



Historical background of freedom of press in India

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Introduction

Historically, the origin of the concept of freedom of the press took place in England. Like other countries the freedom of speech and liberty of the press in England was achieved after a very bitter struggle between the public and crown. From the earliest times, in the West, persecution for the expression of opinions even in matters relating to science or philosophy was resorted to by both the Church and the State, or suppress heresy, corruption of the youth or sedition^[1]. In the beginning Church presented the freedom of thought in religion and then the State suppressed it in politics. Matters assumed importance when the art of printing came to be developed. The press was subjected to a rigorous censorship. Nothing could be published without the imprimatur of the licensure and severe punishments were awarded for publications of unlicensed works. "Political discussion silenced by the licenser, the Star Chamber, the dungeon, the pillory, mutilation and branding"^[2]. Even in the reign of Queen Elizabeth printing was interdicted save in Cambridge, Oxford and London.

"Nothing marked more deeply the tyrannical spirit of the first two Stuarts than their barbarous persecutions of authors, printers and the importers of prohibited books; nothing illustrated more signally the love of freedom than heroic courage and constancy with which those persecutions were borne."^[3]

There was no mention of freedom of speech or liberty of the press in the Petition of Rights of 1628. The fall of the Star Chamber argued well for the liberty of the press, but respite was short-lived, for the restoration brought renewed trials upon the press. Opposition to governmental interference, which has been brewing on for some time, was supported by logical arguments by Milton in his *Areopagitica* (1644), for instance, that free men must have the liberty to know, to utter, and to argue freely according to conscience, above all liberties. The Licensing Act (1644) placed the entire control of the press in the Government. Liberty of the press was interdicted and even news could not be published without license. Then came the Resolutions of 1688; but even in the Bill of Rights of 1688 there was no mention of the freedom of speech or of liberty of the press. The year 1765 came with a bright future for the freedom of press when the Commons refused to renew the old licensing Act. The lapse of this old Act marked the triumph of the press, for thenceforth the theory of free press was recognized and every writing could

be freely published, although of the peril of the rigorous application of the law of libel.

Obviously, the history of freedom of the press, in England, is triumph of the people against the power of the licenser^[4]. William Blackstone in his 4th Book of Commentaries^[5] expressed his views that the liberty of the press was indeed essential to native of a State and the liberty as he supposed was free from any previous restrictions upon publication but State could take action on the matter when it was published and was improper, mischievous or illegal.

Liberty of the press in England thus consists merely in exemption from the licenser. Lord Mansfield C.J. made similar observation in *King v. Dean of Asaph*^[6]. The liberty of the press therefore, primarily consists in printing and publishing anything without any previous license subject to the consequences of law. Freedom of press in England means the right to print and publish anything is not prohibited by law or made an offence, such as sedition, contempt of court, obscenity, defamation, blasphemy^[7]. It is, in substance, mere application of the general principle of the rule of law, namely that no man is punishable except for a distinct breach of law^[8]. It was thus, as a result of a strenuous struggle that the people of the Great Britain secured for themselves the greatest of their liberties the – liberties of opinion.

Position in United States of America

In the United States of America freedom of speech and liberty of press have been separately specifically safeguarded in the constitutions of most of different states. Portions of the constitutions of 48 states have been collected in Cooley's constitutional limitations^[9]. Fifteen states, only namely, Alabama, Arizona, Colorado, Idaho, Illinois, Indiana, Kansas, Missouri, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington and Wyoming do not specifically refer the liberty of the press but content themselves by providing for freedom of speech^[10].

When the First Continental Congress held in 1774, it passed some resolutions which was to be followed by the state constitutions. One of such resolutions was to insert a declaration or Bill of Rights in state constitutions. There was five invaluable rights mentioned in the declaration of rights by the Congress and one of most useful rights was the freedom of press. In 1776, the Virginia Bill of Rights asserted that freedom of press is one of great bulwarks of liberty, and can never be restrained but by despotic governments.

The First Amendment of Federal Constitution of the United

Stated of America which was ratified in 1791, specifically prohibited Congress from making any law which will abridge the freedom of speech or of the press. The Constitution did not elaborate what was meant by 'freedom of the press', but since the United States imported the common law from England. It is natural that the fathers of the Bill of Rights understood it in the Blackstonian sense of absence of prior restraint^[11], and that is evident from the very text of the First Amendment which was drafted in the negative sense, as a prohibition upon the legislative power.

Social and economic developments in the U.S. in modern times, have added a positive content to the initial negative not only absence of prior restraint of any form, as distinguished from subsequent punishment for an unlawful publication,^[12] or freedom from any special restrictions on this medium of expression over and above general restrictions to which every citizen is subject under the general law; but also a freedom from control as to what may be published through the press and from any restriction which may even indirectly hamper that freedom^[13].

In *Bigelow v. Virginia*^[14] this broader aspect of freedom of the press today has been formulated in these words: "the guarantees of freedom of speech and press were not designed to prevent the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential."

The Commission on Freedom of Press in the U.S. was expressed the dual aspect of freedom of the press that: "A free press is free for the expression of opinion in all its phases. It is free for the achievement of those goals of press service on which its own ideals and the requirements of the community combine and which existing techniques make possible. For these ends it must have full command of technical resources, financial strengths, reasonable access to source of information at home and abroad, and the necessary facilities for bringing information to the national market. The press must grow to the measure of this marker"^[15].

It is now firmly established in the U.S., the democracy cannot thrive on 'standardisation of ideas either by legislature, courts or dominant political or community groups'^[16]. On the other hand, it rests on a competition of ideas on public issues and even provocative and controversial views which strike at prejudices and pre-conceptions^[17].

Position in India Prior to 1950

Prior to the advent of Indian present Constitution there was no constitutional or statutory enunciation of the freedom of speech of the subjects or the liberty of the press. The first set of regulations of 1799 was framed by Governor-General Wellesley to counteract the assertion of the freedom of press by a section of Englishmen in the wake of the British rule in India^[18]. The regulations requires newspapers under pain of penalty to print the names of the printers, publishers and editors of newspapers and to submit all material published therein for precensorship by the Secretary to the Government of India^[19]. In 1818 these were replaced by liberal regulations of Governor-General Lord Hastings who favoured a free press^[20].

It may pointed out that upto 1816 all the newspapers/journals were edited or owned by the Englishmen and no Indian was associated with the process in any way. It was during Hastings' time that the first Indian owned newspaper, namely, Bengal Gazette was started in 1816 by Shri Gangadhar Bhattacharjee^[21]. The paper has been described as the pioneer of hundreds of newspapers started by Indians subsequently^[22]. By now the Indian press had also started emerging and asserting itself.

Raja Ram Mohan Rai most prominent forefounder of the Indian journalism published in Calcutta for the first time in the year 1820 the English 'Brahmanical Magazine'. In the same year he also started the publication of India languages newspapers in Bangali and Persian. The position assumed by Raja Roy as the editor of *Mrat-ul-Akbar*, a persianpaper, was that of an educator of the people and the interpreter and mediator between the rule and the ruled. At the end of the 18th century, Roy was the first Indian to use the press services introduced into the country by the various Englishmen in order to spread his social reform ideas to the Indian intellectual in Bengal^[23]. Roy was the first Indian who raised his voice against the British rulers for not granting freedom of press. Together with same English friends, Roy fought for abolition of Sati, for increasing the minimum age of marriage etc.^[24] as well as for unlimited press freedom and political reforms^[25]. However, his propaganda for social reform like the abolition of Sati frightened the government as it could lead to several difficulties^[26].

The free development of an independent Indian press was checked in 1823 through the Press Ordinance was issued by the Governor-General, John Adam providing for the licensing of the press under which all matter printed in a press except commercial matters required a previous licence from the Governor-General. Similar regulations were made in Bombay in 1825 and 1827.

The Ordinance and existing regulations in British India were replaced by the Press Act 1935 popularly known as the Metcalfe's Act, which only required the printer and publisher of every newspaper to declare the location of the premises of its publication. In case of any change a fresh declaration was required. The Act prescribed a fine of rupees five thousand and imprisonment for a term not exceeding two years for not complying with the requirement of declaration^[27]. It is interesting to note that attitude of Sir Charles Metcalfe, who was the acting Governor-General immediately after the sudden resignation of Lord Bentinck, a liberal Governor-General, in March 1935. Metcalfe did not like the licensing of the press under the 1823 Ordinance. He adopted a positive approach towards the press and asked Lord Macaulay, Law Member of the Governor-General in Council – the Central Government of British India to revise the existing laws regarding licensing regulations of the press were indefensible and believed that the repressive press laws in India did not ensure the security of the government and that government did otherwise possess sufficient powers to enforce security and emergency legislation.

Macaulay was, thus, in favour of enacting a legislation in place of the existing one which would enable a printer to publish without obtaining prior permission but at the same

time make him liable for punishment for printing sedition. He wrote that:

“The Act which I now propose is intended to remove both evils, and to establish a perfect uniformity in the laws regarding the press throughout the Indian Empire. Should it be adopted, every person who chooses will be at liberty to setup a newspaper without applying for a previous permission. But no person will be able to print or publish sedition or columny without imminent risk of punishment”^[28].

Macaulay’s draft was opposed by some members of the Council apprehended the native press might undermine British authority. They expressed the view that the native press should not be freed from government control and should be prohibited from including in seditious publications or in discussion dangerous to public tranquility^[29]. Disagreeing with these suggestions the Governor-General observed that it should not be a wise step to make distinction between the European and native subjects. So, the native press should not be subjected to restriction which are inapplicable to the European. Both must be placed on equal footing. There was no reason to believe that the press might endanger British interests in India. Metcalfe warned the members of the Council that the British tenure dependent on attempts to suppress the communication of public opinion could not be lasting, both because such attempts must fail^[30]. After he convinced the members of his Council, the Press Act 1835 was passed. It was hailed as the most liberal Press Act in Indian history^[31].

In fact, from the beginning, the British administration watched the growth of Indian press with displeasure. And this was the reason that when the famous proclamation of Queen Victoria made in 1858 after the British Power was firmly established in India, there was no reference to the freedom of speech or of the liberty of press although it was announced that :

“None be in any wise favoured, none molested or disquieted by reason of their religions faith or observations, but all shall alike enjoy the equal and impartial protection of law”^[32].

Until the 1860 the Indian press had no perceptible influence within the country; it developed very slowly with the single exception of Bengal. It was characterized by short duration, very limited circulation and a provincial attitude. The Indian Mutiny of 1857 and the resulting intensified press legislation under Lord Canning known as Act No. XC of 1857 (Gagging Act)^[33] meant for regulating the establishment of printing presses and restrain in certain cases the circulation of printed books and papers, gave a severe a blow to Indian as well as English journalism in the country and ruined printing industry for several years. The Indian Penal Code 1860 was enacted. Though the Act was not directed specifically against the press, it laid down offences which any writer, editor or publisher must avoid, e.g. the offences of defamation, obscenity and promoting enmity between different classes^[34]. The Press and Registration of Books Act which is still in force was brought into force in 1867. The object of the Act was not

to establish government control over the press but merely to regulate printing presses and newspapers by a system of registration and to preserve copies of books and other matter printed in India. Thus, the Act was merely a procedural law and a regulatory measure. It repealed the Metcalfe’s Act, 1835^[35]. Then followed a short lived legislation, the Vernacular Press Act 1878 which provided for punishment of those who publish languages. The British Government always tried to curb the movement of freedom of press by one after another enactment.

Obviously, together with the political appearance of a new group of Indian liberals during the year 1860 the development of political and special reform minded journalism was appared. These liberals founded a number of newspapers and periodicals, mainly in English. As most of these personnels came from legal and teaching profession, some even from government services, they considered journalism not as a mere professional career but as a means of achieving their idealistic concepts of constitutional government. Among these journalists and political leaders Bal Gangadhar Tilak was most prominent. Through the periodicals he founded in 1881, Mahratta (English) and Kesari (Marathi) he aroused the people of western India. Kesari was considered to be organ of mass education and agitation and in 1882 it was the largest Newspaper in an Indian language^[36]. Tilak used the press as no one else did before him, for his campaigns against the British government and its legislation. The dominant controversies of the day between Indian radicals and liberal reformers were carried on between him and Gokhale^[37].

In 1889 the Government, amended the Indian Penal Code and the Code of Criminal Procedure so as to make the law of sedition more effective^[38]. On December 4, 1903 the Indian Official Documents and Information Act, 1889 was further amended so as to include civil matters, naval and military matters and extend to whoever without lawful authority or permission goes to a government office, and commits an offence under the Act. The Act made all offences cognizable and non-bailable.

At the beginning of the 20th century the Newspapers (incitement of Offences) Act, 1908 and the Indian Press Act 1910 which came into force during the first decade of this century were intended to prevent revolutionary activities in India and restricted the freedom of the press still further. The first empowered the local authority to take judicial action against the editor of any paper for publishing matter which in its view was an incitement of rebellion^[39]. The Second Act required keepers of printing presses and publishers of newspapers to deposit security, and empowered the executive to forfeit the security in certain cases. Under the Act search warrants could be issued, property seize and forfeited and articles in transmission by post detained. No forfeiture could be questioned in any court except the High Court. Everything was at the mercy of the executive. In other words, the Act made it impossible for a journalist to criticize the high handedness of local officials as no editor could afford to risk the forfeiture of his security^[40]. The two Acts were however repealed by the Press Law Repeal and Amendment Act, 1922. In fact, after 1908, almost all the leaders of Indian Journalism were in prison, deported or in exile. Many newspapers and periodicals were closed down because they were unable to pay

the required security. The financial insecure Indian language papers were generally the most hard hit ^[41]. This continuous professional insecurity naturally led to radicalization of the press.

Of course, in this period of political journalism hardly anyone was drawn towards the profession because of material interests or thought of a career. Opinions and ideas were represented rather than news given. But in this way no healthy professional tradition could be developed because "Indian newspapers were forced to live in the present rather than to build for the future" ^[42].

However, in order to have a greater impact on particularly the press, the Official Secrets Act was enacted in 1923 to maintain the security of the State against leakage of secret information, sabotage and the like.

On May 17, 1927 at the Bombay Session of the Congress, Motilal Nehru moved a resolution calling upon the working committee to frame a Constitution of India. Based on declaration of rights, a Swaraj Constitution was formed to give momentum to the fight for Swaraj that is, self-government. His preamble declared Swaraj as the inherent and inalienable right of the Indian people. The Constitution was welcomed all over the country ^[43]. The report of the Motilal Nehru Committee in 1928, which is known as the Nehru Report made a number of recommendations regarding incorporation of fundamental rights including the rights of free expression of opinion. The Report was presented to the British but unfortunately, it failed to bring out the desired results. As nothing concrete came out of the Report, at the historic session of Lahore of 1929, of which Jawahar Lal Nehru was made the President, it gave voice to the new militant spirit and passed a resolution declaring Purna Swaraj for complete Independence of India ^[44].

Under the dynamic leadership of Mahatma Gandhi, the Congress Party Press own over public opinion in the country within a few years after a First World War. His diverse activities in the journalistic field gave political journalism a great incentive. The launching of civil disobedience movement by Mahatma Gandhi in 1930 and the activities of the nationalist press scared the British Government which issued, inter alia, the Press Ordinance of 1930 reproducing the stringent provisions of the repealed Act of 1910. Then the Press (Emergency Powers) Act 1931 followed to curb terrorist activities and imposed on the press on obligation to furnish security at the call of the government. The Act was meant to provide against the publication of matters inciting or encouraging the commission of murder or any cognizable offence involving violence, or expressing approval or admiration of any such offence or of any person charged with such offence. The Act which was again amended by the Criminal Law Amendment Act, 1932 empowered a Provincial Government to direct a printing press to deposit a security which was liable to be forfeited if the printing press published any matter whose publication has been prohibited. Thus, the Act directly interfered with the freedom of press ^[45]. In other words, the Press Ordinance of 1930 and later on Press Act of 1931 really checked the throw of the journalists into great financial difficulties. Since operation of press (Emergency Power) Act, 1931 till adoption of new

Constitution journalists were deprived of most of their true rights of freedom of press in one or another way by administrative authorities.

The outbreak of World War II in 1939 gave a free hand to the government to enforce Provisions of Defence of India Act, 1939 and Defence of India Rules made thereunder. The act imposed censorship on the newspapers to publish information which may be useful to the enemy or prejudicial to government interests ^[46].

A brief survey of the press during the British period of Indian history reveals that press as such has no higher rights than the individual citizen. In *Arnold v. Emperor* ^[47] which was a case of an appeal by the editor of a newspaper against the conviction for criminal libel under Section 499 of Indian Penal Code Lord Shaw of Dunfermline in delivering the judgement of the Privy Council made the following observations :

"There lordships regret to find that there appeared on the one side in this case the time worn fallacy that some kind of privilege attaches to the profession of the Press as distinguished from the members of public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general way go, so also may be journalist, but, apart from Statute law, his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful, but the range of his assertions, his criticisms, or his comments is as wider them, that of any other subject. No privilege attached to his position" ^[48].

Thus we find that the history of a nearly century and indeed of the later four decades, preceding the framing of Constitution discloses a persistent effort on the part of the alien rules here to prevent or abridge the free expression and consequent attempt of the Indians to assert that right. In other words, since there were no fundamental rights in India prior to Independence, there was no guarantee of the freedom of expression or of the press. The footing of the press was explained by the Privy Council ^[49] to be the same in England, namely, that of an ordinary citizen so that it had no privileges nor any special liabilities, apart from statute law.

Position in India After 1950

After adoption of new Constitution the position in regard to freedom of press has totally changed. Article 19(1)(a) of the Indian Constitution provides that "all citizens shall have the right to freedom of speech and expression," and the Supreme Court of India through their decisions ^[50] made it clear that freedom of press is included in freedom of speech and expression as enumerated in Article 19(1)(a) of Constitution. Thus, the ambit of freedom of the press under the Constitution in the present position is very largely dependent upon judicial interpretation.

The result was that the press could not be subjected to any restrictions by making a law unless the law itself was constitutionally valid, i.e., consistent with clause (2) of Article 19. The fundamental right of freedom of speech and expression, in fact, is not absolute one. Article 19(2) of Constitution enables the State of restrict it and empowers the judiciary, by implication, to struck down the restriction if it be not a 'reasonable' one or is unrelated to the ground specified.

In short, the immediate gain under the Constitution was denied by any Statute, in India the validity of the Statute itself became open to challenge. Even subsequent punishment has been brought under constitutional check and judicial review, which is clearly absent in England. To this context, Indians have departed from the English precedent and advanced towards the American.

It is, however, necessary to go backwards a little at this stage, i.e., after the adoption of the Indian Constitution. The said Press (Emergency Powers) Act 1931 was repealed and replaced by the Press (Objectionable Matters) Act 1951 – a post Constitution enactment, which in 1957, again, was ceased to be in operation.

The Newspaper (Price and Page) Act 1956, was enacted to prevent unfair competition among newspapers by regulating the prices charged by them. Under this Act the government promulgated the Daily Newspapers (Price and Page) Order 1960 thereby fixing the maximum number of pages that might be published by a newspaper according to the price charged and prescribing the number of supplements that could be issued. This was challenged before the Supreme Court by some of the newspapers as offending Article 19(1)(a) of the Constitution in *Sakal Papers v. Union of India* ^[51]. The Court struck down as unconstitutional Section 3(1) of that the Act and the order which were void as they violated Article 19(1)(a) and were not saved by Article 19(2). The decision in this case constitutes a landmark in the history of the freedom of expression in India. Subsequently, this Act was replaced by the Newspapers (Price Control) Act, 1972 which was in force for two years only. At present, there is no price control over newspapers.

As we will see later ^[52], on the basis of the recommendation of First Press Commission the Parliament of India passed the Parliament Proceedings (Protection of Publication) Act, 1956, to bring the Indian law in tune with the English law. The object of this Act was to define the privilege available to publications made in good faith of reports of proceedings of either House of Parliament whether in a newspaper or by wireless telegraphy. This legislation was necessary to fill in a lacuna which was there in the fourth exception of section 499 of the Indian Penal Code which created a privilege in respect of substantially true report of proceeding in a court of justice but not in respect of publication of a substantially true and faithful report of the proceedings in a legislature. The legal position then was that although the publication of a substantially true and faithful report of the proceedings of Legislature would not constitute contempt of the Legislature, the fact that the words complained against were privileged when they were uttered in the Legislature would not confer any privilege in respect of the publication of these words so far as the criminal law of the land was concerned ^[53].

It should be mentioned other certain laws, which, some of it had given power to the government to prevent publication of news considered to be objectionable by it. Such of these laws as Defence of India Act 1962 and 1971, Maintenance of Internal Security Act 1971. Rules and Orders passed thereunder (For example, Censorship Order 1975 passed under the Defence of India Rules 1971), and the Prevention of Publication of Objectionable Matter Act 1976 which are not now in force ^[54].

Establishment of the Press Council

The Press Council owes its origin to the recommendations of the First Press Commission. The Commission dealing with the standards and performance of the press, the growing tendency towards monopoly and concentration of newspaper ownership, and yellow journalism, recommended establishment of the institution of the Press Council.

To give effect to the recommendations of the First Press Commission, a Press Council Bill was introduced in Parliament in July 1956. This bill lapsed because of the dissolution of Lok Sabha but was taken up again on the recommendations of the National Integration Committee in 1962 and passed by Parliament in 1965 ^[55]. Consequently, the Press Council of India was established on July 4, 1966 whose object was to preserve the freedom of the press and to maintain and improve the standards of newspapers in India. The Council was expected to establish a set of norms to check writings in the press which were objectionable though not punishable under the law in force ^[56].

The Press Council Act, 1965 was, however, repealed during Mrs. Gandhi's regime, by enacting the Press Council (Repeal) Act, 1976. The Press Council was, therefore, abolished with effect from January, 1976, on the following grounds offered by the Government while bringing the Ordinance which later became the Act:

1. The Press Council has failed to set out and enforce any code of conduct, as envisaged by the Act of 1965.
2. It also failed to build up any respectable body of case-law because only complaints of comparatively minor importance were dealt with by the Council.

After coming into power, the Janata Government enacted a fresh Press Council Act, 1978, to re-establish the Press Council of India, set up under the Central Act 37 of 1978, completes and more than a half decades of its functioning with the ringing of 1996. During these seventeen years, the Council has steadily gained in stature and worked towards achieving harmony and balance between the freedom of the press on the one hand, and improvement of standards of newspapers and news agencies on the other. It is an autonomous body and is empowered to regulate its own procedure.

The present Council is a body corporate having perpetual succession. The Council consists of a Chairman and twenty-eight other members as provided by Section 5. The Chairman is, by Convention, a retired sitting judge of the Supreme Court of India. Of the other twenty eight members, twenty represent the press, give are Members of Parliament and three are persons having special knowledge of experience in respect of education and science, law and literature and culture. The Chairman and other members hold office for a period of three years. A retiring members is eligible for re-nomination for not more than one term. The term of office of a member nominated in his/her capacity as a member of Parliament comes to an end as soon as he/she ceases to be a Member of the House from which he/she is nominated. The twenty members representing the press are nominated by press organization and news agencies notified by the Press Council as presentation bodies of the press on an all-India basis. The Press Council Act does not provide for individual membership

to newspapers or press persons. The Council has its own source of revenue by way of fee levied on registered newspapers/periodicals and news agencies. The deficit is made good by grants-in-aid from the Central Government^[57].

Section 13 of the Press Council Act, 1979 lays down the objections and functions of the Council, and Section 14 and 15 its powers. The list of functions is mostly taken from the 1965 Act, with the addition that the Council may (a) undertake studies of foreign newspapers, including those brought out by foreign embassies (so as to take notice of their activities) ; (b) undertake such studies as may be entrusted to the Council by the Government of India.

The primary function of the Council is to help newspapers and news agencies to maintain their independence. Of course, it has no direct powers to control the Government or any source from which such independence is threatened ; but its annual report or interim report, if any, shall be laid before Parliament by the Central Government, so that Parliament may take such steps as it deems advisable to uphold the freedom of the press.

Another important functions which the Press Council is required to perform is to ensure a high standard of public taste and responsibility in journalism, and, for this purpose, it is empowered to build up a code of conduct for newspaper, news agencies and journalists in accordance with high professional standards. This object, however, has not so far been fulfilled because of the view taken by the Press Council that any formal code would attain a rigidity like a statute; and that a better way would be to build up a code by a case-to-case treatment in course of time^[58].

However, prior to the enactment of the Press Council Bill, in 1977, the All-India Newspaper's Conference drew up a code of ethics for journalists and in March, 1978, appointed a Vigilance Committee to enforce that code^[59]. Such Code of ethics, prepared and enforced by the journalists themselves, conforms to the category of self-censorship.

Again, after the enactment of the Press Council Act, 1978 ; the scope for enforcement of any code of ethics formulated by the journalists outside the Press Council seems to have been obviated by reason of the fact that this Act is under Section 13(2)(b) enjoins the Press Council to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards. Such a code, it is understood, is under preparation. When it is prepared and issued, it will prevail over contrary directions, if any, of the Editor's Conference. In a sense, the Code of Conduct issued by the Council may be said to be self-imposed insofar as the journalists shall have a substantial representation in the Press Council.

So far, only the All India newspaper Editor's Conference and the National Union of Journalists have prepared such code of ethics^[60]. But further progress in this line cannot be hopeful in view of the opinion of the Second Press Commission^[61] that a code of ethics should be built up from case to case, and not formally.

The Council may also perform another functions as mention in Section 13 of the Act. These are : to encourage the growth of a sense of responsibility and public service among all those engaged in the professional of journalism ; to keep under

review and development likely to restrict the supply and dissemination of news of public interests and importance ; to keep under review cases of assistance received by any newspaper or news agency in India from any foreign source ; to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers or in news agencies ; of and to concern itself with developments such as concentration of or other aspects of ownership of newspapers and news agencies which may affect the independence of the press^[62].

The Council discharges its responsibilities primarily through the medium of adjudications on complaints received by it either against the press for violation of journalistic norms or by the press against undue interference by an 'authority' with its freedom. Where the Council is satisfied after due inquiry that a newspaper or news agency, editor or journalist has offended against the standards of journalistic ethics, public taste, professional misconduct, the Council may warn, admonish or censure the newspaper, the news agency, the editor or the journalist, or disapprove the conduct thereof, as the case may be. In complaints against the Government and its authorities the Press Council may, if it considers it necessary for the purpose of carrying out its objects or for the performance of any of its functions under this Act, make such observations, as it may think fit, in any of its decision on reports, respecting the conduct of any 'authority' including 'Government'. Section 14(4) of the Act makes the decisions of the Council under sub-section (1) or section (2) of section 14, final which shall not be questioned in any court of law^[63].

It is to be noted that the words 'ethics', 'public state' indicate that the Press Council may chasten an irresponsible newspaper or journalist even though the publication in question may not involve any offence punishable by law.

It will be seen from above that the Council wields a lot of moral authority, although its decisions do not carry punitive sanctions for their enforcement. During these years, the Council can proudly claim to have maintained an unbiased stance though out. Its actions and adjudications have remained uninfluenced, as they must necessarily be, from any extraneous considerations or any external pressures. One important point to be noted in this context is that though the Council has been given the power to summon any person, including a personnel of the press, under the new Act, a specified provision has been inserted to ensure that the Council cannot compel the press to disclose the source of any news or agency which has been received or reported by such press.

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22. Supra note 19 at p. 87.
23. Lochman Manfred, "The Role of Journalism in the Process of Socio-Political Change in India," collected in A.G. Noorani's (ed.) *Freedom of Press in India*, (1970) at p. 87.
24. See Jayawardena Kumar, *Feminism and Nationalism in the Third World*, Kali for Women, 1986 at pp. 80-82.
25. Supra note 23.
26. Supra note 19 at pp. 91-92.
27. Supra note 19 at 38.
28. Supra note 19, at 209-11.
29. Minute by H.T. Prinsep, dated 17th April, 1835 ; Minute by W. Morison, dated April 25, 1835, quoted in Barns (ed.) Supra note 19, at 212-17.
30. Supra note 18 at pp. 35-36.
31. See Karkhanis Sharad, *Indian Politics and the Press*, pp. 35-36.
32. Supra note 10.
33. Supra note 19 at p. 68.
34. Basu, D.D. *Law of the Press in India*, Appendix I (1980) at p. 249, For more details see Chapter IV infra.
35. Sarkar, R.C.S., *The Press of India*, (1st Ed., 1984), pp. 20-21.
36. Supra note 23 at p. 49.
37. Misra, B.B., *The Indian Middle Classes*, Oxford University Press, London (1961), at p. 382.
38. The changes in the Penal Code made by the Amendment Act with which the press was concerned were: (i) the substitution of Section 124A, Section 505 ; (ii) the insertion of Section 153A ; for more details see Chapter IV infra.
39. For important provisions of the Act, see Gopal Madan, *Freedom Movement and the Press*, (1990), pp. 93-95.
40. For details, see natarajan, S., *A History of Press in India*, (1962), pp. 171-172.
41. Natarajan, S., *History of Indian Journalism* (Press Commission Report), New Delhi 1954 at p. 165.
42. Id. At 171.
43. Sharma, B.R., *Socio-Economic Justice Under Indian Constitution*, (1984) at pp. 39-40.
44. Id. At 41.
45. See Supra note 19 at pp. 165-68.
46. Supra note 40 at p. 251.
47. AIR (1914) PC 116.
48. Id. At p. 124.
49. Ibid.
50. *Ramesh Thaper v. State of M.P.*, AIR 1950 SC 124 ; *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129 ; *Express Newspaper Ltd. v. Union of India*, AIR 1958 SC 578 ; and *Sakal Papers Ltd. v. Union of India*, AIR 1962 SC 305.
51. AIR 1962 SC 305.
52. For more details, See chapter V infra.
53. See Ibid, see also *Suresh Banerji v. Punit Goala*, AIR 1951 Cal. 176 at 1978.
54. For brief history of the various laws affecting the press in India, see Supra note 34 at PP. 249-56.
55. See Press Council Report (1965) at 1-2.
56. Almost every modern country has therefore set up a body which could serve as a watchdog over the standards of journalism and at the same time maintain the freedom of the press against unwarranted government intrusion. The institution of Press Council emerged for the first time in Sweden in 1916. In U.S.A. the proposal was initiated by Hutchins Commission on Freedom of the Press as early as in 1947. In U.K., the British Press Council came into being in 1953, is a non-statutory body, having no legal powers. In India, it has a statutory base.
57. See the Annual Report of the Press Council of India, No. 15 (April 1, 1993-March 21, 1994) at pp. 1-2.
58. Report of the Press Commission, Part II (1982) Vol. 1, 27-32.
59. Statesman, 10.03.1978.
60. See Supra note 58 para 32.
61. Ibid.
62. Supra note 57.
63. Ibid.