyle**, (born December 4, 1795, Ecclefechan, Dumfriesshire, Scotland—died February 5, 1881, London, England), Scottish historian and essayist, whose major works include *The French Revolution,* 3 vol. (1837), *On Heroes, Hero-Worship, and the Heroic in History* (1841), and *The History of Friedrich II of Prussia, Called Frederick the Great,* 6 vol. (1858–65)."

[2] "**On Heroes, Hero-Worship, and the Heroic in History**, six essays by Thomas Carlyle, published in 1841 and based on a series of lectures he delivered in 1840. The lectures, which glorified great men throughout history, were enormously popular. In the essays he discusses different types of heroes and offers examples of each type, including divinities (pagan myths), prophets (Muhammad), poets (Dante and Shakespeare), priests (Martin Luther and John Knox), men of letters (Samuel Johnson and Jean-Jacques Rousseau), and rulers (Oliver Cromwell and Napoleon)."

Today, the media has become a part and parcel of our daily lives, be it the newspapers, news channels, magazines, radio, news apps, podcasts, internet, etc. Communication, publication, circulation – the media does it all! And with the ever-expansive scope of technological developments and advancements, the range and reach of media would further constantly bloom and boom.[3]

Justice Krishna Iyer has in his article, "Free press in a hungry Republic" stated that "*The philosophical basis for the freedom of publication and circulation is the social purpose of supplying unadulterated information without tendentious presentation, readily and at the right time. And Constitutional rights stem from political Philosophy*."[4]

[3] Janna Anderson, Lee Rainie, *The positives of digital life*, PEW RESEARCH CENTER, (2018)

[4] Justice V. R Krishna Iyer, *Law, Freedom and Change*, EAST WEST PRESS PVT LTD. NEW DELHI, (1975)

Media is the most effortless and efficient way of staying informed and connected to the happenings around us as well as around the globe. Receiving information concerning the events taking place in a country in an altogether different continent is now arguably as easy as being apprised of the occurrences and developments in one's own locality. Thus, the insufficiency of resources no longer justifies unenlightenment and ignorance.[5]

Democracy is basically governance by the people of the nation. Information regarding the legislators that we elect, the issues that we choose to take a stand on, the deficiencies in the existing governance, etc is thus, critical to the achievement of a functional democracy. [6]

In *Union of India* v. *Assn. for Democratic Reforms*[7], the Supreme Court, had, while stressing upon the need to provide information to the citizens regarding the candidates contesting elections stated that, "*True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and noninformation all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchic organizations.*"

Additionally, social awareness is the primary weapon against crimes. Knowledge of mishaps and criminal activities aids the citizens in the avoidance of the same. In this regard, the role of the media has been crucial.

[5] University of the Cumberlands, HOW FACT-CHECKING CAN HELP US STAY INFORMED IN THE DIGITAL AGE (02/11/2020)

[6] "Cherif Bassiouni (General Rapporteur), David Beetham, Justice M. Fathima Beevi (Ms.), Abd-El Kader Boye, Awad El Mor, Hieronim Kubiak, Victor Massuh, Cyril Ramaphosa, Juwono Sudarsono, Alain Touraine, Luis Villoro, DEMOCRACY: ITS PRINCIPLES AND ACHIEVEMENT, Inter-Parliamentary Union Geneva, (1998)"

[7] Union of India v. Assn. for Democratic Reforms, 2002 (3) SCR 294

The media also acts as a tool for the wide spread dissemination of information. "*There is a long-running debate in media theory over the ways in which the media not only disseminates elite, critical opinion but also influences the formation, expression and consumption of public opinion.*"[8]

Media, especially the television and the internet has also become a means for education of students during the pandemic. "*The COVID-19 pandemic has given online education in India an unexpected push, as it has allowed the continuation of formal education as schools closed to mitigate the spread of the virus."*[9] As educational institutions remain shut and access to libraries and other physical resources remains nil, media has come to the rescue.

Moreover, e-books and online classes have become the new normal, during this pandemic-imposed lockdown.[10] These media resources are essential in order to safeguard the education and career opportunities of the students.

Even in the recent case of *Anuradha Bhasin vs Union of India*[11], which dealt with the internet shutdown and restrictions on the movement of journalists in Jammu and Kashmir, the Court had asserted that*, "There is no doubt that the freedom of the press is a valuable and sacred right enshrined under Article 19(1)(a) of the Constitution. This right is required in any modern democracy without which there cannot be transfer of information or requisite discussion for a democratic society."*

Hence, time and again, through various instances and especially during the current pandemic, the significance of the prime position occupied by the media has become more lucid than ever.[12]

---

[8] Livingstone, S., and Lunt, P., *The mass media, democracy and the public sphere*. In Talk on Television: Audience participation and public debate (9-35). London: Routledge., (1994).

[9] "Rammohan Khanapurkar, Shalini Bhorkar, Ketan Dandare, Pralhad Kathole, *Strengthening the Online Education Ecosystem in India ORF Occasional Paper No. 282, (2020)"*

[10] "The COVID-19 pandemic has changed education forever. This is how , https://www.weforum.org/agenda/2020/04/coronavirus-education-global-covid19-online-digital-learning/"

[11] Anuradha Bhasin vs Union of India, Writ Petition (Civil) No. 1031/2019

[12] "Role of Mass Media and Public Health Communications in the COVID-19 Pandemic, Cureus, US National Library of Medicine National Institutes of Health, (2020)"

The media is the guardian of the Constitutional principles in a democracy. Fair investigative reporting often tends to reveal the ground reality concerning the effective implementation of the laws made by the parliament and the loopholes present therein. This in turn helps create room for the rectification of those laws which otherwise seem to be flawless on paper.

Thus, in the case of *State of U.P.* v. *Raj Narain*[13], the Court observed that, *"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security."*

Additionally, the media exposes cases of abuse and misuse of power and in this manner, increases the accountability of the power holders. "*The media can play a salutary role in creating larger awareness of the concept of human rights, basic human rights that would constitute the right of every individual to his fundamental freedom without distinction as to race, sex, language or religion.*"[14] Thus, this exercise aids in the creation of a functional and workable legal system for the wholistic progress of the nation.

[13] "State of U.P. v. Raj Narain, 1975 AIR 865, 1975 SCR (3) 333"

[14] The role of Media in Protection of Human Rights, Human Rights Council, (2007)

One of the best instances of investigative journalism would be that of the Indian news magazine, *Tehelka* carrying out a sting operation on defense arms dealings. The footage which was procured by means of hidden cameras which were installed by the news establishment revealed politicians, bureaucrats and even certain military officials closing deals with reporters posed as arms dealers, in exchange for bribes. This sting was named Operation West End.[15]

"*This operation resulted in the conviction of the former BJP President, Bangaru Laxman on account of corruption charges. On April 27, 2012, a special CBI court sentenced him to fouryears of rigorous imprisonment and also imposed a fine of one lakh rupees*."[16]

Another instance in this regard would be the media reveal of the infamous fodder scam. In this scam huge amounts were fraudulently withdrawn from the government treasury in Bihar, on the pretext of securing fodder, medicines and for other activities of animal husbandry for vast herds of fictitious cattle. A notable contribution was made in unearthing this scam by the *Asian Age* journalist, Ravi S Jha. He had named Lalu Prasad Yadav and other previous governments as the perpetrators and benefactors of this scam,

"*The inability of the Finance Department to share financial information and monitor funding flows had made legitimate spending cumbersome and created opportunities for graft.*"[17]

The expose ended up with Lalu Prasad Yadav resigning and later being convicted for his involvement.[18]

[15] Tehelka's Operation West End, https://www.outlookindia.com/website/story/tehelkas-operation-west-end/211141

[16] C.B.I. vs. Bangaru Laxman, C.C.No: 01 / 2011

[17] Rushda Majeed and Pallavi Nuka, *Modernizing The State, Connecting To The People: Bihar, India*, Princeton university, (2005 – 2012)

[18] RC No.20(A)/96

In addition to this, the media has often been a saviour of Fundamental Rights as well. One such incident was the human trafficking racket exposed by an *Indian Express* journalist, Ashwini Sarin. In order to expose this racket, Sarin actually bought a woman who was involved in the same from the Agra-Morena-Mainpuri-Etah area, instead of publishing a mere article. [19]

She was then taken to Delhi and placed under security. Later on, she was sent to the Arya Samaj Women's Home.

In this scenario, the media had been instrumental in safeguarding a fundamental right i.e., "*Article 23 of the Indian Constitution, which Prohibits traffic in human beings and forced labour.*"[20]

There are countless other instances which can be listed, wherein the media has taken upon itself, the responsibility of welfare and the elimination of injustice. Incidents taking place in the remote corners in India have also come to light owing to media's omnipresence.[21]

[19] Alok Mehta, *Power, Press and Politics: Half a Century of Journalism and Politics,* (2021)

[20] "23. Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them"

[21] Rajvanshi, Anjula, *Media and Rural Society A Study,* (2019)

Democracy is essentially a means of representative governance. Elections are a means to secure the representation of the will of the citizens.[22]

Democratic legitimization of those in power is indicated as one of the basic functions of the elections and consequences that they bring[23]. However, it is often observed, that the candidates who make tall claims during election campaigns, seldom strive for the accomplishment of the same. "*This is presumably done in the belief that such promises will alter voters' beliefs about the policies the politician will implement if elected and about the capabilities of the politician.*"[24] However, their own egotistical aspirations overshadow the aspirations of the very people they were intended to represent.

As Lord Acton says, "*Power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority: still more when you superadd the tendency or the certainty of corruption by authority.*"[25]

As corruption of morals is a prerequisite of power, the voice of the true drivers of democracy i.e., the general public is a thorough counter measure. More often than not, the concerted efforts of the public, owing to media enlightenment, has aided in pushing the governing bodies as well as the judiciary in exercising good judgement.

In order to further substantiate this point, let us take the case of the most gruesome and horrifying incident concerning women's' rights and safety i.e., the widely infamous Delhi gang rape. This blood curdling crime was committed by six men, in December, 2012 on a moving bus. The brutality of the crime and the torture was so severe, that it ended up killing the victim.

---

[22] 'Anthony Fowler, *Electoral and Policy Consequences of Voter Turnout: Evidence from Compulsory Voting in Australia*, Quarterly Journal of Political Science, 159–182, (2013)'

[23] 'Wojtasik, Waldemar, *Functions of Elections in Democratic Systems. Political Preferences*, 4. 25-38., (2013)'

[24] '*Political Reputations And Campaign Promises*, JOURNAL OF THE EUROPEAN ECONOMIC ASSOCIATION, 846–884, (2007)'

[25] 'John Emerich Edward Dalberg Acton, first Baron Acton (1834–1902) expressed this opinion in a letter to Bishop Mandell Creighton in 1887.'

The media sprung right into action to call India's attention to this monstrosity. Continuous briefing and responsible reporting by the press, appealed to the conscience of countless Indians and hordes of enraged citizens took to the streets to express their grave displeasure over the condition of women in the country and to demand justice.

In this case titled, *Mukesh & Anr vs State for Nct of Delhi & Ors*[26], the Court observed that, "*the incident of gang-rape on the night of 16.12.2012 in the capital sparked public protest not only in Delhi but nation-wide. We live in a civilized society where law and order are supreme and the citizens enjoy inviolable fundamental human rights. But when the incident of gang-rape like the present one surfaces, it causes ripples in the conscience of society and serious doubts are raised as to whether we really live in a civilized society and whether both men and women feel the same sense of liberty and freedom which they should have felt in the ordinary course of a civilized society, driven by rule of law. Certainly, whenever such grave violations of human dignity come to fore, an unknown sense of insecurity and helplessness grabs the entire society, women in particular, and the only succour people look for, is the State to take command of the situation and remedy it effectively."*

The Times of India dedicated one of its issue's front page to the cause with the headline 'Enough Talk. Let's make women safe'. It included a '6-Point Action Plan' with respect to such cases.[27]

The international media too, took note. International news agencies and Human Rights Organizations such as The New York Times, The Washington Post, The Los Angeles Times, The Times Magazine, The Guardian, BBC News, etc began publishing information regarding the same.

[26] Mukesh & Anr vs. State for Nct of Delhi & Ors, CRIMINAL APPEAL NOS. 607-608 OF 2017 (arising out of S.L.P. (Criminal) Nos. 3119-3120 of 2014)

[27] ASSOCIATION FOR PROGRESSIVE COMMUNICATION - https://www.apc.org/en/blog/media-anchoring-positive-protests-against-sexual-assault-India

This mounting pressure, nationwide as well as internationally mightily compelled not only the legislature, but also the judiciary to take a swift and tough stance.

On December 23, 2012 a three-member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, and including Justice Leila Seth, former judge of the High Court and Gopal Subramanium, former Solicitor General of India was constituted in order to recommend amendments to the Criminal Law for the purpose of providing enhanced security as well as speedy redressal to women. The report had a very clear understanding of 'everyday' rape and sexual assault as a form of male violence against women and men.[28]

"*The Criminal Law (Amendment) Act, 2013 was also passed, which amended the Indian Penal Code, Indian Evidence Act, and the Code of Criminal Procedure. It has expanded the definition of rape and introduced a mandatory minimum punishment of seven years for rape.*"[29]

In this manner, the media succeeded in securing justice for "India's Daughter".

The Jessica Lal murder would also serve as an excellent case study. Jessica Lal was murdered in Delhi, by a socialite due to her refusal to serve him drinks after the bar was shut. This case was ordered to be shut because of lack of evidence and the witnesses turning hostile during the trial. However, the incident caught the media's eye and led to huge public outrage.

The accused in the initial interrogation had admitted to the crime, but the confession was later dismissed on a mere technicality. However, the said confession was acquired and aired by NDTV, consequently creating enormous public momentum.

[28] 'Rew, M & Gangoli, *Continuities and change: the law commission and sexual violence*, 6, Journal of Indian Law and Society, 110-124, (2018)'

[29] Preeti Pratishruti Dash, *Rape adjudication in India in the aftermath of Criminal Law Amendment Act,2013*: *findings from trial courts of Delhi,* Indian Law Review, (2020)

*Tehelka* even conducted a sting operation, wherein the recorded tapes provided clear evidence that the witnesses of the case were bribed.[30] These tapes were later aired. This made the miscarriage of justice irrefutable.

The public uproar compelled the judiciary to reopen the case. The accused was finally held guilty and the court accordingly pronounced a life sentence.

The judges in this case, which was titled *Sidhartha Vashisht @ Manu Sharma vs State (Nct of Delhi)*[31] referenced Cardozo, "*one of the great Judges of American Supreme Court in his "Nature of the Judicial Process" observed that the judges are subconsciously influenced by several forces*."

But, while warning about the trial by media, the court also asserted that, "*In the present case, various articles in the print media had appeared even during the pendency of the matter before the High Court which again gave rise to unnecessary controversies and apparently, had an effect of interfering with the administration of criminal justice. We would certainly caution all modes of media to extend their cooperation to ensure fair investigation, trial, defense of accused and non-interference in the administration of justice in matters sub judice.*"

The outcomes of the cases mentioned above would have been drastically different if it weren't for the media intervention. "Court proceedings that are covered widely by the media areconcluded by the courts rather fast by and large."[32]

"*Sometimes, mere inquiries by journalists in the absence of a story's publication or of conclusive proof of wrongdoing can lead to a tangible response from authorities eager to protect their reputations and those of the institutions they represent.*"[33]

---

[30] Police asks for Tehelka tapes on Jessica case- https://www.outlookindia.com/newswire/story/police-asks-for-tehelka-tapes-on-jessica-case/419171, (2006)

[31] Sidhartha Vashisht @ Manu Sharma vs State (Nct of Delhi), (2010) 6 SCC 1; (2010) 2 SCC (cri) 1385

[32] (Bodo & Szabo, 2011; Neubauer & Fradella, 2013), *Influence of Trial by Media on the Criminal Justice System in India* - V.V.L.N. Sastry - Walden University, (2019)

[33] Stapenhurst, Rick, *The Media Role in Curbing Corruption, (2000)*

The media also plays a significant role when it comes to influencing policy making. "*Policy making is a political process which is driven by the social and economic conditions of the country. For most observers the significance of the mass media for public policymaking arises from the fact that the media shapes public opinion, thereby forcing political actors to respond to popular preferences."*[34] Hence, the policy makers are required to have a deep understanding of the conditions prevailing in the society. This would then ensure that the remedies and solutions for societal issues are reflected in the policies.

Media plays a central role since it is the single means through which public opinion is engendered.[35] Thus, media acts as a feedback mechanism for the policies that are enforced. It is reflective of the public reaction and deficiencies in the legislation. This feedback is useful in rectifying the loopholes that might be present. Also, proper implementation of the policies can be monitored by means of media.

Justice Markandey Katju while explaining the role played by the media in history says, "*Historically, the media have been organs of the people against feudal oppression. In Europe, the media played a major role in transforming a feudal society into a modem one. The print media played a role in preparing for, and during, the British, American and French Revolutions. The print media were used by writers such as Rousseau, Voltaire, Thomas Paine, Junius and John Wilkes in the people's fight against feudalism and despotism. Everyone knows of the great stir created by Thomas Paine's pamphlet 'Common Sense' during the American Revolution, or of the letters of Junius during the reign of the despotic George III*."[36]

---

[34] – 'Katrin Voltmer & Sigrid Koch-Baumgarten, *Public Policy and the Mass Media: Influences and Interactions - ECPR Joint Sessions of Workshops – Helsink, (*2007)'

[35] Meera Mathew, *Media Self- Regulation in India: A Critical Analysis* - ILI Law Review, (2016)

[36] Goan Observer Team, *Media Freedom of Press and Ethics,* (2019)

Today the media has become a powerful tool of public expression and more so, a platform for the voice of the public. "*This is how citizens can be supported to maneuver throughmurky and conflictual waters and be actively involved in an informed democracy"*.[37] It influences public opinion and outlook and thus, is an inexplicit contributor to the process of policy making.

The media also encourages the inculcation of a scientific temper in the masses. The Indian Constitution too promotes 'the development of scientific temper and the spirit of inquiry' in the fundamental duties contained in Article 51A.[38] For instance, awareness regarding polio is created by means of media by providing information concerning the days on which polio drops would be made available for the children.

Even during the Corona virus outbreak, the media has and is playing a crucial role by keeping people apprised of the current position and new findings, while also encouraging them to follow the necessary safety and sanitation measures.

[37] '*Media for Democracy Journalism and Elections in Times of Disinformation, Global Conference, Addis Ababa, Ethiopia*, (2019)'

[38] "Article 51 A(h):

[It shall be the duty of every citizen of India] To develop scientific temper, humanism and the spirit of inquiry and reform."

# CONCLUSION

It is now safe to conclude that the media has become an inseverable part of the varied essential characteristics of democracy. It has aided in the upkeep of several fundamentals of a democracy, such as the creation of an educated and enlightened population, assurance of free and fair elections, provision of a platform for the expression of public opinion, maintenance of checks and balances over the other organs and so on and so forth.

It has discharged multiple roles in the past *viz.* firstly, that of a aide to the masses, in terms of providing a means for the expression of their opinions and grievances. Secondly, it has acted as an advisor to the legislature, in so far as it is indicative of general public opinion and also provides feedback on the implemented policies. Lastly, it has been a guide to the judiciary due to the role played by it in the revelation of several wrongdoings and also the provision of evidence in countless cases.

Today, the role of the media has become so intertwined with the accomplishment of many long sought democratic ideals, that we cannot attempt to strive for the achievement of those ideals without the involvement of the same.

The media, as we know it today, is an established agency for social change, reform and awareness. It possesses the power to shape the mindsets of the nation's population and hence, its worth and significance is immeasurable.

The reliance placed upon the media and the trust vested in it calls for responsible and authentic publication and reporting. Stringent measures are required to be taken, in order to prevent misinformation from corrupting the minds and mindsets of the citizenry.

For this very purpose, stringent laws have been put in place. However, these laws and counter measures should not end up gagging media houses and media personnel. The wording and framing of laws needs to be done meticulously and delicately, so as to prevent the strangling of the sovereign voice of the press.

# CHAPTER 3

# THE EVOLUTION OF THE FREEDOM OF MEDIA IN INDIA

C.R. Srinivasan rightly says, "*Many are the miracles of modern age of them all, I should think the greatest is the modern newspaper. It is not a miracle in itself. It has laid the foundation for many miracles that we have witnessed in modern life. It makes and unmakes things. It creates and destroys the strength of the nation. It is a pivot around which revolves the universe. It occupies the nuclear position in the life of the world. The present is essentially the age of newspaper and the immediate future is not likely to be different.*"[39]

One needs to understand that the development of the press and its freedom in India is highly influenced by its colonial past. As Margarita Barns says, " *The history of Indian press must, to a certain extent be a history of British occupation of India, or a cross section of that society.*"[40]

The first printing press was established by the East India Company in Bombay in the year 1674. However, the first official printing press was set up in Calcutta in the year 1779. Since, these presses were the company's property, the publication of instances of the company's wrongdoings was obviously impermissible. Thus, the publication of newspapers was strictly prohibited.[41]

[39] Srinivasan C.P, *The Press and Press and the public,* Nabu Press, *(*2011*)*

[40] Margarita Barns, *The Indian Press,* G. Allen & Unwin Limited, (1940)

[41] S. Natarajan, *A history of press in India,* New York : Asia Publishing House, [1962]

The first ever newspaper was published by the Irishman, James Augustus Hickey in 1780. It was called the Bengal Gazette or the Calcutta General advertiser.[42]

Hickey was quoted as saying, " *I have no particular passion for printing newspaper; I have no propensity. I was not bred to slavish life of hard work, yet I take pleasure in enslaving my body in order to purchase freedom for my mind and soul.*"[43]

The rationale of this newspaper was to expose and bring to light the corruption in the governance of Warren Hastings, the then Governor-General of Bengal. [44]

Due to the criticism levelled against Hastings and his government, Hickey was once sentenced to two years of imprisonment and a fine of Rs 2000.[45] Again, a suit for libel was instituted by Hastings against him and it ended with him having to pay Rs 5000 in damages. Additionally, in the course of the trial, he had to pay the Bail amount of Rs. 80000 on two occasions.[46]

A letter against the imposition of these heavy fines was addressed by Hickey to the Crown, but to no avail. Hence, he ended up being sent to jail for the non-payment of the amounts imposed.[47]

Nevertheless, this did not dissuade him from perusing his crusade and he continued editing the newspaper even in the jail. But, Hastings too persistently instituted multiple suits against him. Ultimately, he managed to sell Hickey's press with the aid of his friend Sir. Eliza

---

[42] Ray, D., & Gupta, A, *The Newspaper and the Periodical Press in Colonial India,* (2017). In J. Shattock (Ed.), *Journalism and the Periodical Press in Nineteenth-Century Britain*, Cambridge University Press, 245-262.

[43] Quoted in 'Press, Public opinion and Government in India' by Shushila Agrawal at p.24

[44] Jane Borges, *the journalist who accused Warren Hastings of erectile dysfunction,* (2018), https://web.archive.org/web/20200920020423/https://www.mid-day.com/articles/the-journalist-who-accused-warren-hastings-of-erectile-dysfunction/19391172

[45] Reshma. U.R., *EVOLUTION OF INDIAN PRESS* - JOURNAL OF NATURAL REMEDIES, 21, 160-162, (2020).

[46] J. Natarajan, *HISTORY OF INDIAN JOURNALISM - PART II OF THE REPORT OF THE PRESS COMMISSION,* Publications Division, Ministry of Information and Broadcasting, (1997)

[47] Joseph W Elder, *Chapters in Indian Civilization- British and Modern Period U.S. Department of Health, Education & Welfare Office of Education,* (1967)

Impey, chief justice of Supreme Court, on account of Hickey's failure to pay the fines levied upon him.[48]

Later on, another newspaper by the name of "India Gazette" was established by Messink and Peter Reed [49]. However, they were willing to abide by the prevalent rules and the regulations.

Next, in the year 1785, *The Madras Courier* was started by Richard Johnson. Then came in Madras, the *Hurkaru*, which was founded by the ex-editor of the *Madras Courier*, Hugh Boyd, after he quit. But, the term of this paper was short-lived on account of Boyd's death a year later.[50]

A few years down the line, newspapers like the "Bombay Herald" and "Bombay Gazette" came to be published in Bombay.[51] Like the Bengal Gazette, the Bombay Gazette too was the publisher of several anti-governmental pieces. As could be expected, this newspaper too had to face the ire of the administration. Consequently, the editor of the Bombay Gazette, was also deported and thus, in this manner, one could witness history repeating itself.

Ultimately, the next editor of the paper gave in to the governmental demands and regulations and the Bombay Gazette went on to become a government newspaper due to its inability to stay afloat after the losses it incurred.

Later on, in 1786, when Lord Cornwallis was appointed as the Governor-General, the editor of the "Bengal Journal", William Duane, once published a false report alleging the death

[48] PRESS COUNCIL OF INDIA, *Challenges Before the Media*, (2017)

[49] Jawhar Sircar, *India's Oldest Newspaper: The Calcutta Gazette,* THE SUNDAY STATESMAN, Literary Supplement, (1984)

[50] IFLA Newspapers conference 2010, *Digital Preservation and Access to News and Views*, (2010)

[51] Codell, Julie, *Introduction: The Nineteenth-Century News from India, Victorian Periodicals Review*, 106-123, (2004)

of Cornwallis, which resulted in the end of his term as the editor of the paper.[52] However, Duane later came up with his own newspaper titled the "Indian World". But, he decided to transfer its reigns, after his house was raided twice. However, he was deported to England before he could do so.

In the term of Lord Wellesley as the Governor General, an article published by Mr. Bruce, the editor of the *Asiatic Mirror*, came under governmental scrutiny.[53] The stir caused by the article led to the issuance of new rules to strengthen the chokehold on press freedom.

The other newspapers and editors were largely displeased with these new restrictions, but none retaliated.

Lord Minto, the next Governor General ordered that "*It was the duty of all the proprietors of all public presses established in this presidency or its dependencies to cause, the name of the printer to be affixed to all works papers and advertisements printed at or issuing from those presses and that any breach of regulations hereafter would incur the severe displeasure of Government.*"

"*The Indian press then had become quite powerful and criticized the government actions.*"[54]

Then came along Francis Rawdon-Hastings, who became the Governor General in 1813 and the press under his regime was treated with leniency. But, he had to promulgate new rules, on account of the displeasure from the British administration.[55]

---

[52] 'Partha Chatterjee, *The Black Hole of Empire History of a Global Practice of Power*, PRINCETON UNIVERSITY PRESS, (2012)'

[53] J. Natarajan, *History of Indian Journalism*, PART II OF THE REPORT OF THE PRESS COMMISSION, Publications Division, Ministry of Information and Broadcasting, (1997)

[54] Syed Razi Wasti, *Lord Minto and the Indian Nationalist Movement, with Special Reference to the Political Activities of the Indian Muslims*, 1905-1910, (1962)

[55] Chisholm, Hugh, *ed. "Hastings, Francis Rawdon-Hastings, 1st Marquess of". ENCYCLOPEDIA BRITANNICA,* Cambridge University Press, 53–55, (1911)

These rules placed certain restrictions on the publication on certain specified areas, but, at the same time, gave an impetus to the restarting of newspapers. Similar regulations came to be followed in Bombay as well.

However, this newfound freedom proved to be short lived, as the newly appointed Governor-General, John Adam, laid emphasis on controlling the press. He is known to have imposed the most stringent restrictions on the publication of newspapers. The rules put forth by him were thus rightly referred to as "Adam's Gag". As the result of these regulations the publication of vernacular paper greatly suffered.[56]

James Silk Buckingham, who had founded the Calcutta Journal in the free reign of Lord Hastings, was deported to England by the Jhon Adam administration on account of his repeated attacks against the then Governor of Madras.[57]

In the meantime, the first ever Bengali newspaper, *Vangal Gazette* was set up by Ganga Kishore Bhattacharya.[58] This weekly newspaper published about Raja Ram Mohan Roy's crusade against Sati.

Raja Ram Mohan Roy himself published two vernacular papers in Bengali and Persian, criticizing the backward traditions and customs which plagued the Indian society. These consisted of the "Sambad Kaumidi", "Brahmical Magazine", "Mirat-ul-Akhbar", "Bangadoota" and "Bengal Herald".[59] Through these he endeavoured to bring about awareness amongst the Indians.

[56] Dr.Ganeswar Nayak, *Socio-Cultural And Economic History Of Modern India,* DDCE/M.A Hist./Paper-22

[57] 'Prasun Sonwalkar. *Indian Journalism in the Colonial Crucible, Journalism Studies*, (2015)'

[58] Bose, P. N. and Moreno, H. W. B., *A Hundred Years of the Bengali Press*, (1920)

[59] *CONTRIBUTION OF RAJA RAM MOHAN ROY'S TO LITERATURE AND JOURNALISM*- Int. J. Adv. Res. 4(12), 2610-2616, (2016)

The publications of Raja Ram Mohan Roy mainly concentrated on social awareness and reforms in India as well as around the world. His efforts gave further impetus to the publication of several other newspapers in multiple Indian languages.[60]

As could be anticipated, the rise of the vernacular press and the resulting awakening posed a huge threat to the British rule.

Hence, Jhon Adam made the registration and licensing of every publication mandatory. Thereafter, Raja Ram Mohan Roy ultimately declared the closure of his publications, when a petition presented by him and others against Adam's mandate was rejected.

The next Governor General, Lord William Bentinck, had a liberal attitude towards the press in India. He had "sowed the seed and nursed it to maturity." "For this, of course, the Governor-General had to bear all sorts of personal criticism from his Home Government."[61]

Thereafter, Sir Charles Metcalf assumed the position of the Governor General. Being well aware of the general sentiment amongst the Indians, he stated, "*All India is looking for our downfall. The people everywhere would rejoice or fancy they would promote it by all means in their power.*"[62] Inspite of the opposition to press freedom on his home front, he benevolently decided to rid the Indian media of all the fetters imposed upon it. He aimed to equalise the laws governing the European and Indian newspapers and thus, proposed a new uniform law.

[60] 'Md Yousuf, *Raja Rammohan Roy and Bengal Press in The Early Nineteenth Century: A Critical Study*, 10, INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY EDUCATIONAL RESEARCH, (2021)'

[61] 'Dilip Kumar Chattopadhyay, *The age of reform and liberal experiments in British India by Lord Bentinck and Lord Dalhousie* - University of Nebraska at Omaha (1974)'

[62] 'Quoted in 'A History of Indian Journalism ' by Mohit Mitra at p.101'

His efforts, culminated in the passing of Metcalf's Act of 1835.[63] This uniform law was applied to all the territories equally. Under the new law, the concerned personnel of the newspapers were required to give a declaration stating the premise of publication of the concerned newspaper.

This legislation gave a massive thrust to the press freedom and growth in India. While commenting on this changing scenario, Sir Edward Thompson said, "*In India Metcalf liberated the press as Governor General and it angered the directors and that powerful immovable mass, the retired officials.*"[64]

In 1826, the First Hindi Newspaper, *Oodunt Martun* was also published as a result of the newfound freedom.[65]

However, for this liberation, Metcalf had to bear the brunt of the administrative anger. The fury of the Court of Directors (the company was represented by the Court of Directors) was witnessed in the form of a letter which stated, " *We are compelled to observe that this proceeding must be considered as the most unjustifiable in as much as it has been adopted by a government only provisional; and also, when a commission for framing a code of laws for the three presidencies was about to commence its important labours*"[66]

Additionally, Metcalf also lost the opportunity of being appointed as the permanent Governor – General and was also left out of the consideration for the post of the Governor of Madras.[67]

---

[63] Pratiyush Kumar & Kuljit Singh, *Media, the Fourth Pillar of Democracy: A Critical Analysis*, IJRAR-INTERNATIONAL JOURNAL OF RESEARCH AND ANALYTICAL REVIEWS, (2019)

[64] P.Sitaramiyya, *The History of Indian National Congress*, Published by Facsimile Publisher, (2016)

[65] Hena Naqvi, *Journalism and Mass Communication*. UPKAR PRAKASHAN, (2007)

[66] Quoted in 'A History of Indian Journalism ' By Mohit Mitra at p. 104

[67] John William Kaye, *The Life of Lord Metcalfe,* Palala Press, (2015)

Metcalf's successor, Lord Auckland also proved to be a boon for the press freedom in India. His liberal attitude towards the press encouraged the publication of more newspapers. *Jamai - Jahannuma* and *Sultan - ul – Akhbar*, *by* Muhammad Ahmad Khan. were amongst those publications that took birth during this period.[68]

Later on, the reign of Lord Ellenborough turned the tables and press freedom was again restricted. He ordered that, "*Official documents and papers were in no case to be made public or communicated to individuals without the previous consent of the Government to which alone they belong.*"[69]

Later on, in 1857, a revolt, widely called the sepoy mutiny, broke out against the British rule. This led to further gagging of the press by the then Governor General, Lord Canning.[70]

These restrictions made the obtaining of permission before the launch of any newspaper or periodical mandatory. But, later on, Canning withdrew these regulations, with a view to establish better relations in India.

Thereafter, the Vernacular Press Act was passed in 1878.[71] This Act provided the government with the power to require the editor of a Vernacular newspaper to give a bond stating that no content, which would incite disaffection towards the government, would be published. Additionally, security deposits were required to be kept with the district magistrate and the same would be liable to be confiscated in the event of disobedience.

---

[68] 'Muhammad Azeemuddin, *Sir Sayyad Ahmad Khan: The Editor and Journalist*, Volume 3, INTERNATIONAL JOURNAL OF ALL RESEARCH EDUCATION AND SCIENTIFIC METHODS (IJARESM), (2015)'

[69] 'J. Natarajan, History of Indian Journalism, PART II OF THE REPORT OF THE PRESS COMMISSION, Publications Division, Ministry of Information and Broadcasting, (1997)'

[70] Bhagwat Prasad Singh, *Censorship of the Indian press between 1857 and 1945*, University of Iowa, (1949)

[71] M. Javaid Akhtar, Azra Asghar Ali, Shahnaz Akhtar, *The Role of Vernacular Press in Subcontinent During the British Rule: A Study of Perceptions*, 30, PAKISTAN JOURNAL OF SOCIAL SCIENCES (PJSS), 77-84, (2010)

However, this Act instead of having the effect of subduing the press, led to immense agitation. There was bitter resentment and widespread reaction against this measure throughout the country.[72]

When Lord Elgin gained the seat, an amendment was introduced to the sedition provision. Dr. Pattabhi Sitaramayya, an Indian independence activist and political leader, has commented on it stating that, " *While the chronic sores of abridged jury powers, and combined judicial and executive functions were still festering and showed no signs of improvement, new ulcer broke out in the body politics in 1897 which brought to light regulation III of 1818 (Bengal), II of 1819 (Madras) and XXV of 1827 (Bombay) under which anybody could be deported without trial. This was applied to the Sirdar Natu who by the time the Congress of 1897 met had been imprisoned over five months*"[73]

The amendment was made to Section 124 -A of Indian Penal Code, which stated that:

"124 – A- *Whoever by words, either spoken or written or by signs, or by visible representation or otherwise, brings or attempts, or excites or attempts to excite disaffection towards her majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added or with imprisonment which may extend to three years, to which fine may be added or without fine."*

"The publisher of newspaper the Jamil-ul- Ulam, Amba Prasad, was charged under the said law."[74]

[72] Bhagwat Prasad Singh, *Censorship of the Indian press between 1857 and 1945*, University of Iowa, (1949)

[73] B. Pattabhi Sitaramayya, *History of Indian National Congress* - I (1885-1935)

[74] LAW COMMISSION OF INDIA, *Consultation Paper on "SEDITION"* (2018)

The Newspapers (Incitement to offences) Act was passed in 1908.[75] Under this Act, the printing press could be seized by the magistrate, if found to be publishing an article which could incite a murder or any other act of violence or an offence under the Explosive substances Act, 1908.

Later on, in 1910, the Indian Press Act, was passed to avoid the publication of two incidents i.e., firstly, On Nov, 18, 1909, a carriage carrying Lord Minto and his wife narrowly missed a bomb in Ahmedabad and secondly, a magistrate, A.M.P. Jackson died after being shot by extremists.[76]

Later, the Press Law Committee came to be appointed with Sir Tej Bahadur Sapru as its chairperson.[77] The discrimination between the Indian and the Anglo - Indian Press was highlighted before this committee.

This committee concluded that there were certain Acts which were causing resentment amongst the Indians. Hence, the committee recommended the repeal of the concerned Acts and this was brought about by the Press Law Repeal and Amendment Act of 1922.[78]

Lord Willingdon became the Viceroy of India in 1931 and Indian Press (Emergency Powers) Act,1931 was enforced. This Act again prohibited the publication of material having a tendency to incite murder or any other form of violence. Additionally, acts like bringing the Government into hatred or contempt or inciting disaffection towards the Government, inciting feelings of enmity and hatred between different classes of subjects, inducing a public servant

[75] C K Mathew, *First Amendment to Constitution of India*, 2, ECONOMIC & POLITICAL WEEKLY (2016)

[76] Bimanbehari Majumdar, *Militant nationalism in India and its socio-religious background*, 1897-1917, (1966)

[77] Setalvad to Sapru, 10 March 1930, National Library of India (NLI), Sapru MSS, I, 24, S 124; ed. B R Nanda, *Essays in Modern Indian History,* Delhi: OUP, p.123, (1980)

[78] *A Collection Of The Acts Of The Indian Legislature And Of Governor General*, Calcutta Superintendent Government Printing, India, (1923)

to resign or neglect his duty were also proclaimed to be offences which required the furnishing of security.[79]

Many liberal and proactive newspapers were prosecuted under this Act.

When India became independent on August 15, 1947, a Press laws Enquiry Committee was appointed. This Committee in its report recommended the repeal of the Indian States (protection) Act, 1934, the Indian Press (Emergency Powers) Act, 1931, and the Foreign Relations Act, 1932, which were in force until then. It also suggested the implementation of an all-inclusive and wholesome legislation in this regard.[80]

While drafting the Constitution, Babasaheb Ambedkar, the Chairman of the Constitution Drafting Committee, asserted that the right to freedom of speech and expression under Article 19[81] of the Constitution also includes the freedom of the press.[82]

---

[79] Raman, V., *Press Gagging: Implementation of Press Ordinances in The Madras Presidency*, 1930 AND 1932. *Proceedings of the Indian History Congress, 63*, 546-560. Retrieved June 19, 2021, from http://www.jstor.org/stable/44158122, (2002)

[80] Malhan, P., *Liberty of The Press in India*, THE INDIAN JOURNAL OF POLITICAL SCIENCE*, 14*(1), 39-49. Retrieved June 19, 2021, from http://www.jstor.org/stable/41853739, (1953)

[81] "19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business"

[82] 'Rajeev Dhavan, *The Press and The Constitutional Guarantee of Free Speech and Expression*, 28, JOURNAL OF THE INDIAN LAW INSTITUTE, 299-335, (1986)'

However, unfortunately, the partition of India created widespread hatred between the Hindus and the Muslims. "Those who hold the view that there was a fundamental fault line of Hindu–Muslim relations in Indian society and politics also believe that the relations were fundamentally hostile and antagonistic and that the violence associated with partition was, therefore, as inevitable as the partition itself." [83]

To dispel this mounting tension, the government had to take certain measures. The first step taken was the amendment of the constitution brought about in the year 1951.

Under this amendment, three additional grounds were added under Article 19 (2)[84] i.e., reasonable restrictions in order to curb the prevailing anarchy *viz.* - (a) friendly relations with foreign states; (b) public order, and (c) incitement to an offence.

The second step was the enforcement of the Press Objectionable Matters Act, which invited a lot of backlash from the press community in India.[85]

Later on, a Press Commission consisting of Dr. Zakir Hussein, M. Chalpati Rao and Justice G.S. Rajadhayksha, was established by Jawaharlal Nehru.[86] This commission

[83] 'PAUL R. BRASS, *The partition of India and retributive genocide in the Punjab*, 1946–47: means, methods, and purposes, JOURNAL OF GENOCIDE RESEARCH, 71–101, (2003)'

[84] "(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."

[85] 'Dr. Jhumur Ghosh, *Indira Gandhi's Call of Emergency and Press Censorship in India: The Ethical Parameters Revisited*, GLOBAL MEDIA JOURNAL, (December 2016 – June 2017)'

[86] 'REPORT OF THE PRESS COMMISSION - PART 1 – 1954.'

recommended the establishment of a Press Council and the same was established through the passing of the Press Council Act in the year 1965.[87]

The press enjoyed a glorious period of freedom under the administration of Jawaharlal Nehru.[88] Even during the emergency which was imposed in the year 1962 on account of the aggression by the Chinese, the press freedom was hardly hampered.

However, during the reign of Indira Gandhi, the situation absolutely reversed.

In the year 1975, a judgement was delivered by the Allahabad High Court against her adoption of corrupt electoral practices in the 1971 parliamentary elections.[89] In the appeal filed by her, the Court permitted her to continue as the prime Minister and stated that, "*her Membership of the Lok Sabha, her rights as Prime Minister or Minister, so long as she fills that office, to speak in and otherwise to take part in the proceedings of either House of Parliament or a joint sitting of the Houses (without right to vote) and to discharge other functions such as are laid down in Articles 74, 75, 78, 88 etc., or under any other law, and to draw her salary as Prime Minister, shall not be affected or detracted from on account of the conditions contained in this stay order."*

But, at the same time, the court also stated that, "*she will be entitled to sign the Register kept in the House for that purpose and attend the Sessions of the Lok Sabha, but she will neither participate in the proceedings in the Lok Sabha nor vote nor draw remuneration in her capacity as Member of the Lok Sabha."*[90]

[87] *Press Council of India History*, https://presscouncil.nic.in/OldWebsite/history.htm

[88] M Chalapathi Rau, *The Press after Nehru*, THE ECONOMIC WEEKLY, (JULY 1964)

[89] Priyadarshi, D., *Case Study: Smt. Indira Nehru Gandhi vs. Shri Raj Narain and Anr, (*1975).

[90] Indira Nehru Gandhi (Smt.) vs Raj Narain & Anr, 1975 AIR 1590, 1975 SCC (2) 159

However, On June 25, 1975, on the recommendation of Indira Gandhi, the president declared an emergency citing the ground of internal disturbances under Article 352 of the Constitution of India.[53] Many opposition leaders and journalists too were arrested on this account.[91]

"The expulsion of foreign journalists like Peter Hazelhurst of London Times, Loren Jenkins of News week, Peter Gill of London Daily, Lewis. M. Simpson of the Washington Post and most notably Mark Tully of B.B.C also took place."[92]

During this period, the Press Council (Repeal) Act, 1976 was enforced and consequently, the Press Council was abolished. The proximate reason for this was the likelihood of the Press Council pronouncing against K.K. Birla of the Hindustan Times and a supporter of emergency regime.[93]

The Parliamentary Proceeding (Protection of Publication) Act, 1976 was the second legislation that was passed during this period.[94] This backward step was condemned by P.G. Mavlankar who said that, " *the record (of parliamentary proceedings) may have everything for the future historians, but people of the present generation will not know what is taking place in parliament".*

---

[91] 352. Proclamation of Emergency

"(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, made a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation Explanation A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof."

[54] "Shah, Aqil., *The dog that did not bark: the army and the emergency in India. Commonwealth & Comparative Politics*. 55. 489-508. 10.1080/14662043.2017.1354856., (2017)"

[92] *India Orders Expulsion Of 3 Correspondents***,** THE NEW YORK TIMES ARCHIVES, (1975)

[93] Raghvan, G. N, *The Press in India. A New History*, Published December 28th 1994 by South Asia Books (first published December 1994)

[94] *Report No. 248 Obsolete Laws: Warranting Immediate Repeal (Interim Report*), LAW COMMISSION OF INDIA, (2014)

Additionally, the prevention of publication of Objectionable Matter Act, 1976 was the third legislation which came into being at this time.[95] This Act empowered a District Magistrate to restrict the publication of a particular subject or class of subjects for a certain prescribed period.

Then came along the historic turn of events in the form of the 1977 elections. The Congress lost its stronghold when the Janata Party assumed power.[96] The then Prime Minister, Morarji Desai had stated in an interview that "*fundamental rights should never be touched whether, there is an emergency or not. They must be maintained under the Constitution.*" Thus, it seemed that the freedom of the press would be rightly restored.

Subsequently, the Prevention of Publication of Objectionable, Matter Act, 1976 was repealed and the Parliamentary Proceedings (Protection of Publication) Act, 1971 was also re-enacted.[97]

The next step was the passing of the amendment inserting Article 361A.[98] The Janata government brought about the Constitution (Forty-fourth Amendment) Act, 1978, which

---

[95] 'Badar Ahmad, *Freedom of Press and The Supreme Court: An Appraisal* - DEPARTMENT OF LAW -ALIGARH MUSLIM UNIVERSITY ALIGARH (INDIA), (1997)'

[96] M.R. Masani, *India's Second Revolution, Asian Affairs*, (1977)

[97] Akshayakumar Ramanlal Desai, *Violation of Democratic Rights in India,* Popular Prakashan, (1986)

[98] Article 361A in The Indian Constitution

"Protection of publication of proceedings of Parliament and State Legislature

(1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice: Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State

(2) Clause (1) shall apply in relation to reports or matters broadcast, by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper Explanation In this article, newspaper includes a news agency report containing material for publication in a newspaper"

inserted Art. 361A. This Article now provides protection to a true publication of the proceedings of the legislature. However, such publication must be made without any malice on the part of the publisher and must not be a misrepresentation leading to misunderstanding.

The Press Council Act, 1978 was brought into force and the Second Press Commission was also appointed in order to make recommendations regarding the laws relating to the press in India.[99]

Commenting about the reforms brought about by the Janata government, D.D. Basu, has stated that, "*Whatever may be the success or failure of Janata Government's rule for two years, the press ought to be grateful to them for removing all the fetters that had been imposed on the press during emergency regime*".[100]

Later on, when Indira Gandhi was again instituted as the Prime Minister, questions relating to the fetters placed upon media liberty during the period of emergency was brought to the fore. [101]

When Rajiv Gandhi assumed power, he started off by supporting press freedom. He said, "*Freedom of Press is an Article of Faith with us, sanctioned by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation.*" [102.] However, the relations between him and the press turned turbulent due to his support of the emergency that was imposed. He also went on record to say that he would not hesitate to impose emergency restrictions once again, "*if the situation so demands*".

Nevertheless, under the later political leaders, the press apparently enjoyed liberty and was free from most restrictions.

---

[99] Kartik Sharma, *Freedom of the Press: Using the Law to Defend Journalists, (2009)*

[100] Basu. D.D, *Law of the Press*, LexisNexis, 5 Ed, (2010)

[101] Dr. Jhumur Ghosh, *Indira Gandhi's Call Of Emergency And Press Censorship In India: The Ethical Parameters Revisited* - GMJ INDIAN EDITION, (June 2017)

[102] Rahesha Sehgal and Udit Malik, *Press Freedom In India: A Legal Study*, (2018)

However, in the recent times, the freedom of press has been facing implicit threats. As per the World Press Freedom Index of the year 2019, India stood at an appalling 140 out of 180 countries.

The cause for this would be the numerous defamation cases filed against journalists, often by those in power.

One such example is the that of the defamation suit[103] filed by Jay Shah, the son of the Union home minister, Amit Shah against an article published by 'The Wire'. The concerned article had allegedly asserted that his company's turnover had massively increased ever since his party i.e., the Bharatiya Janata Party came to power.

Also, recently, in the case of *Arnab Ranjan Goswami vs Union of India*[104] , the Editor-in-Chief of "Republic TV" had several criminal complaints filed against him, in connection with a broadcast made on his channel regarding the mob lynching of 3 persons in Palghar, Mumbai.

This case was filed by Goswami for the quashing of the said complaints and FIRs.

The Court, in this case, quashed all the FIRs, barring one. It was stated that, "*The police are trying to implicate the petitioner in the offence of defamation despite the settled position of law that absent a complaint by the person who is allegedly defamed, no FIR can be lodged.*"

There have been countless other instances in the past and more rampantly, in the present, where the media has been gagged and restrained from expressing its views concerning certain suspectedly dubious governmental practices.

[103] Jay Amitbhai Shah vs Rohini Singh & Ors, C/AO/376/2017

[104] Arnab Ranjan Goswami vs Union of India, Writ Petition (Crl) No. 130 of 2020

This has severely impacted the freedom of the press and has made the journalists wary of putting forth their honest reports. This would in turn, destroy the checks and balances system, which the media in a democratic setup often offers.

India's press freedom ranking for the year 2020 has further plunged down to the 142nd position on account of the internet restrictions imposed in Kashmir.[105]

In the case in this regard i.e., Anuradha Bhasin v. Union of India[106], the Court had stated that, "*There is no doubt that the importance of the press is well established under Indian Law. The freedom of the press is a requirement in any democratic society for its effective functioning Thereafter, many judgments of this Court including Bennett Coleman v. Union of India, (1972) 2 SCC 788, Indian Express (supra), Sakal Papers (P) Ltd. v. Union of India, [1962] 3 SCR 842 have expounded on the right of freedom of press and have clearly enunciatedthe importance of the aforesaid rights in modern society.*"

[105] '2020 World Press Freedom Index: "Entering a decisive decade for journalism, exacerbated by coronavirus"- https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus'

[106] 'Anuradha Bhasin v. Union of India**,** WP(C) 1031/2019'

# CHAPTER - 4

# THE SUPREME COURT'S CONTRIBUTION IN UPHOLDING AND SAFEGUARDING MEDIA FREEDOM

The freedom of press does not find an express mention under the Constitution of India.[107] Hence, the role played by the judiciary in upholding media freedom has been undeniably significant and noteworthy.

Through various judgements, the judiciary of India has made active effort to include the freedom of press under the freedom of speech and expression under Article 19(1)(a).[108]

However, on the other hand, the government has always tried to subdue the press and thwart publication.

"Wedge issues" are divisive, political issues that "often leave no room for nuance". "In the context of India, these include several topics like relationships with Pakistan and Hindu Muslim tensions. Hence, the approach of the judiciary towards this has lucidly defined the pathand extent of media liberty." [109]

In the case of *Express Newspapers V. Union of India* [110] a new test was devised in order to check the validity of a law imposing restrictions upon the freedom of press. The Court in

[107] K.D. Gaur, *Constitutional Rights and Freedom of Media in India*, 36, JOURNAL OF THE INDIAN LAW INSTITUTE, 429-454, (1994)

[108] Subhradipta Sarkar, RIGHT TO FREE SPEECH IN A CENSORED DEMOCRACY (2008)

[109] Matt Peterson and Abdallah Fayyad, *The Irresistible Effectiveness of Wedge Politics*, THE ATLANTIC, (2017)

[110] Express Newspapers V. Union of India, A.I.R. 1958 S.C. 578

this case stated that "*All the consequences which have been visualised in this regard by the petitioners viz. the tendency to curtail circulation and thereby narrow the dissemination of information fetters the petitioner's freedom to choose the means of exercising the right, likelihood of independence of the press being undermined by having to seek alternative media etc. would be remote and depend on various factors which may or may not come into picture. Unless these were the direct and inevitable consequences of the measures enacted in the impugned Act it would not be possible to strike down the legislation as having that effect and operation.*"

Next came along the case of *Sakal Papers (P) Ltd. v. The Union of India*[111]. In this case, the validity of the Newspaper (Price and Page) Act, 1956 (Newspaper Act), which had the effect of regulating the number of pages in terms of the price of the newspapers and also the space allotted for advertising in the newspapers was under scrutiny.

This case was filed by a publisher and it also challenged the Daily Newspapers (Price and Page) Order, 1960, which gave effect to the concerned regulations. The said Act and Order were challenged as being violative of the right to freedom of speech and expression.

The Court in this case reasoned that the logical consequence of the concerned restrictions would be that the newspapers would be either compelled to reduce the pages published or to increase the price of the newspaper. Hence, the dissemination of information or the newspaper circulation would be affected either way. This would be a direct violation of Article 19(1)(a).

The Court in this case observed that, "*the fixation of minimum price for the number of pages which a newspaper is entitled to publish is obviously not for ensuring a reasonable price to the buyers but for expressly cutting down the circulation. The restraint on the freedom to publish any number of pages unless the price of a newspaper is raised along with the curtailment of advertisement, forcing the hike in the price of newspapers, is no remote but the direct consequence of the impugned order. The net direct and immediate effect of the said order*

[111] Sakal Papers V. Union of India A.I.R. 1962 S.C. 305

*is bringing down the circulation. And when a law is intended to bring about that result, it is a direct interference with the freedom of speech and expression."*

In this manner, both the said Act and the Order were held to be unconstitutional. This judgment made it amply clear that arbitrary and unwarranted restrictions on the freedom of press would not be entertained.

In the case of *Bennett Coleman & Co. & Ors vs Union of India & Ors*[112], the newsprint Import Control Order 1955 and the Newsprint Order 1962 came to be challenged on the ground that they imposed restrictions on the import of newsprint. Also, the newsprint policy of 1972- 73 had imposed further restrictions on the newspapers and publication. It stated that those companies which already owned two newspapers could not start new ones. Also, the limit on the number of pages of the newspapers was set at 10. Further, the increase in the number of pages for newspapers that are under ten pages could not be more than 20%. Lastly, it also restricted the exchange of the newsprint between different papers or editions of the same newspaper belonging to the same publication company.

Hence, in the backdrop of all these restrictions, the petition was instituted on the ground of the violation of the right to freedom of speech and expression.

The court has stated that, "*Publications means dissemination and circulation. The press has to carry on its activity by keeping in view the class of readers, the conditions of labour, price of material, availability of advertisements, size of paper and the different kinds of news comments and views and advertisements which are to be published and circulated The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will not be saved by Article 19(2). If the area of advertisement is restricted. price of paper goes up. In the price goes up circulation will go down. This was held in Sakal Papers Case (supra) to be the direct consequence of curtailment of advertisement. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has been*

[112] Bennett Coleman & Co. & Ors vs Union of India & Ors, 1973 AIR 106, 1973 SCR (2) 757

*held by this Court to be an integral part of the freedom of speech and expression. This freedom is violated by placing restraints upon something which is an essential part of that freedom.*

*A restraint on the number of pages, a restraint on circulation and a restraint on advertisements would affect the fundamental rights under Article 19(1)(a) on the aspects of propagation, publication and circulation. The various provisions of the newsprint import policy have been examined to indicate as to how the petitioners' fundamental rights have been infringed by the restrictions on page limit, prohibition against new newspapers and new editions.*

*The effect and consequences of the impugned policy upon the newspapers is directly controlling the growth and circulation of newspapers. The direct effect is the restriction upon circulation of newspapers. The direct effect is upon growth of newspapers through pages. The direct effect is that newspapers are deprived of their area of advertisement. The direct effect is that they are exposed to financial loss. The direct effect is that freedom of speech and expression is infringed."*

The Newsprint Policy of 1972-73 was thus held to be unconstitutional.

**TAXES AND DUTIES:**

The next case in this context is that of *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*[113]. In this case, the petitioners, who were the publishers of newspapers had challenged the duty imposed under the Customs Tariff Act 1975 and the auxiliary duty under the Finance Act 1981. The newspapers were earlier exempt from custom duty.

[113] 'Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985), 1 S.S.C. 641'

It was argued by them that the application of duty would affect the circulation and pricing of newspapers, which would in turn affect and infringe Articles 19(1)(a)[114] and 19(1)(g)[115].

The court in this judgement agreed that the government has the power to impose taxes on the publication of newspapers. However, this imposition should not affect the freedom of speech and expression. The taxes imposed must not be excessive and burdensome.

It was held that, "*The Government should strike a just- and reasonable balance between the need for ensuring the right of people to freedom of speech and expression on the one hand and the need to impose social control on the business of publication of a newspaper on the other. In other words, the Government must at all material times be conscious of the fact that it is dealing with an activity protected by Article 19 (1) (a) of the Constitution which is vital to our democratic existence. In deciding the reasonableness of restrictions imposed on any fundamental right the court should take into consideration the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the disproportion of the imposition and the prevailing conditions at the relevant time including the social values whose needs are sought to be satisfied by means of the restrictions.* "

Furthermore, in the case of *Printers (Mysore) Ltd v. Asst Commercial Tax Officer*[116], the Supreme Court had prohibited the imposition of sales tax on newspapers. This prohibition was mainly on account of the restrictions that would be imposed upon the dissemination of information, if sales tax was to be levied on newspapers.

The Court stated that, "though *the Parliament was empowered at any rate, till 1956 to levy tax on sale or purchase of newspapers, no such tax was ever levied by it. On the contrary,*

[114] Article 19(1)(a)

(a) to freedom of speech and expression;

[115] Article 19(1)(g)

(g) to practise any profession, or to carry on any occupation, trade or business

[116] Printers Maysore Ltd. V, Asst Commercial Tax Officer, (1994) 2 S.CO 434.

*soon after the coming into force of the Constitution, the Parliament enacted the Taxes on Newspapers (Sales and Advertisements) Repeal Act, 1951 whereby taxes levied earlier on the sale of newspapers and on the advertisements published therein was repealed. It may be recalled that under the Government of India Act, 1935, Entry 48 in List 11 of the Seventh Schedule did not exclude the sale of newspapers from its purview and on that account, they were liable to pay tax on their sale. It is this feature which was sought to be put an end to by the aforesaid repealing Act.*

*Entry 92-A of List I, it is relevant to notice, while empowering the Parliament to levy tax on sale or purchase of goods taking place in the course of inter-State trade or commerce, specifically excluded newspapers from its purview which means that no tax can be imposed upon the inter-State sale or purchase of newspapers. In short, the position is: no tax can be imposed on the inter-State sale of newspapers and no tax is imposed on their intra-State sale. This special treatment of newspapers has a certain philosophy and a historical background behind it ....”*

**ADVERTISEMENTS:**

Later on, the case of *Hamdard Dawakhana V. Union of India*[117] dealt with the issue of advertisement in newspapers. In this case, the constitutionality of the provisions of the Drugs and Magical Remedies Act was challenged. The impugned provisions prohibited the advertising of fake drugs and medication which purported to have magical properties. These drugs had become a huge health concern. Nevertheless, this restriction came to be challenged on the ground of infringement of Article 19(1)(a).

The court held that *“An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed…. when it takes the form of a commercial advertisement which has an element of trade or commerce it no longer falls within the concept of freedom of speech for the object is not propagation of ideas-*

[117] Hamdard Dawakhana V. Union of India, AIR 1960 SO. 554.

*social, political or economic or furtherance of literature or human thought; but as in the present case the commendation of the efficacy, value and importance in treatment of particular diseases by certain drugs and medicines. In such a case, advertisement is a part of business… and…* [has] *no relationship with what may be called the essential concept of the freedom of speech. It cannot be said that the right to publish and distribute commercial advertisements advertising an individual's personal business is a part of freedom of speech guaranteed by the Constitution."*

Thus, though the Court noted that advertisements were a part of freedom of speech and expression, it held that they would not receive the protection of Article 19(1)(a), due to its purely commercial nature.

**COMPULSORY PUBLICATION:**

Later in the case of *L.I.C of India V. Munubhai. D. Shah*[118], "The Hindu" had publisheda paper titled, "A fraud on Policyholders – a shocking story", which was written by Manubhai Shah, an executive trustee of the Consumer Education and Research Centre, Ahmedabad. Thispaper highlighted the unfairly high premiums imposed by the LIC, thereby denying the poor an opportunity to get insurance coverage. Thereafter, the LIC magazine published a response to the said paper, but refused to publish the rejoinder submitted by Shah.

Hence, a writ was filed in the Gujarat High Court against LIC. The respondent here contended that the magazine was an in-house publication and hence, could not be compelled to publish the said article.

The High Court rejected the argument of the respondent and upheld the petitioner's right to demand publication.

Thereafter, an appeal was filed against this judgment. The Supreme Court, in appeal, upheld the High Court decision, stating that the LIC was bound to neutrally showcase both the

[118] 'L.I.C of India V. Munubhai. D. Shah, 1993 AIR 171, 1992 SCR (3) 595'

viewpoints. Moreover, the Court made a reference to the LIC Act of 1956 to point out the fact that the corporation is bound to carry on its business as to best subserve the interests of the community.[119]

The respondent in this case also made a reference to the case of a documentary titled "Beyond Genocide"[120], which was based on the Bhopal Gas incident. This film, which won theGolden Lotus award for being the best non-feature film, was declared to be broadcasted on Doordarshan by the Central Minister for Information and Broadcasting. However, the broadcast was later cancelled on the ground that the claims of many of the victims were sub-judice and there was mounting political tension.

The High Court rejected this argument and upheld the right to freedom of speech and expression of the petitioner. Subsequently, Doordarshan was directed by the Court to telecast the documentary.

Similarly, in the case at hand, the Court stated that, "*The attitude on the part of LIC. refusing to publish the rejoinder in the magazine financed from public funds can be described as both unfair and unreasonable; unfair because fairness demands that both viewpoints were placed before the readers, however limited be their number, to enable them to draw their own conclusions and unreasonable because there was no logic or proper justification for refusing publication ". "The most striking feature of the judgement is that for the first time the apex court recognises that the freedom guaranteed under Article 19 (1) (a) includes the right to reply though limited to the exceptional circumstances.*"

Hence, the LIC was directed to publish the rejoinder of the author.

---

[119] THE LIFE INSURANCE CORPORATION ACT, 1956, Sec 6. "Functions of the Corporation. — (1) Subject to the rules, if any, made by the Central Government in this behalf, it shall be the general duty of the Corporation to carry on life insurance business, whether in or outside India, and the Corporation shall so exercise its powers under this Act as to secure that life insurance business is developed to the best advantage of the community."

[120] *BHOPAL: BEYOND GENOCIDE*, New Delhi: Cinemart, (1985).

**OBSCENITY:**

Next, talking about the freedom of publication with reference to obscenity, in the case of *Ranjit Udeshi V. State of Maharashtra*[121], the petitioner was a partner in a firm that owned a book stall. The said book stall came under scrutiny for allegedly selling an obscene book, *Lady Chatterley's Lover*, by DH Lawrence[122] and consequently, the partners were prosecuted under section 292 of the IPC[123]

---

[121] Ranjit Udeshi V. State of Maharashtra, A.I.R. 1965 S.C. 881 at pp. 888-89

[122] "Lawrence's frank portrayal of an extramarital affair and the explicit sexual explorations of its central characters caused this controversial book, now considered a masterpiece, to be banned as pornography until 1960."

[123] "[292. Sale, etc., of obscene books, etc]

(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.]
[(2) ] Whoever—
(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or
(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or
(e) offers or attempts to do any act which is an offence under this section, shall be punished [263] [on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees].
[(Exception) —This section does not extend to—
(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure— (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or (ii) which is kept or used bona fide for religious purposes;
(b) any representation sculptured, engraved, painted or otherwise represented on or in— (i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or (ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]]"

The Court in this case employed the *Hicklin* test[124], which is used to determine whetherthe concerned matter would "deprave and corrupt those whose minds are open to such immoralinfluences, and into whose hands a publication of this sort may fall."

This test was propounded in the case, *R v. Hicklin*[125], where Chief Justice Cockburn hadput forth that "*the test of obscenity is this, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands the a publication of this sort may fall. It is quiet certain that it would suggest to minds, of the young either sex, or even to persons of more advanced years, thoughts as a most impure and libidinous character.*"

Thus, the Court, in the present case, asserted that, *"(Counsel) is not right in saying that Hicklin case emphasized the importance of few words or a stray passage. The words of Chief Justice were that 'the matter charged' must have a tendency to deprave and corrupt. The observations do not suggest that even a stray word or an insignificant passage would suffice. An observation to that effect in the ruling must be read secundum subjectum materium, that is to say, applicable to the pamphlet there considered We need not attempt to bowdlerize all literature and thus rob the freedom of speech and expression. A balance should be maintained between freedom of speech and expression ana public decency and morality but when the latter is substantially transgressed, the former must give way."*

Thus, after applying this test, the Court came to the conclusion that the said book was in fact obscene and hence, the partners were rightly prosecuted.

But, then came the case of *Chandrakanta Kakodkar V. State of Maharashtra*[126], in which, though the Court upheld the validity of the obscenity test, it also stated that, "*It is the duty of the Court to consider the article, story or book by taking an overall view of the entire work and to determine whether the obscene passages are so likely to deprave and corrupt those whose minds are open to such influences and in whose hands the book is likely to fall ; and in doing so the influence of the book on the social morality of our contemporary society cannot*

[124] Frank W. Smith Jr, *Obscenity: From Hicklin to Hicklin?,* 2, University of Richmond Law Review, (1967)

[125] R v. Hicklin, (1868) 3 QB 360.

[126] Chandrakant Kakodkar D. v. State of Maharashtra, A.I.R. 1970 S.C. 1390

*be overlooked. Even so as the question of obscenity may have to be judged in the light of the claim that the work has a predominant literary merit, it may be necessary if it is at all required, to rely to a certain extent on the evidence and views of leading litterateurs on that aspect. To insist that the standard would always be for the writer to see that the adolescent ought not to be brought into contact with sex or that if they read any references to sex in what is written, whether that is the dominant theme or not, they would be affected, would be to require the authors to write books only for the adolescent and not for the adults"*

Thus, it limited the scope of obscenity under section 292 of the I. P. C.

Contrary to its earlier stand on the issue of obscenity, the Court in *Samresh Bose V. Amal Mitra*[127] ruled in favour of the author and his publication. This case arose from a petition filed by Amal Mitra, an advocate, against Prajapati, a novel written by Samaresh Bose. He claimed that the said novel was obscene and immoral.

The author as well as the publisher were convicted under Section 292 by the Chief Presidency Magistrate at Calcutta. Even on appeal to the High Court, the said convictions were upheld.

However, on appeal to the Supreme Court, the convictions were overturned and the Court stated that, "*A vulgar writing is not necessarily obscene. Vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing and corrupting the morals of any reader of the novel, whereas obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences……. An objective assessment of the novel we do not think that it can be said with any assurance that the novel is obscene merely because slang and unconventional words have been used in the book in which there have been emphasis on sex and description of female bodies and there are the narrations of feelings, thoughts and actions in vulgar language…… We have to bear in mind that the author has written this novel which came to be published in the Sarodiya Desh for all classes*

[127] Samaresh Bose And Anr vs Amal Mitra And Anr, 1986 AIR 967

*of readers and it cannot be right to insist that the standard should always be for the writer to see that the adolescent may not be brought into contact with sex. If a reference to sex by itself in any novel is considered to be obscene and not fit to be read by adolescents, adolescents will not be in a position to read any novel and will have to read books which are purely religious."*

The significance of this case lies in the fact that it has brought the law relating to obscenity at par with the progressing times. Hence, though the Hicklin test discussed earlier is still followed in India, it is applied less rigidly and more progressively.

In *Aveek Sarkar v. State of West Bengal*[128] the Supreme Court held that "*the question ofobscenity must be seen in the context in which the photograph appears and the message it wants to convey. The Court further said that the correct test to determine obscenity would be Community Standards Test and not Hicklin Test.* Thus, it was stated that, *regard must behad to the contemporary mores and national standards and not the standard of a group of susceptible or sensitive persons."*

**CONTEMPT OF COURT:**

Next, in the context of freedom of speech and expression with reference to the contempt of Court, it has been observed that the Court has treated its contempt with leniency more often than not.

For example, in the case of *E.M.S. Namboodaripad V. T Narayanan Nambiar*[129], E.M.S.Namboodaripad, the then Chief Minister, had, at a Press Conference which was held by him at Trivandrum, levelled certain allegations against the judiciary by stating that it is " *an instrumentof oppression*" and is guided by "*class hatred*".

Proceedings against him were instituted in the High Court for contempt and consequently, he was convicted.

However, on an appeal to the Supreme Court, his sentence of fine was reduced.

The Court held that, "*As regards sentence we think that it was hardly necessary to impose heavy sentence. The ends of justice in this case are amply served by exposing the*

[128] *Aveek Sarkar v. State of West Bengal,* AIR 2014 SC 1495.

[129] E.M.S. Namboodaripad v. T Narayanan Nambiar, A.I.R. 1970 SO. 2015

*appellant's ignorance and by sentencing him to a nominal fine. We accordingly reduce the sentence of fine to Rs. 50/-."*

But, in the case of *C.K. Daphtary V. O.P.Gupta*[130], the Court correctly exercised its powers of punishing contempt. Here, O. P. Gupta, the respondent had published a booklet, levelling allegations of dishonesty against Justice J. C. Shah.

The concerned petition was filed by C.K. Daphtary and some others on the ground that the said booklet unfairly imputes criticism and thus, scandalises the reputation of the judges as well as that of the highest Court of the country.

The Court in its judgement held O. P. Gupta guilty of contempt of Court and sentenced him to simple imprisonment for a period of two months.

It was stated that, "*Under the existing law of contempt of court any publication which is calculated to interfere with the due course of justice or proper administration of law by this Court would amount to contempt of court. A scurrilous attack on a Judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary; and if confidence in Judiciary goes, administration of justice definitely suffers.*"

Hence, the law of contempt of Court was exercised by the judiciary in order to ensure the protection of the faith which the public has reposed in it.

Further, the Supreme Court, in the case of *National Textile Workers Union V. P.R. Ramakrishnan* [131], defined the scope and extent of fair criticism. In this case, a journalist was being prosecuted for accusing four judges of passing certain judgements with corrupt motives.

The Court in this case made it clear that judges cannot unnecessarily be subject to unwarranted contempt, hatred and ridicule. However, on the other hand, it also stated that fair criticism need not be actionable.

Later, in the case of *M.R. Parashar V. Farooq Abdulla*[132], the Chief Minister of Jammuand Kashmir was prosecuted for contempt. However, the Court dismissed the petition becauseof insufficiency of proof.

---

[130] C.K. Daphtary v. O.P.Gupta, AIR 1971 S.C. 1132

[131] National Textile Workers Union v. P.R. Ramakrishnan, AIR 1983 S.C. 759

[132] M. R. Parashar v. Farooq Abdulla, AIR 1984 SO 615

*The Court asserted that, "the right of free speech is an important right of the citizen, in the exercise of which he is entitled to bring to the notice of the public at large the infirmities from which any institution suffers, including institutions which administer justice. Indeed, the right to offer healthy and constructive criticism which is fair in spirit must be left unimpaired in the interest of public institutions themselves. Critics are instruments of reforms, not those actuated by malice but those who are inspired by the spirit of public weal. Bona fide criticism of any system or institution is aimed at inducing the administrators of that system or institution to look inwards and improve its public image. Courts do not like to assume the posture that they are above criticism and that their functioning needs no improvement. But it is necessary to make it clear that though law does not restrain the expression of disapprobation against what is done in or by courts of law, the liberty of free expression is not to be confounded with a licence to make unfounded allegations of corruption against the judiciary. The abuse of the liberty of free speech and expression carries the case nearer the law of contempt."*

Here, the court viewed fair criticism as a reformer of public institutions. Hence, the Court tried to strike a balance between the need for the maintenance of freedom of speech as well as the integrity of the judiciary.

In *Srinivas Mohanty v Dr. Radhanath rath*[133], the Court reiterated that "The freedom of the press is basically the freedom of the individuals to express themselves through the mediumof press."

**DEFAMATION:**

Talking about defamation as a fetter to the freedom of publication, the Court in the case of *R. Rajagopal V. State of Tamil Nadu* had stated that the publication of the autobiography written by a prisoner cannot be prohibited only based on the apprehension of defamation of the state. [134]

In this case, a prisoner, Auto Shanker, who had been convicted for six murders and was sentenced to death, had written his autobiography, while he was in jail. He had also expressed his desire to have the said autobiography published. A Tamil magazine, *Nakkheeran* wanted to

[133] Srinivas Mohanty v Dr. Radhanath rath, 1997 (84) CLT 648

[134] R. Rajagopal v. State of Tamil Nadu, A.I.R 1995 S.C. 264 at p. 277

publish it and made an announcement regarding the same. However, the prison officials compelled Auto Shanker to write to the magazine, forbidding them from publishing his autobiography.

Hence, the said magazine filed a petition on the ground that the concerned denial of publication violated not only the magazine's, but also the prisoner's right to freedom of speech and expression.

The Court in this case held that the officers of the prison had no right to prohibit the publication on the mere assumption that the matter would be defamatory to the state.

The Court however cleared that what it disallowed was the prohibition or restrictions that were placed prior to the publication of the autobiography. But, the state is not barred from suing for defamation once the said autobiography has been published.

Thus, they stated that, "*it must be held that the petitioners have a right to publish, what they allege to be the life story/autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorisation. But if they go beyond that and publish his life story, they may be invading his right to privacy and will be liable for the consequences in accordance with law. Similarly, the State or its officials cannot prevent or restrain the said publication."*

In the case of *Selvi J. Jayalalithaa vs. Penguin Books India*[135], Madras High Court had stayed the publication of a book written by senior political journalist Ms. Vaasanthi titled *"Jayalalithaa – A Portrait".* The injunction was granted on the ground that the publication of the said book, without due verification of the facts contained therein, would damage the plaintiff's reputation and would also lead to an invasion of her privacy.

In *Subramaniam Swamy v. Union of India*[136], several petitions were filed against the provisions relating to criminal defamation under sections 499 and 500 of the IPC and Sections 199(1) to 199(4) of the Indian Code of Criminal Procedure, 1973. It was argued that these provisions act as a fetter to the freedom of speech. However, the court held that, "*Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest."*

[135] Selvi J. Jayalalithaa vs. Penguin Books India, (C.S. NO. 326 OF 2011)).

[136] 'Subramaniam Swamy v. Union of India, (W.P. (Crl) 184 of 2014)'

Also, recently, in the case of *Swami Ramdev vs. Juggernaut Books*[137], the court had banned the publication of the book titled '*Godman to Tycoon: The Untold Story of Baba Ramdev*', based upon Baba Ramdev, on account of defamatory content contained therein.

**COURT PROCEEDINGS:**

However, recently, in the case of *The Chief Election Commissioner of India v. MR Vijayabhaskar*[138], the court held that the freedom of speech and expression includes within its ambit, the freedom of press to report Court proceedings.

The court asserted that, *"The concept of an open court requires that information relating to a court proceeding must be available in the public domain. Citizens have a right to know about what PART C transpires in the course of judicial proceedings. The dialogue in a court indicates the manner in which a judicial proceeding is structured. Oral arguments are postulated on an open exchange of ideas. It is through such an exchange that legal arguments are tested and analysed. Arguments addressed before the court, the response of opposing counsel and issues raised by the court are matters on which citizens have a legitimate right to be informed. An open court proceeding ensures that the judicial process is subject to public scrutiny. Public scrutiny is crucial to maintaining transparency and accountability. Transparency in the functioning of democratic institutions is crucial to establish the public 's faith in them."*

Further, it stated that, *"As we understand the rights of the media to report and disseminate issues and events, including court proceedings that are a part of the public domain, it is important to contextualize that this is not merely an aspect of protecting the rights of individuals and entities on reporting, but also a part of the process of augmenting the integrity of the judiciary and the cause of justice as a whole."*

**POLITICS:**

[137] 'Swami Ramdev vs. Juggernaut Books, (CM(M) 556/2018))'

[138] The Chief Election Commissioner of India v. MR Vijayabhaskar, Civil Appeal No. 1767 of 2021 (Arising out ofSLP (C) No. 6731 of 2021)

In the case of *Rambabu Singh Thakur v. Sunil Arora*[139], the court had directed the Political parties to publish any criminal cases which were pending against their selected candidates.

*"In this judgment, this Court was cognisant of the increasing criminalisation of politics in India and the lack of information about such criminalisation amongst the citizenry. In order to remedy this information gap, this Court issued the following directions: Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court:*

*116.1. Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.*

*116.2. It shall state, in bold letters, with regard to the criminal cases pending against the candidate.*

*116.3. If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.*

*116.4. The political party concerned shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.*

*116.5. The candidate as well as the political party concerned shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers."*

[139] Rambabu Singh Thakur v. Sunil Arora, Contempt Pet. (C) No. 428 of 2019 in W.P(C) No. 536 of 2011 & Contempt Pet. (C) No. 464 of 2019 in W.P(C) No. 536 of 2011

# CONCLUSION

From the numerous judgements that have been mentioned until now, it can be observed that the judiciary has always strived to balance out the competing interests, with reference to the press, whether it be the contempt of Courts, privileges of the members of the parliament, security and integrity of the state, public order or even obscenity.

The significance of the role played by the judiciary in upholding the freedom of the press is evident from the fact that the right to freedom of press has acquired the status of being a fundamental right in spite of its lack of express mention.

There have been multiple occasions, as can be seen, wherein the Courts have pardoned even their contempt, so as to give unfettered freedom to the media to express the reality. Though, on certain occasions, it has also imposed upon the media the restraints required for the smooth running of our democratic setup.

Thus, the liberal and considerate attitude of the Court towards the media and its publications has, time and again, given the much-appreciated boost as well as momentum to the now much respected and revered instrument of democracy i.e., the press.

# CHAPTER - 5

# PARLIAMENTARY PRIVILEGES

Parliamentary privileges are certain special rights, which are conferred upon the members of the parliament and its committees, in order to facilitate its smooth functioning.[140]

Parliamentary privileges have been defined by Erskine May as, "*The sum of peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. Thus, privilege though part of the law of the land, is to a certain extent an exception from the ordinary law*".[141]

"*The publication of proceedings conducted in the parliament and in the state legislatures forms an essential part of the right to freedom of speech and expression in a democracy. The Constitution of India itself lays down the privileges of the Indian Parliament relating to two matters, viz. freedom of speech and publication of speeches and proceedings of Parliament.*"[142] It brings out the legislative intent and promotes the rise of an informed citizenry.

The press acts as the eyes and ears of the general public, in their absence in the proceedings. However, the freedom of the press and the privileges enjoyed by the members of the parliament and state legislatures have always been in constant conflict.[143]

---

[140] 'https://rajyasabha.nic.in/rsnew/rsat_work/CHAPTER%E2%80%948.pdf'

[141] Erskine May, *Parliamentary Practice*, LexisNexis Butterworths, (2019)

[142] Dalip Singh, *Parliamentary Privileges in India*, 26, THE INDIAN JOURNAL OF POLITICAL SCIENCE, 75-85, (1965)

[143] Shivprasad Swaminathan, *The Conflict Between Freedom of The Press and Parliamentary Privileges: An Unfamiliar Twist in A Familiar Tale,* 22(1), National Law School of India Review, (2010)

# CONSTITUTIONAL PROVISIONS

Coming to the publication of proceedings of the parliament, the concerned house of the parliament has the right to prohibit the publication of reports of debates or its proceedings.

It has been expressly provided in Article 105 that the respective houses are empowered to control the publication of proceedings of Parliament.[144]

Talking about the application and jurisdiction of this provision, the Court has held that it applies to any proceeding that relates to any business that is being transacted in the house.[145]

Even in the case of Tej Kiran Jain And Others vs N. Sanjiva Reddy And Others[146], the Court had held that, "*The article confers immunity inter alia in respect of anything said.....in Parliament. The word anything is of the widest import and is equivalent to everything.*

---

[144] "**105. Powers, privileges, etc of the Houses of Parliament and of the members and committees thereof**

(1) Subject to the provisions of this constitution and 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 that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty fourth Amendment) Act 1978

(4) The provisions 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"

[145] 'Rajeev Kumar Singh, *Comparative Analysis of Parliamentary Privileges in UK and India: An Overview*, 4 INDIAN JOURNAL OF LAW AND HUMAN BEHAVIOUR , (2018)'

[146] 'Tej Kiran Jain and Others vs N. Sanjiva Reddy and Others, 1970 AIR 1573, 191951 AIR 332, 1951 SCR 74771 SCR (1) 612'

*The only limitation arises from the words **in Parliament** which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court."*

What this means is that the protection granted hereinunder extends to a publication about anything said in the course of the business transacted in the concerned house, even if it does not relate to or is not relevant to the said transacted business. Even in such a case, the publication will be provided immunity. "It is one of the essences of parliamentary system of government that people's representatives should be free to express themselves without fear of legal expenses."[147]

The same privileges have also been provided to the members of the state legislatures by virtue of Article 194.[148]

[147] Raghav, Tapesh, *Relevance of Right to Speak with Parliamentary Privileges* (2012).

[148] "194. Powers, privileges, etc, of the House of Legislatures and of the members and committees thereof
(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State
(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings
(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution forty fourth Amendment Act, 1978
(4) The provisions 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 the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature"

# PROTECTION TO PUBLISHERS

Generally, the publications in newspapers of a true report of the proceedings of the parliament are protected under Art. 361A of the Constitution. This Article was inserted by the Forty-fourth Amendment Act of 1978 and it exempts such publications from liability, provided they are made without any malice on the part of the publisher.[149]

However, the publisher can be held liable especially when the publication has, with malice, misrepresented the proceedings of the house. Suppression of the concerned speeches and conversations, which would lead to a misconception or misunderstanding in the minds of the readers is also not permissible.

Thus, for the purpose of securing protection under this provision, the publication of the report must be a near verbatim narration of the proceedings of the house. "The Verbatim reports of the proceedings of the Parliament are not a mere narration of Questions, Adjournment

[149] "Article 361A in The Indian Constitution-Protection of publication of proceedings of Parliament and StateLegislature:

(1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice: Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast, by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation In this article, newspaper includes a news agency report containing material for publication in a newspaper."

Motions, Bills and Resolutions, etc. As a matter of fact, they are a rich source of contemporary history."[150]

What is to be noted here is that the falsity of the report/publication under contention, would bar the application of this section. Also, a substantially true report of the proceedings is also not liable to be protected, if it has been published with malicious intention.[151]

Additionally, the publication must not consist of the proceeding of a secret sitting of the house. A publication made in this regard would stand in clear violation of Rule 252 of the Lok Sabha Rules.[152]

[150] *Story of Parliamentary reporting*, LOK SABHA SECRETARIAT

[151] Prof. Mukul Srivastava, *Parliamentary Journalism*, UNIVERSITY OF LUCKNOW, https://www.lkouniv.ac.in/site/writereaddata/siteContent/20200407094826247 4mukul_Parliamentary_journalism.pdf

[152] "252. Subject to the provisions of rule 251, disclosure of proceedings or decisions of a secret sitting by any person in any manner shall be treated as a gross breach of privilege of the House."

# GUNUPATI KESHAVRAM REDDY V.NAFISUL HASAN

In the case of Gunupati Keshavram Reddy v. Nafisul Hasan[153], the Committee of privileges of the U.P. Legislative Assembly had issued a notice to a weekly called Blitz[154] to appear before it for the purpose of providing a justification for publishing derogatory content against the speaker of the Legislative assembly.

However, the editor did not make an appearance and the committee found him guilty of the levied charge. Thereafter, he was arrested on account of a warrant issued by the speaker, but he wasn't brought before the magistrate within 24 hours, as mandated by Article 22(2)[155] of the Constitution.

Thus, a writ of habeas corpus came to be filed before the Supreme Court on the ground that fundamental rights had been violated. The same was accepted by the Court and he was ordered to be released.

The key takeaway from this case is that it was held that the parliamentary privileges under Articles 105 and 194 cannot, in any case, take precedence over the Fundamental Rights.

Later on, he was again summoned before the house. But, when he again failed to appear, no further action was taken against him. On the contrary, a suit for damages, was instituted by him, against the speaker, in the High Court at Bombay, citing wrongful arrest and detention.

However, this claim was dismissed by the High Court.

---

[153] Gunupati Keshavram Reddy v. Nafisul Hasan & State Of U.P, Civil Appeal No. 75 Of 1952

[154] Vir Sanghvi, *Karanjia and his Blitz*, (2008)

[155] "(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate"

# PANDIT M.S.M SHARMA V.

# SHRI KRISHNA SINHA

An important judgement in this regard was delivered by the Court in the case of *Pandit M.S.M Sharma v. Shri Krishna Sinha*[156].

In this case, the petitioner was the journalist and the editor of "Searchlight"[157], an English newspaper, circulated in Bihar, while the Chief Minister of Bihar and the Chairman of the Privileges Committee of the Bihar Legislative Assembly, Mr. Krishna Sinha was the respondent.

A member of the Bihar Legislative Assembly, Maheshwar Prasad Narayan Sinha, had on 30th May, 1957 levelled allegations against the Chief Minister accusing him of corrupt practices. These allegations included partiality in the selection of Ministers. It was stated that the ministers were not chosen correctly as those who possessed the requisite qualifications and capabilities were never considered for the posts.

Also, issues relating to the transfers of public servants and other corrupt administrative practices were also raised.

Later on, though all the remarks made in this context were expunged, Searchlight went ahead and published the concerned speech and comments. In reply to this, a member of the legislative assembly, Mr. Nawal Kishore Sinha, issued a notice, in order to raise an objection in the assembly, citing the breach of parliamentary privilege. This notice was then referred to the Privileges Committee for further contemplation.

[156] Pandit M. S. M. Sharma vs Dr. Shree Krishna Sinha, 1960 AIR 1186

[157] Jones, Daniel: "Searchlight: Archiving the Extreme." Political Extremism and Radicalism in the Twentieth Century, Cengage Learning (EMEA) Ltd, (2018)

Consequently, M.S.M Sharma was summoned by the Secretary of the Legislative Assembly to appear before the Privileges Committee and to show cause as to why no action should be taken against him for the alleged breach of privilege.

Mr. Sharma then filed a writ petition under Art. 32[158] stating that the notice issued to him violated his Fundamental rights under Articles 19(1)(a)[159] as well as 21.[160]

The respondent on the other hand reiterated the powers and privileges enjoyed by the State Legislative Assembly under Article 194(3) of the Constitution.

He asserted that the proceedings of the house cannot be permitted to be published as the state assemblies enjoyed the same immunities as were conferred on the British Parliament's House of Commons.

---

[158] "**32. Remedies for enforcement of rights conferred by this Part**

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution"

[159] "**Article 19(1)**

(1) All citizens shall have the right

(a) to freedom of speech and expression;

[160] **21. Protection of life and personal liberty:**

No person shall be deprived of his life or personal liberty except according to procedure established by law."

As far as the judgement is concerned, the majority decision delivered by the then Chief Justice, Sudhi Ranjan Dasthe stated that as no law had been passed by the legislature of Bihar with regard to the powers, privileges and immunities of the state legislative assembly, it would be entitled to the same powers, privileges and immunities under Article 194(3) as were conferred upon the House of Commons of British Parliament when the Constitution had commenced.

The court noted that, "*Parliamentary privilege is defined as the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law. The privileges of Parliament are of two kinds, namely, (i) those which are common to both Houses and (ii) those which are peculiar either to the House of Lords or to the House of Commons (2). The privileges of the Commons, as distinct from the Lords, have been defined as the sum of the fundamental rights of the House and of its individual members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords.*

*(3). Learned Solicitor General claims that the Legislative Assembly, like the House of Commons, has the power and privilege, if it so desires, to prohibit totally the publication of any debate or proceedings that may take place in the House and at any rate to prohibit the publication of inaccurate or garbled versions of it. In other words, it is claimed that the House of Commons has the power and privilege to prohibit the publication in any newspaper of even a true and faithful report of its proceedings and certainly the publication of any portion of speeches or proceedings directed to be expunged from the official record."* [161]

The Hon'ble Court noted that a standing order, imposing restrictions on the publication of proceedings, was imposed by the House of Commons in 1641. Since, the said standing order has not been amended or repealed, it still holds true.

[161] Judgement pg. 24

The order reads as follows, " *that no member shall either give a copy or publish in print anything that he shall speak in the House and that all the members of the House are enjoinedto deliver out no copy or notes of anything that is brought into the House, or that is propoundedor agitated in this House* "

By analogy, the Court concluded that the Bihar Legislative Assembly possessed the same power on account of its non-imposition of any statute in this regard.

Furthermore, the court rejected the petitioner's argument that the publication of a bonafide report of parliamentary proceedings shall not be treated as illegal due to the Fundamental Right to freedom of speech and expression guaranteed by Article 19(1)(a).

Additionally, the petitioner had also contended that Article 19(1)(a) should be given precedence over Article 194(3). The Court reasoned that it has been expressly stated that only clause 1 of Article 194 would be subject to the other provisions of the Constitution, whereas, the other clauses of this Article are free from any such limitation.

Moreover, the Court applied the rule of Harmonious Construction of statutes. It stated that both Article 19(1)(a) and Article 194(3) hold equivalent significance and hence cannot be pitted against each other.

The court asserted that Article 19(1)(a) is a general provision, while Article 194(3) is a special provision.

However, in his dissenting opinion, Justice Subbarao has cited the judgement of *Gunupati Keshavram Reddy V. Nafisul Hasan*[162] to assert that 194(3) is actually bound by the provisions of part III of the Constitution.

But, based on the majority reasoning, the Court concluded that the notice issued to the Petitioner by the State legislative Assembly was valid. Hence, the petition was dismissed.

[162] 'Gunupati Keshavram Reddy v. Nafisul Hasan and the State of U.P, AIR 1952'

The significance of this case lies in the clarification provided with reference to expunged proceedings of the House. If expunged proceedings are published, the publisher is liable to be held for contempt of the house as well as for a breach of privilege.

It must also be noted that in this case, the apex Court held that, "*the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of debates or proceedings that take place within the House. A fortiori the House had...the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debates or proceedings. Nor do we share the view that it will not be right to entrust our Houses with those powers, privileges and immunities, for we are well persuaded that our Houses... will appreciate the benefit of publicity and will not exercise the powers, privileges and immunities, except in gross cases.*"

Hence, the rights of the newspapers to publish a report of the happenings of the houses is in fact encouraged. However, the only condition to this is that the report must be accurate, made in good faith and must represent the facts correctly and truthfully.

It has been stated that, *"The newspapers are eyes and ears of the public not present in the House. Unless the House puts a ban, the newspapers must be held to have the rights to reproduce fairly and faithfully and accurately the proceedings or any part thereof without let or hindrance from any person not authorised by the House or by any law. The newspaper may not misrepresent by editing, adding or unfairly omitting to give a totally wrong impression."*[163]

Additionally, prematurely published reports, especially of committee proceedings also violate parliamentary privilege.

For instance, there was a case wherein the evidence which was given by a witness to the Committee of Privileges was published even before it could be laid before the house. Here, the Committee held that, *"It is well established that the proceedings of a Parliamentary Committee are confidential and what transpired in the meetings of the committee should not be disclosed or given any publicity, unless the same is presented to the House or is otherwise treated as not confidential."*

[163] R.S. Deb., 2.3.1981

# KESHAV SINGH VS SPEAKER, LEGISLATIVE ASSEMBLY

The discussion about parliamentary privileges would be incomplete without mentioning the case of Keshav Singh vs Speaker, Legislative Assembly.[164] In this case, Keshav Singh, who was a resident of Gorakhpur had published pamphlets against a member of the house, Narsingh Narain Pandey. Pandey had been accused of bribery and corruption therein. Hence, Keshav Singh was held guilty for a breach of parliamentary privileges.

Thereafter, Keshav Singh was summoned to appear before the assembly on multiple instances, however, he avoided appearing citing his inability to pay the travel fare. But, later on account of a warrant issued by the speaker, he was finally brought before the house.

Also, a letter came to the fore, wherein Keshav Singh had asserted that he stood by what he had published and that he vehemently opposed his reprimand.

The assembly found him guilty of the charge are sentenced him to seven days of custody on account of contempt.

In this context, a general warrant came to be addressed to the Marshal of the House and the Superintendent of the District Jail in Lucknow and thereafter, Keshav Singh was taken to the jail and imprisoned.

[164] Keshav Singh vs Speaker, Legislative Assembly, AIR 1965 All 349, 1965 CriLJ 170

However, a writ of Habeas Corpus demanding the release of Keshav Singh, came to be lodged within six days, on the ground that his detention was mala fide and that the deprivation of his personal liberty was against the law. As a result, Keshav Singh was released on bail.

However, this did not go well with the house and a resolution came to be passed against Keshav Singh, his advocate and the two judges who had ordered his bail, on account of contempt. The judges filed a petition under Article 226[165] stating that the resolution passed by the house was in violation of Article 211.[166] It was asserted that the said resolution amounted tocontempt of Court.

---

[165] "226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause ( 2 ) of Article 32"

[166] "211. Restriction on discussion in the Legislature No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties"

Thereafter, the bench of the High Court of Allahabad stayed the execution of the said resolution until the disposal of the case. However, that very day, the house issued another resolution in order to clarify its stand. It asserted therein that the accused judges would not be reprimanded without being given a reasonable opportunity of being heard, as provided for under Article 208[167] of our Constitution.

Later, the warrants against the judges were withdrawn. However, the house demanded their appearance so as to show cause as to why they should not be proceeded against on account of contempt. However, this resolution too came to be stayed by the Court.

On account of the resultant tussle between the legislature and the judiciary, the President of India was compelled to refer the matter to the Supreme Court under Article 143[168],for its advice.

---

[167] "**208. Rules of procedure**

(1) A House of the Legislature of a State may make rules for regulating subject to the provisions of this Constitution, its procedure and the conduct of its business

(2) Until rules are made under clause ( 1 ), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the legislative Council, may make rules as to the procedure with respect to communications between the two Houses"

[168] "143. Power of President to consult Supreme Court (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon"

The Court, in this case, drew a difference between the House of Commons and our legislature. It asserted that, " *The opinion that the Legislative Assembly does not possess the power which the House of Commons enjoys of issuing a general warrant and of insisting that the Courts treat it as conclusive is based on two grounds, viz., first that the power is enjoyed by the House of Commons by virtue of agreement with the Courts and not by virtue of its being a privilege of the House of Commons and, secondly, that, even if it is considered to be a privilege of the House of Commons, it cannot be imported into India as it would be Inconsistent with the exercise of the power under Article 32 by the supreme Court and of the power under Article 226 by the High Courts. The basis of the opinion is not that this is a privilege possessed by the House of Commons by virtue of its being a superior court of record and that it cannot be enjoyed by the Legislative Assembly as it is not a court of record."*

Further, it also held that it is the Courts which are empowered to decide whether a privilege exists or not. "However, once the existence of the privilege is established, the courts cannot interfere in its exercise by the house."[169]

As far as the contempt alleged to have been perpetrated by the judges is concerned, the Court stated that the conduct of the judge, in his judicial capacity, could never be treated as contempt.

However, the Allahabad High Court only partially implemented the advice rendered. It held that since, it has been established that the house has the privilege to commit any person by general warrant, which is non-justiciable, on account of the House of Commons possessing it, our legislature also enjoys the same. Hence, the Court refused to interfere with the exercise of this privilege.

(2) "The President may, notwithstanding anything in the proviso to Article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon"

[169] Griffith (2007) op. cit., p. 6. See also Carney (2006) op. cit., p. 100.

# THE RIGHT TO EXCLUDE

The parliament also holds the right to exclude strangers from attending its proceedings. This right also includes the exclusion of the press. This has been provided for under Rule 387 of the rules of procedure and conduct of business in Lok Sabha.[170] Additionally, their removal from the premises has also been provisioned for under Rule 387 – A.[171]

Additionally, Rule 248 provides for a similar exclusion of strangers during the conduct of a secret sitting, on the request of the leader of the house. [172]

The parliament may also withdraw the press cards[173] issued to the media representatives,in the case of any alleged default.

Though, the occasions to exercise these provisions and powers rarely arise, their mere existence enables us to gauge the extent of absence of press freedom with regard to parliamentary publications.

[170] "387. The Speaker, whenever thinks fit, may order the withdrawal of strangers from any part of the House."

[171] "387A. An officer of the Secretariat authorised in this behalf by the Speaker shall remove from the precincts of the House or take into custody, any stranger seen therein or who may be reported to such officer to be, in any portion of the precincts of the House which is reserved for the exclusive use of members, and also any stranger who, having been admitted into any portion of the precincts of the House, misconducts or wilfully infringes the regulations made by the Speaker under rule 386 or does not withdraw when the strangers are directed to withdraw under rule 387 while the House is sitting."

[172] "248. (1) On a request made by the Leader of the House, the Speaker shall fix a day or part thereof for sitting of the House in secret. (2) When the House sits in secret no stranger shall be permitted to be present in the Chamber, Lobby or Galleries: Provided that members of the Council may be present in their Gallery: Provided further that persons authorised by the Speaker may be present in the Chamber, Lobby or Galleries."

[173] PRESS AND PUBLIC RELATIONS WING - Lok Sabha Secretariat

# CONCLUSION

Public participation lies at the very core of the democratic setup. An informed citizenry is of essence in order to further the goals of a democracy and hence, the right to freedom of speech and expression has been included in the list of Fundamental Rights.

However, parliamentary privileges, though antithetical to the freedom of speech and expression, have been or rather had to be conferred in order to facilitate the smooth functioning of the parliament.

One can infer from the discussed provisions and case laws that the right to publish proceedings is in no way absolute and is subject to the authority of the concerned house. The power to prohibit the publication of proceedings is aimed at maintaining the privacy of the debate. This in turn would propagate freedom of speech in the house.

The right to freedom of speech and expression does demand the publication of the proceedings of the parliament. However, this right cannot be upheld and advanced at the cost of jeopardizing the integrity and smooth functioning of the house. Thus, the press cannot possibly be permitted to publish reports or other content that may violate the parliamentary privileges.

The Courts in India can only determine the existence or absence of a certain privilege. However, it cannot interfere in its exercise by the concerned house, once its existence has been established.

Furthermore, it has been established by the Court that Parliamentary privileges are not subject to the right to freedom of speech and expression under Article 19(1) (a), but the application of the right to life and personal liberty cannot be restricted even in this case.

Hence, it can be inferred that the Court has often made an attempt to establish a balance between these two provisions of the Constitution.

"*One demand that is raised not infrequently by the press is that the legislatures codify their privileges. The demand is understandable. Though nothing less can actually help the*

*press, this probably is too much of a demand. The legislatures are surely mindful of the fact that that if they codify the privileges, the resultant 'code' would be 'law' under Art. 13 and thus subject to judicial review."*[174]

[174] "Shivprasad Swaminathan, *The Conflict Between Freedom Of The Press And Parliamentary Privileges: An Unfamiliar Twist In A Familiar Tale*, 22(1) NATIONAL LAW SCHOOL OF INDIA REVIEW, (2010)"

# CHAPTER – 6

# CRITICAL EVALUATION OF THE OFFICIAL SECRETS ACT, 1923 VIS-À-VIS MEDIA FREEDOM

The legislation related to Official Secrets was established in India, as soon as the same was enacted in Britain in 1889.[175] Hence, the history and origin of our Official Secrets Act, 1923 can be traced back to the legislation of England.

Lord Curzon had initially enacted the Indian Official Secrets Act in the year 1904. However, later, the same was replaced by the Official Secrets Act of 1923.

This Act deals with espionage, confidentiality, spying and the like. It prohibits the passing on of secret and critical information to an enemy state. It prohibits the communication of official critical information in the form of any *"sketch, plan, model, article, note, document, or information itself, or the substance, effect or description thereof*."

What is to be noted here is that the Act targets not only the person who communicates the secret information, but also the person who allegedly receives the same.

This Act may be used by the government and its agencies to refuse the release of vital public information, even if it is covered by the Right to Information Act, 2005, on the ground of maintenance of national security.

Furthermore, the absence of any set definition of 'official secret' under this Act, adds to the scope of possibility of abuse. Under this Act, the government may, at its discretion,

[175] S.R.Maheswari, *Secrecy in Government in India*, 25 I.J. P.A. 1101 (1979).

remove any information from the preview of the Right to Information Act, 2005, by declaring it to be an official secret.

*"The classification of files is not done under the provisions of the Official Secrets Act. The classification or declassification of files is done by each Ministry/ Department of the Government as per their requirement in terms of the Manual of Departmental Security Instructions, 1994. These instructions are reviewed by the Ministry of Home Affairs from time to time and reiterated to all the Ministries/Departments for compliance. As the actual process of classification and declassification is done by the Ministries/ Departments concerned as per their requirement, there is no central database of the total number of classified files."*[176]

Thus, this process of classification of data as classified is conclusive and not open to any challenge.

The classification of Documents and equipment according to the *Security Manual for Licensed Defence Industries* is as follows:

- "TOP SECRET - "TOP SECRET" "shall be applied to information and equipment, the unauthorized disclosure of which could be expected to cause exceptionally grave damage to the National Security or national Interest. This category is reserved for the nation's closest SECRETs and is to be used with great reserve."

- SECRET - "SECRET" "shall be applied to information and equipment, the unauthorized disclosure of which could be expected to cause serious damage to the National Security or National Interests or cause serious embarrassment to the Government in its functioning. This classification should be used for highly important matters and is the highest classification normally used."

- CONFIDENTIAL - "CONFIDENTIAL" "shall be applied to information and equipment, the unauthorized disclosure of which could be expected to cause damage to National Security or could be prejudicial to the National Interests or would embarrass the Government in its functioning."

[176] 'GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS, LOK SABHA, STARRED QUESTION NO.†*557, https://www.mha.gov.in/MHA1/Par2017/pdfs/par2015-pdfs/ls-050515/557.pdf'

- RESTRICTED - "Restricted" "shall be applied to information and equipment which is essentially meant for official use only and which should not be published or communicated, to anyone except for official purpose."

- UNCLASSIFIED – "The designation UNCLASSIFIED is used to identify information and equipment that does not require a security classification."

However, the said classification is extremely ambiguous and this classification rests with the government. Also, no procedure has been prescribed for the same.

Talking about the declassification of these documents, the Public Records Act, 1993 and the Public Records Rules, 1997 defines declassification as follows:

> "*Declassification means downgrade the security classification after their evaluation*."[177]

With regard to the Down-grading of classified records, it states that, "*The records creating agency shall by an office order authorize an officer not below the rank of the Under Secretary to the Government of India to evaluate and downgrade the classified records being maintained by it. A copy of such office order shall be forwarded to the Director General or Head of the Archives, as the case may be.*"

"*Also, the officer so authorized shall evaluate the classified records every fifth year for the purpose of down-grading.*"[178]

[177] NATIONAL ARCHIVES OF INDIA – RTI Handbook

[178] ibid

# PROVISIONS OF THE ACT

Section 3[179] of the Official Secrets Act, 1923 provides for the penalties for spying. But what is to be noted here is that an accused person can be convicted under this section, even if no act against state safety or integrity is proved. Instead, his guilt could be inferred solely from his character or conduct.

[179] "**3. Penalties for spying. —**
(1) 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; or
(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or 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 1 [or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States]; he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years. (2) On a prosecution for an offence punishable under this section
2 ***, it shall not be 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 was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document, 3 [information, code or pass word 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."

Section 4[180] of the Act makes mere communication of an accused under Section 3 a ground for presuming guilt. It even prohibits communication with any person who is reasonably suspected of being a foreign agent.

Section 5[181] of this Act talks about the disclosure of secret information. Such secret information might include any "*secret official code or pass word or any sketch, plan, model, article, note, document or information.*"

---

[180] "4. **Communications with foreign agents to be evidence of commission of certain offences.**

(1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with a foreign agent, whether within or without 4 [India], shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained-or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to any enemy. (2) For the purpose of this section, but without prejudice to the generality of the foregoing provision,(a) a person may be presumed to have been in communication with a foreign agent if (i) he has, either within or without 4 [India]; visited the address of a foreign agent or consorted or associated with a foreign agent, or (ii) either within or without 4 [India], the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person;"

(b) the expression "foreign agent" "includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without 1 [India], prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without 1 [India], committed, Or attempted to commit, such an act in the interests of a foreign power; (c) any address, whether within or without 1 [India], in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent."

[181] **5. Wrongful communication, etc., of information. —**

(1) "If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, 2 [or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States 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 office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government,

Under this section, a person receiving any confidential information might also be held liable. Hence, even the receipt of any official secret information, in violation of the provisions of the Official Secrets Act, 1923 would amount to an offence under this section.

Also, a person receiving any official secret information from a public officer would be guilty of an offence, if he communicates the same to any other unauthorised person.

In the case of *RK Karanjia v. Emperor*[182], an article was published by a newspaper called *Blitz*, calling upon the public to leak official secrets to its editor. The newspaper had also offered a hefty payment in exchange of such information.

The Article read as follows: "*INFORMATION PLEASE Blitz's overall policy is to give its readers the fullest information on all topics -- secret or otherwise -- affecting them. As such, this paper is not bound by an antiquated convention which debars the press from releasing to the common people official secrets, confidential documents, leakages of such news as are sought to be suppressed from public knowledge. Such information is always most welcome*

---

or as a person who holds or has held a contract made, on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract— (a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it or a Court of Justice or a person to whom it is, in the interests of the State his duty to communicate it; or (b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or (c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or (d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information; he shall be guilty of an offence under this section. (2) 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 code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section. (3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section. "1 "[(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]"

[182] RK Karanjia v. Emperor, AIR 946 Bom. 322.

*when brought to the editor, and will be paid for at lavish rates. Blitz has in the past paid as such Rs. 1000/-and over for one such story ..... EDITOR*".

Such transfer of information was alleged to be in contravention of Section 5(1) of the Official Secrets Act, 1923. The Bombay High Court held that "*It is no doubt true that nowhere is the expression official secrets defined, but looking to the purpose and scheme of the Official Secrets Act, especially Sections 3 to 10, which create offences against the Government for publication of official secrets, they have all reference to secrets of one or the other department of the Government or the State and not to any secrets of a private office. In our opinion the expression official secret is ordinarily understood in the sense in which it is used in the Official Secrets Act. "If the secret pertains to any private office such as, for instance, the office of the University or the Corporation it would not be called an official secret but as a University secret or a Corporation secret. But the term official by itself has obtained the meaning attached to it in the Official Secrets Act, and in our opinion that is the sense in which it would be understood by readers of this news magazine." We are, therefore, unable to hold that "official secret" is a wider term including secrets of any private institution".*

Further, it was also held that, "Section *5, Sub-section (1) is very comprehensive in its nature and it applies not merely to Government servants but also to all persons who have obtained that secret in contravention of this Act.*"

The court finally had held that it was not concerned with the intent of the words, but only their tendency and in the present case, the words used possessed a tendency to incite any person to commit an offence.

Further**,** in the case of *State of Kerala vs K. Balakrishna and Anr*[183], a newspaper had published certain parts of the budget before its presentation. The Court in this case held that even though there was no explicit or express rule declaring the budget to be a secret document, the same could be inferred from the statements of the witnesses produced in the case and also from the books on constitutional law.

The constitutional law book of E. C. S. Wade and G. Godfrey Phillips was referred to and the court inferred that, "*Shortly after the opening of the financial year in April, the Chancellor of the Exchequer "opens his Budget" in the Committee of Ways and Means. The traditional Budget statement falls into two parts. The first is a retrospect of the past year,*

[183] State of Kerala vs K. Balakrishna and Anr, AIR 1961 Ker 25, 1961 CriLJ 80

*comparing yield of revenue with estimated yield, and actual with estimated expenditure. The second part deals with (1) the estimated expenditure of the new year, which is already known to members and the public through the publication by March of the new year's estimated expenditure and (2) the Chancellor's proposals for meeting it out of taxation on the existing basis, together with his intention as to the imposition of new or the remission of existing taxation. These matters are closely guarded secrets until the Budget is opened, in order that steps may not be taken to forestall them, e. g., by dumping of goods or speculation on the stock exchange". "This passage lends support to the view that Budget matters are guarded secrets until the Budget is actually presented in the Legislature."*

Hence, the unauthorised publication of the budget would attract the application of Section 5 of the Official Secrets Act, 1923.

The court asserted that, "It is certainly a serious offence which might have far reaching consequences and repercussions on the economy of the State."

The same issue later again popped up in the case of *Nand Lal More vs The State*[184]. However, the argument advanced in this particular case was that the budget proposals could not be considered to be secret as they were required to be made public later on.

However, the Court rejected this contention. It was held that, "*The fact that on a subsequent date the budget proposals have to be made public would not detract from the secrecy of those proposals till such time as they are announced in Parliament. The observations in the book on Constitutional Law by E.C.S. Wade and G. Godfrey Phillips show that budget proposals are closely guarded secrets until the budget is opened, in order that steps may not be taken to forestall them."*

Later on, in the case of *S.P. Gupta vs President of India and Ors*[185], popularly known as the 'judges transfer case', an issue arose due to the non-appointment of two judges. In order to prove the discrepancy in appointment, the petitioner sought the disclosure of documents containing the correspondence between the law minister, the Chief Justice of Delhi, and the Chief Justice of India.

[184] Nand Lal More vs The State, 1965 CriLJ 393

[185] S.P. Gupta vs President of India and Ors, AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365

In reply, the respondents relied on Article 74(2)[186] of the Constitution of India, which provides that advice tendered by Ministers to the President shall not be inquired into in any court.

Also, they cited section 123[187] of the Indian Evidence Act, to assert the fact that evidence derived from unpublished official records relating to any affairs of the State cannot be given away without express permission.

The Court in this case held that, "*now it is obvious from the Constitution that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfil the*

[186] "**74. Council of Ministers to aid and advise President**

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice: Provided that the President may require the council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court"

[187] "**123. Evidence as to affairs of State. —**

No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit."

*role which democracy assigns to them and make democracy a really effective participatory democracy"……. "There can be little doubt that' exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is clean government and a powerful safeguard against political and administrative aberration and inefficiency."*

The Court then drew a distinction between the advice rendered by the Council of Ministers to the President and the correspondence between the law minister, the Chief Justice of Delhi, and the Chief Justice of India. It held that while the former was protected from judicial assessment, the latter wasn't.

With respect to section 123 of the Indian Evidence Act, the Court held that, "*even where a claim for immunity against disclosure of a document is made under Section 123, the Court may in an appropriate case inspect the document in order to satisfy itself whether its disclosure would, in that particular case before it, be injurious to public interest and the claim for immunity must therefore be upheld. Of course, this power of inspection is a power to be sparingly exercised, only if the Court is in doubt, after considering the affidavit, if any, filed by the minister or the secretary, the issues in the case and the relevance of the document whose disclosure is sought."*

It stated that the "*only two grounds on which the decision of non-appointment of judges can be challenged is that firstly, there was no full and effective consultation by the Central Government with the Chief Justice of the High Court, the State Government and the Chief Justice of India before reaching the decision and secondly, that the decision is mala fide or based on irrelevant considerations and in the present case, both these grounds are applicable.*"

Also, public interest was reiterated as a major ground for permitting disclosure. Hence, it was held that the matter related to the appointment of judges was a matter of great public importance and its disclosure would be justified.

Hence, the claim of secrecy made by the government was ultimately rejected by the Court and the disclosure of the concerned documents was made mandatory.

Section 8(2)[188] in The Right to Information Act, 2005 states that a public authority would be allowed to disclose any information, in public interest, notwithstanding anything contained in

[188] "8. Exemption from disclosure of information. —

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, —

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests."

the Official Secrets Act, 1923 or the exemptions that have been provided for under Section 8(1), if such disclosure outweighs the harm that might be caused to the interests sought to be protected.

Also, it must be noted that Section 22[189] of the Right to Information Act, 2005 clearly states that its provisions would have precedence over the provisions and restrictions imposed by the Official Secrets Act, 1923.

(3) "Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

[189] "**22. Act to have overriding effect. —**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

# CASES

In the year 2002, "Iftikhar Gilani, the New Delhi bureau chief for the Jammu-based newspaper *Kashmir Times* and a regular contributor to the German broadcaster Deutsche Welle, as well as to the Pakistani newspapers *The Friday Times* and *The Nation* was arrested."[190]

His arrest was made under the Official Secrets Act for possessing classified documents. He allegedly was in possession of a paper which had been published by the 'Institute of Strategic Studies, Islamabad'. This paper contained information on the deployment and placement of Indian troops in Kashmir.

However later, this document was found to be available on the internet and hence, could not be claimed to be classified. Moreover, the document could not be held to be an "official secret" under the Indian Act, as it had originated in Pakistan.

"*The only evidence against Gilani cited by the government so far is a public document released in 1995 by Pakistan's Foreign Ministry that includes information about alleged human rights abuses committed by Indian troops in Kashmir, according to R.M. Tufail, Gilani's lawyer.*"[191]

The military stated that "the information contained in the document is easily available" and "the documents carry no security classified information and the information seems to have been gathered from open sources".[192]

However, until the case against him was withdrawn, he was detained in Tihar jail till January 2003. This is definitely not an isolated incident but, is a lucid evidence of the misuse and abuse of the of the Official Secrets Act.

---

[190] 'India: Journalist arrested under Official Secrets Act, June 13, 2002, https://cpj.org/2002/06/india-journalist-arrested-under-official-secrets-a/'

[191] ibid

[192] The Official Secrets Act, 1923: A look at what it contains, when was it reformed and who's been implicated under it - https://www.firstpost.com/india/the-official-secrets-act-1923-a-look-at-what-it-contains-when-was-it-reformed-and-whos-been-implicated-under-it-6216371.html

Next is the case of Shantanu Saikia, a journalist, who had published certain excerpts from a cabinet note in The Financial Express. "Saikia was arrested in 1999 for publishing the contents of a note from the Cabinet of India regarding divestment policy. Three years later, after an unsuccessful investigation into the identity of the individual who leaked the Cabinet note to him, Saikia was charged with violating the Official Secrets Act. The prosecution extended over seven years. Finally, in 2009, a criminal court judge dismissed the case on two grounds. First, the court found no actual harm to the state resulted from the disclosure of the document at issue— indeed, it was common for news outlets to report on Cabinet papers. Second, the court adopted a narrow interpretation of the law—following the Indian Supreme Court's narrow interpretation of the OSA's espionage provisions—in concluding that the OSA only provided sanctions for the unauthorized communication of a secret official code or password, not of a document bearing a secret designation."[193]

Further, in the case of *Manohar Lal Sharma vs Narendra Damodardas Modi* , where 'The Hindu 'was being blamed for the confidential information relating to the Rafale deal from the Ministry of Defence, the court had held that, **"***Section 8(2) of the Right to Information Act (already extracted) contemplates that notwithstanding anything in the Official Secrets Act and the exemptions permissible under subsection (1) of Section 8, a public authority would be justified in allowing access to information, if on proper balancing, public interest in disclosure outweighs the harm sought to be protected. When the documents in question are already in the public domain, we do not see how the protection under Section 8(1)(a) of the Act would serve public interest… It is clear that under the Right to Information Act, a citizen can get a certified copy of a document under Section 8(2) of the RTI Act even if the matter pertains to security or relationship with a foreign nation, if a case is made out thereunder. If such a document is produced surely a claim for privilege could not lie.*"

[193] 'Katharine Larsen and Julia C. Atcherley, *Freedom of Expression-Based Restrictions on the Prosecution of Journalists Under State Secrets Laws: A Comparative Analysis*, 5 J. INT'L MEDIA & ENTERTAINMENT LAW'

# CONCLUSION

-

The report of the 'Second Administrative Reforms Commission (ARC) on the Right to Information', had sought the repeal of the Official Secrets Act.

However later, when these recommendations were forwarded to a Group of Ministers (GOM), it accepted many of the suggestions and suggested amendments, but rejected the repeal of the Act.

In July 2017, The Union Ministry of Home Affairs had reportedly sought certain changes in the Official Secrets Act, in order to make it more transparent. Accordingly, it had also reviewed the provisions of this Act.

Thereafter, suggestions were made in this regard, with reference to the Right to Information Act to the Cabinet secretariat.

What can be concluded from the above discussions is that the Official Secrets Act is no doubt an all-inclusive legislation, meant to safeguard the country against enemy intrusion and leakage of secret information, but on the flipside, it also served the vested interest of gagging the voices of newspapers and journalists.

This Act is strictly contradictory to the right to information of the citizens. Also, it is vague and arbitrary in its classification and application.

But, after all being said, we cannot deny the fact that the repeal of this Act, in the absence of any other suitable legislation, might expose India to enormous amounts of security breaches. Hence, the only thing that can be done is the reconfiguration of this Act in the context of modern democracy.

# CHAPTER – 7

# CONCLUSION AND RECOMMENDATIONS

In the preceding chapters, *firstly*, an attempt has been made to analyze the role and significance of the media in India. *Secondly*, the evolution of media, over the years, has been traced. *Thirdly*, the role of the judiciary in the upliftment of media has been highlighted. *Fourthly*, the threat posed by the parliamentary privileges to the freedom of media has been put forth and *lastly*, the press freedom has been critically analyzed in the backdrop of the various limitations imposed upon the same by the Official Secrets Act, 1923. Hence, certain conclusions can be now drawn accordingly.

Dissemination of information by the media has been the highlight of the new age. It has been an indication of the evolution and the strengthening of the fundamental rights of the citizens, the right to freedom of speech and expression to be precise. The transformation brought about by the media has been so massive, that it has now been accepted to be a crucial pillar of any democracy.

However, what can be noted is that India is yet to realize the true potential and significance of the media. Despite the Supreme Court's holdings highlighting the indispensable role of the media, it has never been able to accord a secure position to it in the Indian setup. Besides, the lack of any legislation to safeguard the media standing leaves it at the mercy of the judiciary to step up to its aid in times of crisis.

The current study clearly reveals that the media has been and is being treated as additional element of democracy instead of an inherently essential one.

The first chapter has been an attempt to provide a brief introduction to the topic. It highlights the basis for the selection of this topic. It also provides its scope. This chapter puts forth the need for taking up this topic, which, as is now established, is to bring to light the role, evolution and impediments faced by the media in India. Ever since the colonial era, the media in India has constantly endeavoured to bring forth the atrocities committed by those in power. It has been acting as the watchdog of our democracy ever since.

It has, time and again, performed the herculean task of keeping a check on the government, its activities and its policies. It has been the medium of expression of the general public's opinion, which has been established as the hallmark of a strong and functional democracy. It has been voicing peoples' grievances ever since its inception during British India.

It has strengthened the system of checks and balances and kept the democratic organs within due bounds. Hence, gradually, the role of media received recognition and consequently, the right to freedom of the press came to be regarded as a fundamental constitutional right under Article 19(1)(a) of the Indian Constitution. Furthermore, the judicial judgements in this regard have further strengthened its standing and position.

However, despite these efforts, the freedom of media in our country has been noted to be extremely superficial and illusory. Over time, a number of factors have emerged as impediments in the smooth, efficient and autonomous functioning of the media. These restrictive conditions have impaired the media's independence and have rendered its worth pendulous.

This dissertation is an attempt to comprehend the obstacles in the way of media freedom. It also aims at analysing the factual positioning of media freedom in the country, in the backdrop of the concerned restrictions.

The second chapter brings forth the significance and the role of the free press in any democratic setup. Democracy being people's governance, the role played by the media is of paramount importance. It is the voice of the general population of the country.

Hence, a multitude of judicial pronouncements have been made, wherein the emerging significance of the media has been put forth by the judiciary. Additionally, the media has been instrumental in initiating proceedings against the corrupt leaders in the context of scams. The exposes and stings conducted by the newspapers and media channels have helped in uncovering numerous undemocratic and corrupt practices.

In the same context, the media has been the record keeper of sorts, as far as the fulfilment of pre-election claims is concerned. By keeping a constant tab on politicians and the elected leaders, the media has turned into a logbook of their activities and wrongdoings. This has, in turn, enabled the citizenry to make informed and educated choices during elections.

Also, undeniably, it has been an instrument of social change. It has furthered collective public sentiments on varied societal issues and evils. One may even go to the extent of saying that this has led to faster and more favourable judicial pronouncements with regard to various pressing issues.

These vigilant and proactive initiatives of the Indian media have also helped in garnering international attention on several occasions. This has provided further impetus to India to adhere to international standards of human rights. As has been observed, this has influenced policy decisions as well, which has culminated in the enactment of more favourable and public oriented legislations.

Lastly, the media has also played the role of an educator to the masses. Consequently, it has encouraged the inculcation of a scientific attitude amongst the general populace.

Hence, it can be safely concluded that the media's role is indispensable in more ways than one. Its autonomy and independence are crucial to the functioning of our country's democratic setup. Thus, stringent steps need to be taken in order to secure its authenticity.

The third chapter traces the evolution of the media and its freedom in India. The freedom of media took root in British India, where it was at the mercy of the British will. The history of media in India is certainly not devoid of courageous attempts at unfolding the evil, inhuman and inherently discriminatory practices of the colonists.

The editors of several early newspapers had to face adverse repercussions on account of the candid publication of the British wrongdoings.

As will be observed from this particular chapter, the freedom of media during the British era has undeniably had to endure several hurdles. Most of the British servants had attempted to supress free publication in order to prevent the rise of dissent against the colonial regime.

Nevertheless, the underlying rationale of many of these newspapers was to disseminate information regarding the colonialists' unjust activities. This acted as a fuel that motivated their fearless publications.

But, it must also be noted there were certain governors-generals, though very few, who did believe in according freedom to India's press. However, in the end they had to face the ire of the British administration due to their liberal administration and attitude towards the press.

Later on, the press came to be charged under sedition laws in an attempt to thwart publication of information that might lead to general resentment against the British government. Section 124 -A of Indian Penal Code provided for the same. Also, legislations were enacted by the British administration, time and again, with the sole aim of restricting publication.

It was after independence that the press freedom in India actually flourished in its true sense. Though it was not expressly mentioned, it was intended to be a part of the right to freedom of speech and expression during the drafting of the constitution.

However, the 1975 emergency period could be viewed as a brief return of the dark ages as far as the freedom of press is concerned. But, this was remedied when the Janata government came to power in the later elections. The press freedom came to be restored again and this time with added security in the form of Article 361A, inserted by the Constitution (Forty-fourth Amendment) Act, 1978.

Even later on, the press freedom remained more or less untouched by the subsequent governments. On the contrary, it is unfortunate to note that the freedom of press in India is currently on the decline. This is evident from our reprehensible World Press Freedom Index rankings, which are becoming progressively worse with each passing year.

Thus, it can be concluded that the freedom of press, which saw a positive upward trend post-independence, is now experiencing the same censorship and uncertainty which it did during the pre- independence period under the colonial regime.

The fourth chapter talks about the Supreme Court's contribution in upholding the freedom of press. We may even go to the extent of saying that the press owes its very existence and freedom to the proactiveness of the judiciary.

As far as the taxation of newspapers is concerned, the Supreme court has, since the very beginning, taken a stand that though the government has the right of taxation of newspapers, but any tax which tends to affect the circulation of newspapers is prohibited. Thus, the taxes and duties imposed must in no way be excessive or unreasonable, so as to impair the functioning and publication of the newspapers.

In the context of advertisements in newspapers, the judiciary's stand has been that they are a part of freedom of speech and expression, but would receive no protection thereunder, on account of their purely money-oriented rationale.

In certain cases, the court has also ordered the compulsory publication of information in public interest. The right to reply was held to be a part of the freedom guaranteed under Article 19 (1) (a) in the case of *L.I.C of India V. Munubhai. D. Shah.*

With regard to obscenity in publications, the court, in the later cases, has limited the scope of application of section 292 of the I. P. C, which provides for the punishment for the sale of obscene books. It has made an attempt to bring the law related to obscenity at par with the progressing times and as a result, it is now applied less rigidly.

As far as its own contempt is concerned, the judiciary's stance has been a balanced one. More often than not, it has treated it own contempt with leniency, except when gross attempts have been made to lower its standing or to scandalise the reputation of judges.

What can be seen is that the court has exercised its power to punish for contempt solely to avoid the distortion of the faith of the general pubic over the judiciary of the country.

It has always taken fair criticism in its stride and has even encouraged it as being an essential part of the right to freedom of speech and expression.

As far as defamation being a reasonable restriction against publication is concerned, the court has taken a mixed view on a case-to-case basis. It has held that the mere assumption of plausible defamation cannot be an excuse to thwart publication.

But, on the other hand, it has, in several cases, stayed the publication of materials that might defame or affect the standing of an individual in the society. It has held that the right to reputation is also a fundamental human right. Hence, the freedom of press cannot be used as an excuse to defame any individual.

Nevertheless, the court has held that the right to publish the proceedings of the court is a part of the right to freedom of speech and expression.

Also, the court has ordered the publication of the criminal antecedents of the candidates of political parties. This step has been taken by the judiciary, in order to control the growing criminalisation of politics in India. This would, in turn, enable the citizenry to make better and informed decisions.

Thus, we can conclude that the courts had recognised the crucial role of the press at the very start. The judiciary has hence, made a thoroughly conscious and proactive attempt to augment press freedom in India. It has attempted to reconcile the freedom of media with the other provisions of the constitution as well as with the reasonable restrictions imposed upon the freedom of speech and expression.

The fifth chapter talks about the apparent conflict between parliamentary privileges and freedom of the press. Parliamentary privileges have been acting as an impediment in the free flow of information to the citizens. The media too is barred from publishing content that might affect the privileges and standing of the members and the houses. One may argue that these privileges have been put in place in order to maintain the integrity and also for the smooth functioning of the parliament. But, more often than not, these privileges have been wrongfully used by the parliament to thwart the publication of crucial revelations to the general public.

The underlying cause of this ongoing tussle between the media and the parliament is the lack of codification of these privileges. Codification would accord certainty to these privileges. Also, it would enable the media to comprehend and anticipate the scope and extent of these privileges. This would in turn enable it to avoid any plausible breaches of privileges or contempt of the houses. It would avoid unnecessary proceedings being instituted against unsuspecting media houses.

Up until now, what has been observed is that the parliament has been ever so reluctant to codify its privileges. This is because, once codified, these privileges would then be considered as "law" and would be subject to scrutiny by the courts. Codification would delimit their ambit and then they would be checked on the touchstone of all constitutional provisions. Hence, due to this very reason, no attempt has been made, till date, by the parliament to make any law to this effect.

The media is supposed to be an honest and candid reporter of the parliamentary happenings and events, but, the constant allegations levied and suits instituted by the parliamentarians against several media establishments has affected its autonomy severely. It can now be lucidly observed that the media favour and reporting has swayed in the direction of the ruling party.

The fear of being apprehended for any allegedly "offensive" information has cast a shadow of doubt over the media's status as an instrument of keeping a check over the activities of the legislature.

The official Secrets Acts, 1923 is yet another blot on the free press regime that is attempting to take roots in India. This law of British origin has unfortunately held its ground in India, despite the termination of colonization.

As far as the press is concerned, it attempts to restrict every other piece of important information and successfully does so too. It has become a means to threaten and choke the voice of the free press.

This draconian law is loosely framed and vague in its application. It makes no attempt at defining as to what would constitute the revelation of secret information. Its mere existence is like a dangling sword over the media establishments. By allowing the government to decide as to what would be treated as "secret", it confers extremely wide discretionary powers, which have been subjected to constant abuse.

Also, the process of classification of documents as 'top secret', 'secret', 'confidential', 'restricted', and 'unclassified' is again subject to the exercise of wide discretion and lacks any proper format, criteria or procedure.

Such discretionary treatment leads to widespread confusion and abuse.

The necessity of the Official Secrets Act was felt in order to safeguard those government secrets, the revelation of which might adversely affect the integrity and security of the nation. However, in the recent times, this objective has been wholly lost. The Act is now being used as a veil to hide the immoral/illegal dealings of the political parties that are or have been in power.

It is being used as a means of supressing the dissent, which the media platforms might create by publishing politically critical data.

# SUGGESTIONS

1. Firstly, there is a need to recognise the worth and importance of the press in the growth and development of our democracy. Accordingly, the freedom of press must be viewed and reconciled in the backdrop of the reasonable restrictions imposed by the constitution, so as to give it more room for disseminating true and crucial information in public interest.

2. The Constitution may also include an express provision to safeguard the freedom of press, rather than leaving it to the interpretation of the judiciary. Such express mention would bring the freedom of press at par with the other provisions of the constitution.

3. India is under an obligation to adhere to the global standards of press freedom. It must strive to raise its ranking in the World Press Freedom Index, because the openness of the press and freedom of publication are strong indicators of a functional and progressive democracy.

4. Also, the judiciary needs to take a firm stand with regard to the freedom of media. It needs to set precedents and also adhere by them. It may, through judicial pronouncements set forth guidelines to safeguard the autonomy of the media until a substantial law is framed in this regard by the legislature. However, the ultimate task of framing and enacting the legislation should be left to the legislative wing alone.

5. The declaration of freedom of press as a part of the right to freedom of speech and expression has been a step in the right direction. Nevertheless, there exists a dire need to enact a legislation to strengthen the position and standing of the media. The legislature needs to step up and take the responsibility of forming a comprehensive legislation that would lucidly define the scope of the freedom of the press. The said legislation needs to clearly outline the rights possessed by the newspapers, media channels and media personnel as well. Such a legislation would be useful in providing a structure to the presently unorganized media in India as well. This legislation may also define the relation of the media with the other organs of governance, so as to avoid any future conflict.

6. The formation and enactment of such a legislation governing media freedom must be made after effective deliberation and consultation with the experts of the media field. The legislature may even form a panel consisting of media personnel/experts and legal luminaries, in order to form a well-rounded law in this regard. The suggestions of this panel need to be given due consideration and the prospective legislation needs to be reconciled with the existing ones and especially with the Constitutional provisions which impose certain restrictions.

7. Parliamentary privileges, though essential for the smooth functioning of the Parliament, should not be permitted to intervene, or rather completely nullify, the freedom of the press. The press acts as a watchdog by keeping a check on the activities of the parliament and the parliamentarians and hence, the absolute and unfettered authority to oust the press should not rest solely with the parliament. At the very least, the ouster of the media from the proceedings of the house must be supported by valid reasons, with the exception of exemption from disclosure in public interest.

8. The official Secrets Acts, 1923 also needs a through review in order to augment press freedom. The arbitrary and unjust provisions of the Act, which constantly tend to threaten fair reporting and publication must either be done away with altogether or at least amended. Moreover, the Act should include a clear and decisive definition of the term "secret" in order to prevent any confusion and abuse of the provisions of the Act. Also, the criteria for classification of secret/classified information/documents must also be added to the Act, so as to prevent arbitrary practices of categorisation of official data.

9. On the flip side, a code of conduct for the functioning of media personnel is also a necessity. This would enable the media sector to organise and streamline its activities and also to form a uniform set of rules and regulations capable of universal application. Such an organised and standard procedure would provide credibility to the currently chaotic and scattered organisation of the press. Also, if the media indulges in self-regulation, it would be in a better position to secure freedom and standing in the society. Such self-regulation would also enhance the public trust in the institution of press.

10. The Press council could also be given autonomy and power to regulate the press and to ensure the enforcement and observance of the code of conduct. Additionally, the Council could be empowered to prescribe and ensure the adherence of certain ethical standards. It could also perform the task of training the journalists and spreading general awareness.

# BIBLIOGRAPHY

**BOOKS**


1. M.P. JAIN, CONSTITUTION OF INDIA, EASTERN LAW COMPANY (2008).
2. M. LAXMIKANTH, INDIAN POLITY (5TH EDITION)
3. D.D. BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA
4. HM SEERVAI, CONSTITUTIONAL LAW OF INDIA A CRITICAL COMMENTARY (1986)
5. SRINIVASAN C.P, THE PRESS AND PRESS AND THE PUBLIC, NABU PRESS, (2011)
6. MARGARITA BARNS, THE INDIAN PRESS, G. ALLEN & UNWIN LIMITED, (1940)
7. S. NATARAJAN, A HISTORY OF PRESS IN INDIA, NEW YORK: ASIA PUBLISHING HOUSE, [1962]


**ARTICLES**


1. Janna Anderson, Lee Rainie, *The positives of digital life*, PEW RESEARCH CENTER, (2018)
2. Justice V. R Krishna Iyer, *Law, Freedom and Change*, 68 EAST WEST PRESS PVT LTD. NEW DELHI, (1975)
3. University of the Cumberlands, HOW FACT-CHECKING CAN HELP US STAY INFORMED IN THE DIGITAL AGE (02/11/2020)
4. Cherif Bassiouni (General Rapporteur), David Beetham, Justice M. Fathima Beevi (Ms.), Abd-El Kader Boye, Awad El Mor, Hieronim Kubiak, Victor Massuh, Cyril Ramaphosa, Juwono Sudarsono, Alain Touraine, Luis Villoro, DEMOCRACY: ITS PRINCIPLES AND ACHIEVEMENT, Inter-Parliamentary Union Geneva, (1998)

5. Livingstone, S., and Lunt, P., The mass media, democracy and the public sphere. In Talk on Television: Audience participation and public debate (9-35). London: Routledge., (1994).
6. Rammohan Khanapurkar, Shalini Bhorkar, Ketan Dandare, Pralhad Kathole, Strengthening the Online Education Ecosystem in India ORF Occasional Paper No. 282, (2020)
7. Rushda Majeed and Pallavi Nuka, Modernizing The State, Connecting To The People: Bihar, India, Princeton university, (2005 – 2012)
8. Alok Mehta, Power, Press and Politics: Half a Century of Journalism and Politics, (2021)
9. Rajvanshi, Anjula, Media and Rural Society A Study, (2019)
10. Anthony Fowler, Electoral and Policy Consequences of Voter Turnout: Evidence from Compulsory Voting in Australia, Quarterly Journal of Political Science, 159–182, (2013)
11. Wojtasik, Waldemar, Functions of Elections in Democratic Systems. Political Preferences, 4. 25-38., (2013)
12. Political Reputations And Campaign Promises, JOURNAL OF THE EUROPEAN ECONOMIC ASSOCIATION, 846–884, (2007)
13. Rew, M & Gangoli, Continuities and change: the law commission and sexual violence, 6, Journal of Indian Law and Society, 110-124, (2018)
14. Preeti Pratishruti Dash, Rape adjudication in India in the aftermath of Criminal Law Amendment Act, 2013: findings from trial courts of Delhi, Indian Law Review, (2020)
15. (Bodo & Szabo, 2011; Neubauer & Fradella, 2013), Influence of Trial by Media on the Criminal Justice System in India - V.V.L.N. Sastry - Walden University, (2019)
16. Stapenhurst, Rick, The Media Role in Curbing Corruption, (2000)
17. Katrin Voltmer & Sigrid Koch-Baumgarten, Public Policy and the Mass Media: Influences and Interactions - ECPR Joint Sessions of Workshops – Helsink, (2007)
18. Meera Mathew, Media Self- Regulation in India: A Critical Analysis - ILI Law Review, (2016)
19. Jane Borges, the journalist who accused Warren Hastings of erectile dysfunction, (2018),https://web.archive.org/web/20200920020423/https://www.mid-day.com/articles/the-journalist-who-accused-warren-hastings-of-erectile-dysfunction/19391172

20. Reshma. U.R., EVOLUTION OF INDIAN PRESS - JOURNAL OF NATURAL REMEDIES, 21, 160-162, (2020).
21. Joseph W Elder, Chapters in Indian Civilization- British and Modern Period U.S. Department of Health, Education & Welfare Office of Education, (1967)
22. Jawhar Sircar, India's Oldest Newspaper: The Calcutta Gazette, THE SUNDAY STATESMAN, Literary Supplement, (1984)
23. Codell, Julie, Introduction: The Nineteenth-Century News from India, Victorian Periodicals Review, 106-123, (2004)
24. Partha Chatterjee, The Black Hole of Empire History of a Global Practice of Power, PRINCETON UNIVERSITY PRESS, (2012)
25. Syed Razi Wasti, Lord Minto and the Indian Nationalist Movement, with Special Reference to the Political Activities of the Indian Muslims, 1905-1910, (1962)
26. Prasun Sonwalkar. Indian Journalism in the Colonial Crucible, Journalism Studies, (2015)
27. Bose, P. N. and Moreno, H. W. B., A Hundred Years of the Bengali Press, (1920)
28. CONTRIBUTION OF RAJA RAM MOHAN ROY'S TO LITERATURE AND JOURNALISM- Int. J. Adv. Res. 4(12), 2610-2616
29. Md Yousuf, Raja Rammohan Roy and Bengal Press in The Early Nineteenth Century: A Critical Study, 10, , INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY EDUCATIONAL RESEARCH, (2021)
30. Dilip Kumar Chattopadhyay, The age of reform and liberal experiments in British India by Lord Bentinck and Lord Dalhousie - University of Nebraska at Omaha (1974)
31. Pratiyush Kumar & Kuljit Singh, Media, the Fourth Pillar of Democracy: A Critical Analysis, IJRAR- INTERNATIONAL JOURNAL OF RESEARCH AND ANALYTICAL REVIEWS, (2019)
32. P.Sitaramiyya, The History of Indian National Congress, Published by Facsimile Publisher, (2016)
33. Hena Naqvi, Journalism and Mass Communication. UPKAR PRAKASHAN, (2007)
34. Muhammad Azeemuddin, Sir Sayyad Ahmad Khan: The Editor and Journalist, Volume 3, INTERNATIONAL JOURNAL OF ALL RESEARCH EDUCATION AND SCIENTIFIC METHODS (IJARESM), (2015)
35. Bhagwat Prasad Singh, Censorship of the Indian press between 1857 and 1945, University of Iowa, (1949)

36. M. Javaid Akhtar, Azra Asghar Ali, Shahnaz Akhtar, The Role of Vernacular Press in Subcontinent During the British Rule: A Study of Perceptions, 30, PAKISTAN JOURNAL OF SOCIAL SCIENCES (PJSS), 77-84, (2010)
37. Bhagwat Prasad Singh, Censorship of the Indian press between 1857 and 1945, University of Iowa, (1949)
38. B. Pattabhi Sitaramayya, History of Indian National Congress - I (1885-1935)
39. C K Mathew, First Amendment to Constitution of India, 2, ECONOMIC & POLITICAL WEEKLY (2016)
40. Bimanbehari Majumdar, Militant nationalism in India and its socio-religious background, 1897-1917, (1966)
41. Raman, V., Press Gagging: Implementation of Press Ordinances in The Madras Presidency, 1930 AND 1932. Proceedings of the Indian History Congress, 63, 546-560. Retrieved June 19, 2021, from http://www.jstor.org/stable/44158122, (2002)
42. Malhan, P., Liberty of The Press in India, THE INDIAN JOURNAL OF POLITICAL SCIENCE, 14(1), 39-49. Retrieved June 19, 2021, from http://www.jstor.org/stable/41853739, (1953)
43. Rajeev Dhavan, The Press and The Constitutional Guarantee of Free Speech and Expression, 28, JOURNAL OF THE INDIAN LAW INSTITUTE, 299-335, (1986)
44. PAUL R. BRASS, The partition of India and retributive genocide in the Punjab, 1946–47: means, methods, and purposes, JOURNAL OF GENOCIDE RESEARCH, 71–101, (2003)
45. Dr. Jhumur Ghosh, Indira Gandhi’s Call of Emergency and Press Censorship in India: The Ethical Parameters Revisited, GLOBAL MEDIA JOURNAL, (December 2016 – June 2017)
46. M Chalapathi Rau, The Press after Nehru, THE ECONOMIC WEEKLY, (JULY 1964)
47. Badar Ahmad, Freedom of Press and The Supreme Court: An Appraisal - DEPARTMENT OF LAW - ALIGARH MUSLIM UNIVERSITY ALIGARH (INDIA), (1997)
48. M.R. Masani, India's Second Revolution, Asian Affairs, (1977)
49. Akshayakumar Ramanlal Desai, Violation of Democratic Rights in India, Popular Prakashan, (1986)
50. Kartik Sharma, Freedom of the Press: Using the Law to Defend Journalists, (2009)
51. Dr. Jhumur Ghosh, Indira Gandhi’s Call of Emergency and Press Censorship in India:

The Ethical Parameters Revisited - GMJ INDIAN EDITION, (June 2017)

52. Rahesha Sehgal and Udit Malik, Press Freedom in India: A Legal Study, (2018)
53. K.D. Gaur, Constitutional Rights and Freedom of Media in India, 36, JOURNAL OF THE INDIAN LAW INSTITUTE, 429-454, (1994)
54. Subhradipta Sarkar, RIGHT TO FREE SPEECH IN A CENSORED DEMOCRACY (2008)
55. Matt Peterson and Abdallah Fayyad, The Irresistible Effectiveness of Wedge Politics, THE ATLANTIC, (2017)
56. Frank W. Smith Jr, Obscenity: From Hicklin to Hicklin?, 2, University of Richmond Law Review, (1967)
57. Dalip Singh, Parliamentary Privileges in India, 26, THE INDIAN JOURNAL OF POLITICAL SCIENCE, 75-85, (1965)
58. Rajeev Kumar Singh, Comparative Analysis of Parliamentary Privileges in UK and India: An Overview, 4 INDIAN JOURNAL OF LAW AND HUMAN BEHAVIOUR, (2018)
59. Raghav, Tapesh, Relevance of Right to Speak with Parliamentary Privileges (2012).
60. Prof. Mukul Srivastava, Parliamentary Journalism, UNIVERSITY OF LUCKNOW, https://www.lkouniv.ac.in/site/writereaddata/siteContent/20200407094826247 4mukul_Parliamentary_journalism.pdf
61. Vir Sanghvi, Karanjia and his Blitz, (2008)
62. Jones, Daniel: "Searchlight: Archiving the Extreme." Political Extremism and Radicalism in the Twentieth Century, Cengage Learning (EMEA) Ltd, (2018)
63. Shivprasad Swaminathan, The Conflict Between Freedom Of The Press And Parliamentary Privileges: An Unfamiliar Twist In A Familiar Tale, 22(1) NATIONAL LAW SCHOOL OF INDIA REVIEW, (2010)
64. S.R.Maheswari, Secrecy in Government in India, 25 I.J. P.A. 1101 (1979).
65. Katharine Larsen and Julia C. Atcherley, Freedom of Expression-Based Restrictions on the Prosecution of Journalists Under State Secrets Laws: A Comparative Analysis, 5 J. INT'L MEDIA & ENTERTAINMENT LAW

**STATUTES**


1 Indian Penal Code, 1860

2 RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN LOK SABHA

3 Official Secrets Act, 1923

4 The Indian Evidence Act, 1872


**OTHER AUTHORITIES**


1 REPORT OF THE PRESS COMMISSION – PART 1 –1954.

2 Report No. 248 Obsolete Laws: Warranting Immediate Repeal (Interim Report), LAW COMMISSION OF INDIA, (2014)