FREEDOM OF PRESS IN INDIA, PAKISTAN AND BANGLADESH: A COMPARATIVE STUDY

M. Phil Thesis

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Freedom of Press in India, Pakistan and Bangladesh: A Comparative Study

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Declaration

This Master of Philosophy thesis *entitled "Freedom of Press in India, Pakistan and Bangladesh: A Comparative Study,"* embodies the results of my own research work under the supervision of Dr. A.B.M. Mafizul Islam Patwari, Professor, Department of Law, University of Dhaka.

It is certified that the work reported in this thesis is original and it has not been submitted either in part or in full to any other University for any degree or any other purpose.

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Abstract

Today freedom of press is a fundamental right; it is a universally recognised right. A free press is essential to liberty; now it is not a privilege but an organic necessity in a great society to have a free press. Through a long history of fire and fight freedom of press has attained its present constitutional status in world legal order. Although freedom of speech and expression is everybody's fundamental birth-right, freedom of press is an artery of that right. In social perspective it is however not an unbridled right; it is to be enjoyed within the perimeter of reasonable restrictions to be imposed by law in Bangladesh. This thesis deals with the law of freedom of press as applied in this subcontinent. In dealing with the subject efforts have been made to trace the origin, growth and development of this law in Indo-Pak-Bangladesh subcontinent against the background of its development and growth in European countries mainly in England, America and France. Freedom of press is in this subcontinent no doubt a by-product of the fundamental right of speech and expression. Following the Western concept of freedom of press, the powerful judiciaries of India and Pakistan have developed it as a distinct right through logical interpretation from the right of speech and expression. The framers of Bangladesh Constitution have however placed it as a specific fundamental right in Part III of the Constitution. Freedom of press is usually believed to grow fair under democracy, but in this sub-continental democracy it does not appear to bid fair to the expectation of constitutional jurists. The reasons for this unwholesome democratic climate are not far to seek. Constitutional experts mostly think that in the countries of this subcontinent the practice of democracy is still in its infancy, literacy is still limping to attain an acceptable percentages. Transparency, accountability and tolerance to other's opinion which are considered pre-conditions for good governance are still not practised by the political parties. As a result hostile attitude always exist between the government and the opposition; and the siding of the press to either side creats doubt in press impartiality. This mutual distrust and the government's stubborn atitude not to tolerate any criticism against its policies and actions create a situation hostile to the growth of free press. Moreover, government's unequal distribution of its financial favours, confrontational role of press, misreporting by press people also affect press freedom. In this work attempts have been made

to divulge all these aspects connected with the freedom of press and some suggestions have been made to redress them in the light of international situation of the freedom of press.

For a convenient discussion of the subject the work has been divided into seven chapters.

Chapter I deals with the nature, scope and utility of freedom of press. Here meanings of words like 'press' and 'freedom' are discussed to arrive at a synthesised meaning of the phrase 'freedom of press', how printing replaced the work of copying by hand and the germination of the freedom of press.

In the second chapter attempts are made to show the development of the right of freedom of press in three Western countries, namely, England, America and France; their national laws relating to press freedom are also portrayed here. In this chapter the International Conventions on the freedom of press are introduced to assess the degree to which the systems of mass communication including newspapers, radio and television permit the free flow of information to and from the public in all the UN member countries. Internationalization of freedom of press, the role of Press Councils in shaping the conduct of journalists, UN Conference and Convention on freedom of information are all displayed here to form the standard attained by the sub-continental countries in their endeavour towards freedom of press.

Chapter III is devoted to the discussion of press freedom in this subcontinent. Here the pre-British and British period press freedom is narrated; British Regulations, Ordinances and Acts relating to press and press freedom are brought in to show the press freedom under the British domination. Some of these laws will display the various endevours of the British government to effectively control the press in order to suppress nationalist movements of the Indians.

Chapter IV deals with the post-independent freedom of press in the subcontinent. Although the constitutions of India and Pakistan do not specifically mention freedom of press as a fundamental right, it was considered an implied right lurked in the right of freedom of speech and expression and the supreme judiciaries of these two countries gave it flesh and blood. Therefore in this chapter important leading cases were discussed and has been shown how the right of freedom of press is brought forth from the right of freedom of speech and expression. In this chapter the Bangladesh situation is also discussed in this regard. It has been shown here how the reasonable restrictions imposed on the enjoyment of the freedom of

press under Bangladesh Constitution give the judiciary scope to introduce new outlook in constitutional interpretation and keep a balance with world opinion about freedom of press.

Chapter V is devoted to the discussion of the statutory laws of India, Pakistan and Bangladesh with regard to the freedom of press and the role of the lower judiciary conjointly with the higher judiciaries of these three countries in the interpretation of these laws. In this chapter it has been shown that freedom of press is not an unrestricted right; some of the statutory laws put restrictions on the use of this right. Seditious speech, defamatory remarks, publication of obscene objects and promotion of hatred and enmity between different religious groups by spoken or written words are all punishable under statutory laws. Contempt of court cases are also discussed in this chapter; and attempts have been made here that reporters and journalists are not above board in the discharge of professional duties.

Chapter VI contains the discussion of the role played by some quasi-judicial organs or institutions like Press Council, Press Institute in upholding and developing freedom of press in the subcontinent. To preserve the freedom of press and to maintain and improve standard of newspaper and news agencies some code of conduct is essential and the Press Councils of the concerned countries are entrusted to draw it. The role of the press councils of India and Bangladesh is discussed in this chapter; Pakistan has no such Press Council. In this chapter Press Institute's role is also discussed to show how far they are educating the reporters and journalists to maintain their ethics in their profession.

Chapter VII is the concluding chapter. This chapter contains the conclusion of the whole work. In this chapter some suggestions are made that freedom of press as a fundamental right must be enjoyed to the fullest extent along with the development of cyber technology in modern society. Laws must be changed rapidly, new institutions must be developed to culture and ensure this right.

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Abbreviations

A.C.	:	Appeal Cases
A.I.R.	:	All India Reporter
B.L.D.	:	Bangladesh Legal Decisions
C.J.	:	Chief Justice
Cr.L.J.	:	Criminal Law Journal
C.W.N.	:	Calcutta Weekly Notes
D.L.R.	:	Dhaka Law Reports
F.C.	:	Federal Court
I.L.R.	:	Indian Law Reports
J.	:	Justice
K.B.	:	King's Bench
P.C.	:	Privy Council
P.L.D.	:	All Pakistan Legal Decisions
Q.B.	:	Queen's Bench
S.C.	:	Supreme Court
S.C.R.	:	Supreme Courts Reports
S.C.C.	:	Supreme Court Cases.

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Chapter I

The Press and Freedom: Meaning

(i) Press and society

(a) Press

'The Press' indicates in general printing press as in the sentence 'stop the press' or merely printing as in the sentence 'Get the report ready for the press'. It may also indicate the reporters and journalists. Today the press is an extremely broad term and includes all systems that make information available to people, such as, newspapers, television, radio, books, lectures, movies, art, dance, telephone, cassettes, CD's, video devices, magazines, electronic bulletin boards, computer networks, billboards, video tapes etc. Once the printing press was the most popular forms of mass communication, and newspapers were considered the principal point of the printing press. Today the press is called the media. It is an acceptor that written words inspire most and the imperative form on to others through the written words. All the world's major religions, philosophies, schools of political thoughts and systems of governments in the past were spread through writings. Without writings and the ability to circulate this writing, all the great religions and their traditions would have influenced very slow and would probably be entirely forgotten today. Through the press or media today we learn about our world, our life, medical breakthroughs, scientific adventures, toppling regimes, the truth about history, useful news, trivial news, good news, bad news and probably everything about knowledge. Indeed we rely on the press, depend on its accuracy and, if it turns out to be inaccurate, we expect another news organization to expose the exposed.

(b) Freedom of press

'Freedom' indicates the condition of being without something harmful or unpleasant; it is a conditions of being without constraint. In social perspective it implies a relative situation where one may do or enjoy something as long as it does not restrain another from doing or enjoying something. Freedom of press means the freedom or right to print news or fair

opinions or matters of public interest without fear or being stopped or favoured by a government or other official group.[1]

From the beginning of society human beings are generally votaries of freedom and peace. In the evolution of human society it is found that at times this freedom was arrested and the peace was disturbed by authoritarian leaders of society and people had to fight for their restoration. In the case of free press there was no exception to it. In its efforts to invent new things at one time human intellect invented, along with others, press to print and preserve knowledge and information about things material and abstract around. In this way scribes scroll came to be replaced by press printed books, journals, newspapers and the like. Thus came the printing press as a milestone in the long history of human civilization. Gutenberg's printing the Bible in 1455 and the publication of the freedoms magazine was a result of the British socialist movement in the early 1880's marked the beginning of the freedom of press. But free printing and the dissemination of information became irksome to authoritarian rulers, so press lost its freedom until democracy came in the society as a form of government by the people, of the people and for the people. This democratic freedom of press however does not mean unbridled licence to publish anything the press may choose; this freedom is subject to reasonable restrictions imposed by law in the interest of the security of the state. Had there been no such restrictions, free press would have invaded man's privacy and misreporting would have created a situation in the society where it would have been difficult to live a meaningful life and find correct information about things happening around. Recently however it is being observed that even democratic governments in underdeveloped and developing countries are influencing the press with direct or indirect threats as well as favours to secure their political interests. This may be a transitory phase. Computer technology has already revolutionized printing; through internet one may down-load the computerized material of a far away persons. Press printing has not still however lost its utility. It is still rendering the same service to society; it is disseminating knowledge and providing information to millions of people everyday. Its freedom still at times becomes a burning question and governments are still afraid of it. So long as human society will last, press printing in its present form or in any other super intellectually developed forms will be there in society and controlling its activities will be a constant effort of everybody who becomes unhappy with them.

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[1] Paul Procter, (ed.); *Longman Dictionary of Contemporary English* (1781), p. 863.

A free society cannot exist without a free press. Freedom of press is recognized as the most vital element in every free society. Freedom of press is an important component in the development of a country. The absence of free press and suppression of people's right to speak to and communicate with each other impoverishes human freedom. Informational role of a free press contributes greatly to the protection and security of people. In modern world freedom of press is the most cherished right of man; without this right other rights cannot be enjoyed satisfactorily. Freedom of press includes freedom of speech and expression. It is the guaranteed fundamental right subject to certain reasonable restrictions imposed by law. It is the habit of mankind to express ideas and opinions through some media. Newspaper is one of such media, and probably is the most important media to express one's ideas and opinions; it records them in permanent form. Newspaper is a mirror of national and international events and happenings. A modern man with minimum literacy cannot think of a day without a newspaper. Freedom of press is auxiliary to freedom of speech and expression. Free flow of information, free exchange of ideas and free discussion are essential in a democratic society. A free press is the basis of democracy; it is essential for the establishment of the rule of law and for the enjoyment of human rights and fundamental freedoms in a modern democratic society. It creates social responsibility. When it is so important an element in a modern democratic state there must be social awareness and motivation for its nourishment. Free press may sometimes frustrate the aspirations of the people; it may do incalculable harm to the country by abusing its powers, so it must be above board.

People are usually prone to believe the printed news even they are not correct, and made mischievously. Correct reporting by the media can do a good deal of good to the society, but the reverse is disastrously bad for the individual or institution involved; and it is always seen that subsequent apology or corrections of a false or misreporting cannot communicate faster and more prominently than false reporting. In reporting a balance therefore must be maintained in respect of reports and comments between the reporter's rights relating to freedom of press and the individual's right of protection against false imputation imparing his reputation. Reporters have a responsibility of keeping the public informed of matters of public interest. They must report anything which is really of public interest. Freedom of press depends on the observance of proper ethical standards in presenting unbiased and objective news and balanced views to enable the people to make correct assessment and to imbibe true consciousness of various socio-economic problems that face the nation as a whole. Freedom of press has a significance and importance beyond the interest

of the press itself. A press with free comment is the ultimate safeguard of human liberty and since the rights of an individual to express himself are precisely the same as those of the newspapers it follows that if the rights of the newspaper are whittled away, those of the individual will surely diminish.

(ii) The Press Power

A free press has the ability to turn an uninformed populance with an informed one. Thomas Jefferson has said:

> "The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate for a moment to prefer the latter."

The press is the most powerful body in a country; it can make public opinion for or against an administration, institution or body of persons for its good or bad deeds. The term 'media coup' is a recent coining; society has observed its effects on any a time. Pen is mighter than the sword. The Prophet of Islam has said, 'The ink of an scholar is more sacred than the blood of the martyr.' The press must use its power; constructively for all out development of the nation and progress and preservation of human rights. When the press is so responsible to its duties it may be called a free press. To earn freedom, the press must be responsible and must not abuse its power. Freedom of press is of fundamental importance to a society. It covers not only the rights of the press to import information of general interest or concern, but also the right of the public to receive it. Press plays a vital role in the administration of justice. It is the watchdog to see that every trial is conducted fairly, openly and above board. Freedom of press does not essentially mean to write anything insulting, improper and malicious to assassinate the character of a person in power and to lower one's prestige and honour in the society. The press must not overburden its newspapers with trash and fluff as found in western world where a greater part of reporters time and media's space are devoted to story on who is sleeping with whom and whether they are married to someone else, or to printing obscene and pornographic pictures. There is plenty of international tension, domestic strife, real crime and competition to keep the reporters busy and fill the newspapers space. Journalists must not report 'trash for cash' and tarnish the good name of reporting. They must earn respect of the people through their reporting and the media must play the role of the preceptor. Freedom of press is a fundamental right along with the freedom of speech and

expression; it is a fundamental equal to the freedom of religion. A free press is not a luxury; it is a necessity today. Consensual crimes which are mostly found today in society among low paid and morally weak non-nationalistic journalists and newly wealthy people or socially corrupt and administrative people corrupt the freedom of press, so reporters and publishers must always guard themselves against all sorts of temptation to commit any such crimes.

(iii) Concept of Press

Freedom of press is a western concept. It was first developed in England. Freedom of press is to be regarded as an inalienable right of people in a free society. Freedom of press means the right to publish without any previous licence or censorship.[2] "A Community needs news" said the distinguished English author Dame Rebecca West, "for the same reason that a man needs eyes. It has to see where it is going"[3] "The liberty of the press", says Blackstone, "Consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published"[4] The expression "freedom of the press" means the right to print and publish without any interference from the State or any public authority.[5]

The historic freedom of press means that, "subject to the civil and criminal restraints upon publication any person or company may publish a newspaper or magazine without getting official approval in advance."[6] According to lord Mansfield, "Liberty of the press consists in printing without any previous license subject to the consequences of the law."[7] In the case of ***American Communication Association*** v. ***Douds***,[8] the Supreme Court of America has observed:

> "Freedom of speech, press and assembly are dependant upon the power of constitutional government to survive. If it is to survive it must have power to protect itself against unlawful conduct and, under some circumstances, against incitements to commit unlawful acts. Freedom of speech does not comprehend the right to speak on any subject at any time."

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[2] *Virendra* v. *Punjab State AIR* (1957) punj 1 CrLJ. p. 88.
[3] *The New Encyclopedia Britanica*, Vol. 15, 15th Edn. (1981) p. 235.
[4] O. Hood Phillips (etal) *Constitutional and Administrative Law* (London: Sweet and Maxwell Ltd. 1978) p. 495.
[5] Durga Das Basu, *Law of the Press in India*, (New Delhi: Prentice Hall Ltd., 1980) p. 10.
[6] E.C.S. wade and Godfrey Phillips, *Constitutional and Administrative Law*, (London: Longman Group Ltd., 1977) p. 484.
[7] *The King* v. *Dean of Saint Asaph (1784) 3TR428 at 431.*
[8] (1950) 339 US 382: 94 Law Ed. 925 at p. 927.

In *People* v. *Croswell*[9] Alexander Hamilton remarked that "Freedom of the Press" is the right to publish with impunity, truth, with good motives, for justifiable ends though reflecting on government, magistracy, or individuals.

Freedom of press is a part of freedom of speech and expression which is a universally recognised right, because a majority of the civilized nations have given this right, in some form or the other a place of pride.

The press is simply a medium of communication of the word and freedom of word is a public right in the sense that it is exercised or exercisable in relation not to one's ownself but to others. The freedom of speech is a natural freedom of man. Freedom of speech comprehends the freedom of press and the freedom of speech and press are fundamental personal rights of the citizens. The state has to recognise this right whether by declaring it in the Constitution or regulating it in accordance with ordinary law, or merely enduring it as a premium of being civilised. It is an old commonplace that the "freedom of opinion and expression is one of the cornerstones of human rights and has great importance for all other rights and freedoms."[10]

According to A.K. Brohi, the great Pakistani jurist, "... freedom of the press means nothing more than one's ability to express oneself in print. Press thus ... in much the same position as the ordinary citizen, it has no special privileges".[11]

The classical meaning of freedom of press is the freedom to publish as profession. The modern refined techniques of the media of communication, for example, the radio and television broadcasts, seem to have widened to some extent the freedom of press. This newer media of communication can also be meaningfully included in the scope of the denotation of the expression "freedom of press". This formal meaning of freedom of expression is, therefore, the freedom to communicate anything appealing to public perception by visual or auditory representations would be included within the magnified concept of the freedom of expressions.[12]

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[9] (1804) 3 Johns (N.Y.) 337.
[10] Louis Henkin (ed.), *The International Bill of Rights*, (New York: Columbia University Press, 1981) p. 216.
[11] A.K. Brohi, *Fundamental Law of Pakistan* (Karachi: Din Muhammadi Press, 1958) p. 375.
[12] Dr. R.G Chaturvedi and Dr. Inakshi Chaturvedi, *Freedom of Press*, 1989) p. 375.

Freedom of press, in short, forecloses the State from assuming a guardianship of the public mind. In ***Indian Express News Papers*** v. ***Union of India***,[13] Venkataramiah, J., of the Supreme Court of India stated:

> "In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale, particularly in the developing world, where television and other kinds of modern communications are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments ... It is, therefore, the primary duty of all the national Courts to uphold the said freedom and invalidate all laws or andministrative action which interfere with it, contrary to the constitutional mandate."

In this regard Blackstone's remarks is of course important:

> "The liberty of the press is indeed essential to the nature of a free state ... the only plausible argument heretofore used for restraining the just freedom of the press, 'that it was necessary to prevent the daily abuse of it, 'will entirely lose its force, when it is shown ... that the press cannot be abused to any bad purpose without incurring a suitable punishment: whereas it never can be used to any good one, when under the control of an inspector."[14]

R.C.S. Sarker pointed out that freedom of press has three important elements: "Freedom of publications, freedom of circulation and freedom of access to all sources of information."[15]

The modern age can be described as the 'age of liberty'. The modern mind cannot tolerate or condone the different forms of suppression of individual freedoms such as facism or religious compulsion and intolerance that have marred the lives of many throughout the human history preceding the modern era.

Freedom of speech and expression in general and freedom of expression through the press in particular, and other media including electronic media should be exercised as much

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[13] (1985) 1 SCC p. 641.
[14] William Black Stone, *Commentaries on the Law of England* (Oxford: Clarendon Press, 1765) vol. IV, pp. 151-153.
[15] R.C.S. Sarker, *The Press in India*, (New Delhi: S. Chand and Company Ltd. 1984), p. 35.

as possible so that no regression takes place to a scenario similar to that which existed before society advanced to a level in which such freedoms become realities. As would be evident from the preceding discussion, the approach is one of maximization and not of minimization. The modern state should always strive to see that, as far as practicable, restrictions are not placed in the enjoyment of the freedom of press. Only the legitimate interests of others including genuine national emergencies should be allowed to curtail this freedom.

Although the modern man is to be free to think as he likes and also be able to express his thoughts and opinions freely, this freedom should not be allowed to become an unrestrained and unbridled licence to say or print whatever one wishes regardless of its impact and effects on the lives of others.

The concept of the freedom of press was introduced in the Indian subcontinent in the middle of the 16th century. But in fact the western concept had a tremendous impact on the formulation of the guarantee of freedom of press. Press in the western world could not print anything that it thought fit for publication, this freedom was subject to certain restrictions. In the UK, USA and France press does not enjoy any special rights other than those to which a citizen is entitled. In England the law of libel was applied to press. In USA press was free to publish anything until it violated a distinct law. But in France press was subject to the law of libel to a greater extent than in England and on flimsy grounds libel cases were brought against press and its people. The freedom of press in India, Pakistan and Bangladesh has become a justiciable fundamental right.

A free press is the very basis of democracy. It is essential for the establishment of the rule of law, and for the enjoyment of human rights and fundamental freedoms in a modern democratic society. It creates social responsibility and awareness among the people. There is a negative aspect of the press. The press may also do incalculable harm to the country by abusing its powers. People are generally prone to believe the printed word even when it is not honest.

As the freedom of press is essential for the preservation and development of democracy, for the establishment of the rule of law and human rights and fundamental freedoms, so its development in the international contexts should be discussed in some length. Actually freedom of press took a positive shape in the modern democratic States, e.g. UK, USA, France etc. Keeping this point in view, in the present study a short discussion on the development of freedom of press has been made. Following this, the provisions of

freedom of press found in the principal international human rights instruments. Thus, Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, and other regional human rights instruments which contain provisions for freedom of press, will be discussed with a view to giving a correct perspective of the study.

The introduction of the right to freedom of speech and expression and of the press in the constitutions of India, Pakistan and Bangladesh, its suspension and curtailment are not new things in the political and constitutional history of the Indian sub continent. It was incorporated in the constitutions of these countries, as a justiciable fundamental right, suspended by constitutional machineries and even curtailed by extra-constitutional actions on several occasions.

The freedom of press in India, Pakistan and Bangladesh has become a justiciable fundamental right as incorporated in their constitutions, and the constitutional courts have become empowered to enforce this freedom when its infringement and violations are occurred. In all the three countries following the constitutional provisions several statutes were passed in order to ensure freedom of press and to curtail it on some specified occasions on justified reasonable grounds. There are some other quasi-judicial institutions and bodies which take a leading role in ensuring freedom of press.

This dissertation, though mainly concerned with freedom of press in the context of India, Pakistan and Bangladesh, has nevertheless made an attempt as a matter of necessity to discuss the background of the development of the concept of freedom of press in the international and national contexts and the role of quasi-judicial and other bodies with a view to giving the proper perspective of the study.

(iv) Justification and Objectives

Unless made dumb God has given every human being the right to speek and express his views either orally or by gesture, and the speaker acquires the consequential rights to reduce it in writing or in any other permanent form. He can abuse this right when speaking orally and nobody can lawfully do anything against him unless there is proper evidence of the abuse. But whenever a press prints somebody's views it becomes documentary and the speaker cannot retrograde from it. The aggrieved party can proceed against the press and can also put prior restriction on the press not to print any harmful or explosive news or views. This restriction on the press is a restriction on the right to speech and expression. But the rights to speech and expression is a providential and inalienable fundamental right. Can

therefore restriction be put on the printing action of the press and will the press admit such restrictions? How far is the press free to print news and views or supply information? These are some of the questions *inter alia*, which were frequenting my mind all along before I started this research work.

The researcher has got the opportunity to see how cases relating to freedom of press are coming before higher courts, how they are being argued before their learned Lordships and how their Lordships are musing over them in upholding the freedom of press. These opportunity encouraged the researcher greatly to make an in depth study on the subject of freedom of press. The researcher was rather astound to see that a newspaper without which we cannot start a day's work, which millions of people read everyday and whose supplied information make an orator's orations more amusing could earn the wrath a ruling coterie and ultimately stop its publication. The researcher felt an urge to work on this topic. The present work is a modest attempt to fulfil that unsolved desire. With all his personal and extra-personal limitations and the dearth of reading materials and information, the researcher has tried to present here his personal observations considering others on the subject. The researcher started reading books, journals, law reports, case laws and all other available materials on freedom of press which its were available around. However much he was reading it was increasingly felt to him that something more need to be done to uphold the freedom of press, to protect the rights and interest of the press people and to update the laws relating to press freedom. This research will be directed to give a humanistic outlook to the existing press law of Bangladesh so that it can keep pace with the fast and dynamic progress of science and technology, and press people may get justice in modern complex socio-political problems. When society is drifting towards globalization in all sphere of life, national press laws must also accommodate the principles adopted in various international conventions and conferences using super cyber-system.

The objects of this work will mainly be:

a. to trace origin and development of the law of press freedom in this subcontinent *vis-a-vis* its position in England, America and France.

b. to identify the problems that stand on the way of effective enjoyment of the right of press freedom and find out the means to overcome them.

c. to assess and evaluate the guardianship role of the judiciary in the interpretation and application of this right.

d. to suggest reforms of the existing laws in the light of the regulations of international conventions and conferences.

(v) Methodology, Material and Lay out of the Dissertation

In the preparation of this dissertation historical, analytical and comparative methods are used. To find the development of the freedom of press historical method has been used while in assessing the effectiveness of the existing rights in the light of the existing laws help of comparative method has been adopted. The analytical method has been used to suggest reforms of the existing law. Moreover, in suggesting reforms personal discussions have been made with the leading lawyers of the Bangladesh Supreme Court and eminent journalists. Suggestions which are made in the conclusion are mainly the presentation of their considered opinions as will be suitable in the clime and climate of Bangladesh.

Since the right of freedom of press is an off-shoot of the fundamental right of speech and expression, materials are abundantly available in the books on constitutional law, law reports available at various Bar libraries, journals, newspapers articles and the like. In the preparation of this dissertation libraries of Bangladesh Supreme Court Bar library, the library of the Supreme Court, the Dhaka University library, the Bangladesh Parliament library, the Press Institute of Bangladesh library and the Bangladesh Press Council library are mainly be used. Moreover the paper clips of various NGO's are also used. Proceedings of various national and international conferences on freedom of press are abundantly used for an effective discussion.

The dissertation is divided in to seven chapters. In Chapter I the nature, scope, meaning and utility of the freedom of press; in Chapter II historical development of this right, in Chapter III freedom of press in Pre-British period and post British periods, in Chapter IV post independent freedom of press, in Chapter V statutory laws, in Chapter VI quasi-judicial institutions and councils and in Chapter VII conclusion and the whole work are discussed.

Chapter-II

Development of Freedom of Press in Europe

1. Freedom of Press in Western Countries

Freedom of Press is a western concept. It was first developed in England and spread among other countries of the western world. Nowadays, in all democratic countries of the world the right of free speech and press holds a pre-eminent position among all other basic rights. It is regarded as the very foundation, the indispensable condition, for the existence of every other right. Freedom of speech and expression and of the press is at the basis of Anglo-American-French Jurisprudence. It is said that the press keeps governments in due subjection to their duties. The struggle for this freedom among the western nations and particularly among the English-speaking peoples extends over a number of centuries and represents a fundamental development in the Philosophies of these peoples.

The term "freedom of expression" includes within its range a wide variety of expressions like expressing one's views freely either by signs, word of mouth, writing, printing or by carrying banners with writing on them.

The courts in England, America and other countries have interpreted that this right includes not merely one's right to express or propagate one's own views but also the right to publish and propagate the views of others. It is for this reason that the freedom of press is included within this right.

A newspaper has the right to print anything that it thinks fit for publication. But the freedom that it enjoys is not unbridled. It is subject to the law of the land. The press in England, USA and France does not enjoy any special rights other than those to which a citizen is entitled. The position of writers contributing articles to a newspaper is substantially the same as that of person writing letters to the Press. In this connection A.V. Dicey remarked:

> "The law of England does not recognize in general any special privileges on behalf of the press. The law of the press as it exists in England is merely a part of the law of libel and the so-called liberty of the press is a mere application of the general principle that no man is punishable except for a distinct breach of law."[1]

The freedom of Press, which is an artery of the freedom of expression, was not gained without long battled in USA. The legislative foundation of American freedom of press begins with their First Amendment and related judicial pronouncements. In America, the press is more free inspite of some legislative barriers and press can print freely whatever it liked. According to western observers, the French press finds its freedom either purchased or pressured. The number of libel cases against the French press in the courts on flimsy charges is frighteningly large. The result is that journalists are affected by the sentences because of damage to reputation it involves. Nowadays though French Press does not publish anything what it likes but inspite of restriction press is enjoying freedom to a greater extent.

In this chapter attempts will be made to describe the development of freedom of press in U.K., USA and France as well as to scrutinize the relevant laws/ case laws with a view to giving the correct perspective of the study. Apart from this, attempts will also be made to examine the international instruments which contain freedom of press, with a view to giving a correct position of the study.

(a) Development of Freedom of press in the United Kingdom

The United Kingdom is a constitutional monarchy with no written Constitution. Its constitution is an aggregation of legal precedents and customs; no single document in the form of modern Constitution exists. In England the struggle for a free press was prolonged and costly. As every lawyer knows, the phrases "freedom of discussion" or "liberty of the press" are rarely found in any part of the statute book nor among the maxims of the common law. It appears, however, in the preamble to Lord Campbell's Libel Act, 1843.[2] As terms of art they are indeed quite unknown to the English Courts. The printing press was introduced

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[1] A.V. Dicey, *An Introduction to the Study of the Law of the Constitution*, (London: Macmillan and Co. Ltd., 1971), p. 240

[2] *Ibid*, p. 239

into England in 1476. When William Caxton set up the first British printing press in Westminster in 1476 his printing pursuits were restricted only by his imagination and ability. There was no law governing what he could or could not print; he was completely free.[3] For five centuries Englishmen and Americans have attempted to regain the freedom that Caxton enjoyed; for shortly after he started publishing the British Crown began the control and regulation of printing presses in England. The British government soon realized that unrestricted publication and printing could dilute its power seriously. Information is a powerful tool in any society, and the individual or individuals, who control the flow and content of the information received by a people exercise considerable control over those people. The printing press broke the Crown's monopoly of the flow of information, and therefore control of printing was essential. Soon after the introduction of the art of printing in the fifteenth century a series of proclamations began to be issued to restrict and control printing, in addition to the law of treason, sedition, heresy and blasphemy. One of the earliest effort to control its use took the form of a proclamation by Henry VIII in 1529 that banned certain books odious to him or to the Clergy who advised him. The following year a licensing system was begun and a book seller was hanged for attempting to sell proscribed book. Licensing of printing did not end until 1697. From 1538 when a full-blown licensing system was instituted on the theory that printing was a state matter and therefore subject to control by the Crown.[4] The proclamation forbade the import of books in England except after approval by it. Subsequent proclamation fortified this control, held necessary in the interest of the State. Until 1585, various edicts were issued against printers, subjecting them to harsh penalties if they criticized Church or Government.[5] In 1588, infamous Court of the Star Chamber was created by royal edict which was consisting of high ranking members of government who sat behind closed doors in the ***"starred chamber"*** at Westminster. The "Court" continued until 1641, issuing decrees and ordering any punishment it deemed proper except the death sentence. Fines, press seizures, cutting of ears, splitting of noses and imprisonment where penalties meted out by the Star Chamber[6] 'For eighty years the council of the Tudors and Stuarts attempted to restrict printing to members of the Stationers Company and from 1559 no work might be printed by members of that company until it had received the *imprimatur* of certain bishops or judges. By 1637 the attempt to control printing

[3] Don R. Pember, *Mass Media Law*, (Dabuguc: Wm. C. Brown Co. Publishers, 1977), p. 40.
[4] William E. Francis, *Mass Media Law and Regulation* (Ohio: Grid Inc. 1978), p. 1.
[5] *Ibid.*
[6] *Ibid, p.* 2.

had failed, but it might still be possible to control publication.[7] So by Star Chamber decree and by parliamentary ordinance, by statute, by proclamation and by common law it was laid down that throughout most of the sixteenth and seventeenth centuries all books and papers printed by anyone must be submitted to licensers and be registered by the Stationers Company before being published, i.e. during that period all printing required to licence.

The Star Chamber was abolished in 1641, but harassment of printers continued during the long parliament by means of licensing authority. The zealousness of Parliament in controlling the press is demonstrated by the following report in ***Corbett's Parliamentary History of England*** concerning a law passed on June 11, 1643:

> "The liberty of the press having of late been very grievous to the parliament, they passed an ordinance to restrain it, and to strengthen some former orders made for that purpose."

The most material clauses are these, that no order or declaration of either house (Parliament) shall be printed without order of one or both the said houses; nor any other book, pamphlet paper, ... shall from henceforth be printed, bound, stitched, or put out to sale, by any person ... unless the same be first approved and licenced under the hands of such person as both, or either, of the said houses shall appoint for licencing the same; and be entered in the Register Book of the company of Stationers, according to ancient custom, and the printer thereof to put his name thereto. The master and wardens of the said company ... are authorized and required to make diligent search and to seize and carry away such printing presses, letters and other materials, of every such irregular printer, which they find so misemployed; ... and likewise to make diligent search ... for such scandalous and unlicensed books, not entered, nor signed with the printers name aforesaid, being printer, contrary to this order; and the same to seize and carry away; ... and likewise to apprehend all authors, printers and other persons whatsoever employed in compiling, printing, stitching, binding, publishing and dispersing of the said scandalous, unlicenced, and unwarrantable papers, books, and pamphlets as aforesaid, and all those who shall resist the said parties in searching after them and bringing them before either of the houses or the committee of examinations, that so they may receive such further punishments as their offences shall demerit; and not to

[7] William H. Wickwar, *The Struggle for the Freedom of the Press,* (London: George Allen and Unwin Ltd., 1928), p. 14.

be released until they have given satisfaction to the parties employed in their apprehension ... not to offend in like sort for the future.[8]

As early as 1644 John Milton, in an appeal for the liberty of unlicensed printing, assailed an Act of Parliament which had just been passed providing for censorship of the press previous to publication. He vigorously defended the right of every man to make public his honest views without previous censure, and declared the impossibility of finding any man base enough to accept the office of censor and, the same good enough to be allowed to perform its duties.[9] Milton in his most eloquent address to the Parliament, put the liberty of the press on its true and most honourable foundation. He addressed:

> "Believe it Lords and Commons, they who counsel ye to such a suppression of books do as good as bid you suppress yourselves."[10]

In his ***Areopagitica*** he sought to show the absurdity and inequity of throttling the press and tried to prove that freedom of speech was not an evil to be tolerated but was actually a blessing essential to the life and happiness of any nation. He said:

> "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."[11]

In 1655 Oliver Cromwell pursued a system of restraint in support of his government and announced that no person what so ever do presume to print any matter of public news or intelligence without leave of the Secretary of the State. After the restoration of Charles II a statute on the same subject was passed, copied with some few alterations from the parliamentary ordinances. The Act expired in 1679 and was revived and continued for a few years after the Revolution of 1688. Many attempts were made by the government to keep in force but it was so strongly resisted by Parliament that it expired in 1694 and had never been revived.[12]

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[8] William E. Francois, *op. cit., p.* 2.
[9] *Grosjean v. American Press Co.*, 80 L. ed 660 (666).
[10] John Milton, *Areopagitica,* A speech for the liberty of unlicenced printing, (London: Macmillan, 1915) p.44
[11] *Ibid.*
[12] Jagdish Swarup, *Human Rights and Fundamental Freedoms* (Bombay: N.M. Tripathi Pvt. Ltd., 1975) p.221.

To demand for freedom of press, Parliament responded in 1649 by making seditious publication a crime of treason, punishable by death and by limiting printing to the confines of London and several other major cities. After the abolition of Star Chamber, the English press had a short spell of freedoms, and domestic news at last began to appear. At the same time the news book finally became a newspaper in form. Under pressure of space and the urgency of events the old title page and its blank versions were dropped. The news began directly beneath the titles which was now constant and series became increasing by regular number and dated. It has been estimated that between 1640 and 1660, nearly 300 distinct news publications were brought out. Under the regime of Cromwell (1649-58) when strict control was re-imposed, only two official publications were permitted- the ***Mercurius Politicus,*** which Milton edited for a time and the ***Publick Intelligencer***.[13] With the Licensing Act of 1662, control became tighter. Censorship was slackened in England after the Revolution of 1688 and the Licensing Act was allowed to lapse in 1694. The English Bill of Rights in1688 provided that the freedom of speech and debate of proceeding in Parliament ought not to be impeached or questioned in any Court or place out of Parliament, but made no similar provision for the benefit of ordinary citizen. However the scope of freedom was gradually expanded in a series of English judicial decisions over the next century.[14]

In 1693 parliament renewed the Licensing Act for a final period of two years, but the lapse of the Act in May 1695, cannot be attributed to any vigorous public demand for a free press. The House of Commons refused to renew it, not so much out of respect for freedom of expression but rather because experience showed that licensing did not succeed in its object. The result was that for the future, the press had been governed by the ordinary law of sedition and libel. No prosecution for criminal libel against the proprietor, publisher or editor of a newspaper could be brought without the order of a judge in chambers.[15] In ***Goldsmith*** v. ***Pressdram***[16] where a weekly called ***Private Eye*** published remarks defamatory of the chairman of a number of large public companies, Wien J. stated that the Court would exercise its discretion to allow proceedings in criminal libel to be taken where there was a ***prima facie*** case of a serious libel affecting the public interest even though there was no likelihood of a breach of the peace.

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[13] *The New Encyclopedia Britanica, op. cit.*, p. 238.
[14] Paul Sieghart, *The International Law of Human Rights* (Oxford: Clarendon Press, 1984), p. 330.
[15] The Law of Libel Amendment Act, 1888, Sec. 8.
[16] (1977) B.3. The case was settled.

The nascent power of the press was bound to disturb the government. In 1712 an attempt was made to curb it with the notorious Stamp Act.[17] This impose tax on newspapers and pamphlets, on advertising and on the print paper itself. This "taxes on knowledge" was enacted as a means of punishing scandalous and licentious publications of forcing registration of a growing number of publications (thereby making it easier to control them), and of bolstering the treasury. The newspaper stamp duty was increased in 1776. These taxes on newspapers had the desired effect of once killing off many newspaper, but their effect was only temporary.[18]

In England there were no special laws regulating the operation of newspapers. Several laws, however, relate directly to the news gathering activity of the press. In this connection the major laws are discussed below:

The Libel Act, 1792[19]

This Act commonly was known as *"Fox's Act"*, since it was passed through the instrumentality of Charles James Fox. The preamble of the Act provides:

> "Whereas doubts have been arisen whether on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the King and the defendant or defendants, on the plea of not guilty pleaded, it be competent to the jury impanelled to try the same to give their verdict upon the whole matter in issue."[20]

Section 1 of the Act provides that the jury may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information, and shall not be required or directed by the Court to find the defendant guilty merely on the proof of the publication by him of the paper charged to be a libel, and of the sense ascribed to it on the indictment or information.[21] According to section 2, the judge may give his opinion and

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[17] *The New Encyclopedia Britanica, op. cit.*, p. 238
[18] O. Hood Phillips *(et. Al). op. cit.*, p. 494.
[19] 32 (Geo 3 C 60) See, *Halsbury's Statutes of England and Wales*, Fourth Edition (1989), Vol. 24, p. 80.
[20] *Ibid*, p. 80.
[21] *Ibid*, p. 81

directions to the jury on the matter in issue, and the Act does not prevent the jury in its discretion from finding a special verdict as in other criminal cases.[22]

The Libel Act, 1843[23]

To try the libel cases carefully and to curtail freedom of press, the English authority had passed the Libel Act, 1843 to amend the law respecting defamatory words and libel which came into force form 24th August, 1843. This Act is commonly known as *Lord Campbell's Act,* though the short title was given to it by the Short Titles Act 1896.Section 3 of the Act provides that, if any person shall maliciously publish any defamatory libel, knowing the same to be false, every such person, being convicted thereof, shall be liable to be imprisoned in the common goal or house of correction for any term not exceeding two years, and to pay such fine as the court shall award.[24] It is seen in the section 5 of the Libel Act that if any person shall maliciously publish any defamatory libel, every such person being convicted thereof, shall be liable to fine or imprisonment, or both, as the court may award, such imprisonment shall not exceed the term of one year.[25]

The Law of Libel Amendment Act, 1888[26]

This Act was also passed to amend the Law of Libel which came into force on 24th December, 1888. This Act was so important that it ensures freedom of press in England at a larger scale. Section 3 of this Act runs as:

> "A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter."[27]

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[22] *Ibid.*
[23] (6 & 7 Vict C 96), See, *Halsbury's Statutes,* Vol. 24, 4th Edition (1989), p. 87.
[24] See. Section 3, *Ibid.*
[25] See. Section 5, *Ibid.*
[26] (51 & 52 Vict C 64), *Ibid.*, p. 105.
[27] *Ibid.*

This section does not state whether the privilege conferred by it is absolute or qualified. In the case of ***Farmer*** v. ***Hyde***[28] it was decided that such privilege is, within its limits, absolute and not qualified. It was further held that at common law reports or judicial proceedings are the subject of qualified privilege, provided they are (1) fair and accurate, (2) not prohibited by order of the Court, and (3) not blasphemous, seditious or obscene.

According to section 8 of the Act, "No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of newspaper for any libel published therein without the order of a Judge at Chambers being first had and obtained. Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.[29]

In the case of ***Desmond*** v. ***Throne***[30] it was decided that the Judge when exercising his discretion under this section is required to consider all the circumstances, and not simply the evidence adduced by the applicant.

The Obscene Publications Act, 1857, 1959 & 1964

The topic "obscene publication" is hardly of constitutional importance so long as the restrictions on liberty of expression are reasonable in relation to the public opinion of the day. In early times jurisdiction over obscenity was exercised by the Ecclesiastical Courts as a matter of morals; but this jurisdiction was taken over by the Common Law Courts in ***Curl's case*** (1727), where the misdemeanor of obscene libel was recognized. The Obscene Publications Act, 1857 also empowered Magistrates to authorize the seizure and destruction of obscene articles kept for sale or other purpose of gain.[31] The Obscene Publication Act, 1959[32] created the statutory offense of publishing obscene matter, which superseded the common law misdemeanor and repealed and replaced the Act of 1857 as regards the seizure and forfeiture of obscene matters. This Act was passed on 29th July, 1959 to amend the law relating to the publication of obscene matter; to provide for the protection of literature; and to

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[28] (1937) 1 K.B. 728, (1937) 1 All. ER. 773, CA.
[29] See. Section 8 of the Law of Libel Amendment Act, 1888.
[30] (1982) 3 All ER 268, (1983) 1 WLR 163.
[31] O. Hood Phillips (*et. Al.*), *op. cit.*, p. 500.
[32] (7&8 Eliz 2 C 66), See *Halsbury's Statute*, 4th Edn. Vol. 12, p. 276.

strengthen the law concerning pornography.[33] According to section 2(1) of the Act, any person who, whether for gain or not, publishes an obscene article shall be liable (a) on summary conviction to a fine not exceeding (the prescribed sum) or to imprisonment for a term not exceeding six months; (b) conviction on indictment to a fine or to imprisonment for a term not exceeding three years or both.[34] Under section 3 of the Obscene Publication Act, 1959 a Justice of the Peace may issue a warrant empowering a constable to enter and search by any premises, stall or vehicle, and to seize and remove any articles which he has reason to believe to be obscene articles kept for publication for gain. When the owner of the premises or user of the stall or vehicles has been summoned to appear to show cause why the articles should not be forfeited, the Magistrates Court may order the articles to be forfeited if it is satisfied that they were obscene articles kept for publication for gain. The owner, author or maker may also appear to show cause against forfeiture. Appeal against forfeiture order lies to the Crown Court or by the case stated to the High Court.[35]

The English authority has further passed the Obscene Publication Act, 1964[36] to strengthen the law for preventing the publication for gain of obscene matter and the publication of things intended for the production of obscene matter. Section 1 of this Act was designed to close two gaps in the Obscene Publications Act, 1959 revealed by the decisions in ***Mella*** v. ***Monahan.***[37] The amendment made, is intended to remove the difficulty created by the case ***Mella*** v. ***Monahan***. Section 3 of the Act, 1964 provides that photographic negatives were not articles capable of publication within the meaning in the Obscene Publications Act, 1959 as they were not shown, played or projected to some member of the public. This section over comes that defect in the 1959 Act by providing that Act shall apply to anything, e.g., photographic negatives, duplicator stencils or moulds, which is intended for use for the reproduction or manufacture of obscene articles.[38]

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[33] *Ibid.*, p. 277.
[34] *Ibid.*, p. 277.
[35] See. Section 3 of the Obscene Publication Act, 1959. See, *Ibid.*, p. 281-282.
[36] (1964 C 74), See, *Ibid.*, p. 299.
[37] (1961) Crim. L.R. 175.
[38] *Halsbury's Statute, op. cit.*, p. 301.

The Official Secrets Act, 1911, 1920, 1939 and 1989

The official Secrets Act, 1911[39] was passed on 22 August, 1911 conferred drastic powers which can be used to prevent comment upon matters of general public interest. The principal purpose of this legislation is the prevention of espionage and communication of any information which may be calculated to prejudice the safety of the state in the hands of a potential enemy. Section 2(1) of the said Act runs as:

> "If any person having in his possession or control ... any information ...which has been entrusted in confidence to him by any person holding office under her Majesty ... (a) communicates the ... information to any person other than a person to whom he is authorised to communicate it ... that person shall be guilty of a misdemeanor."

The general character of this provision is very clear. If a person holding office under Her Majesty within the meaning of section 2(1) of this Act, discloses to a newspaper reporter information relating to an offence, even if it be of no particular public interest, both he and the reporter who makes use of the information as news are on the face of it guilty of offences. There are wide powers of search upon mere suspicion of the commission of an offence under this Act and these powers are not limited by the requirement that a search warrant can only be issued by a judicial authority. The proceedings under this Act may be held wholly or partly in camera, if the prosecution applies to the Court.

Section 9 of the Act provides:

> "(1) If a Justice of the Peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorising any constable ... to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature or anything which is evident

[39] (1 & 2) Geo 5C 28), See *Halsbury's Statute*, 4th Edn. (1997), Vol. 12, p. 169.

of offence under this Act having been or on being about to be committed, which may find on the permission or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed,

(2) Where it appears to a Superintendent of Police that the case is one of great emergency and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice under this section."[40]

The Official Secrets Act, 1920[41] was passed on the 23rd December, 1920 to amend the Official Secrets Act, 1911. The amended section 6 of this Act empowered the police authority to collect from any person, any information relating to the offence or suspected offence and if the person knowingly gives false information, police can charge him for guilty of a misdemeanor.[42]

The Official Secrets Act, 1939 which was passed on the 23rd November, 1939 by amending section 6 of the Official Secrets Act, 1920 restricted the special power of interrogation by the police authority which relates to acts of espionage or sabotage of defence installation.[43]

Section 2 of the Official Secrets Act, 1911 was repealed by the Official Secrets Act, 1920 and it was replaced by the Official Secrets Act, 1989[44] for protecting more limited classes official information. This Act was passed on May 11, 1989 and came into force on March 1, 1990 by the Official Secrets Act, 1989 (Commencement) Order, 1990.[45] Though this Act replaces section 2 of the Official Secrets Act, 1911with new provisions to protect certain limited classes of information e.g. disclosures relating to security and intelligence,

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[40] *Ibid.*, p. 172.
[41] (10 & 11) Geo 5C 75), See *Halsbury's Statute*, 4th Edn. Vol. 12, p. 180.
[42] *See* Section 6 of the Act.
[43] (2 & 3) Geo 6C 121), *Halsbury's Statute*, Vol. 12, 4th Edn. p. 206.
[44] (1989 c 6), *Ibid.*, p. 1210.
[45] SI 1990/199 See *Halsbury's Statute*, 4th Edn. Vol. 12, p. 1225.

disclosure relating to defence, disclosure relating to international relations etc.[46] The offence of disclosure varies in degree according to the category of information concerned and according to the degree of harm caused. In addition, this section makes a further distinction with regard to members and former members of the security and intelligence services and certain other notified persons and with regard to other persons. In the former case such persons are guilty of an offence if, without lawful authority, any information, document or other article relating to security or intelligence which is or has been in that person's possession is disclosed and including any statement purporting to be such a disclosure. In the later case the offence is not all embracing since an offence is committed where a damaging disclosure is made. Section 2 further provides the disclosure of information, etc., relating to defence, once again the disclosure must be proven to be a damaging one: damaging disclosure being that which is, broadly likely to prejudice the capabilities of the armed forces or the interests of the United Kingdom abroad.[47]

The Judicial Proceedings (Regulation of Reports) Act, 1926[48]

This Act came into force on the 15th December, 1926 and it was enacted to regulate the publication of reports of judicial proceedings in such manner as to prevent injury to public morals.[49] According section 1(1) it shall not be lawful to print or publish, or cause or procure to be printed or published:

(a) in relation to any judicial proceedings any indecent matter or indecent medical, surgical, or physiological details being matter or details the publication of which would be calculated to inquire public morals:

(b) in relation to any judicial proceedings for dissolution of imarriage, for nullity of marriage, or for judicial separation, or for restitution of conjugal rights, any particulars other than the following, that is to say:

(i) the names, addresses and occupations of the parties and witnesses;

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[46] *Ibid.*, p. 1213.
[47] *Ibid.*
[48] (16 & 17 Geo 5c 61), See *Halsbury's Statute*, Vol. 12, 4th Edn. (1997), p. 188.
[49] *Ibid.*, p. 188.

(ii) a concise statement of the charges, defences and counter charges in support of which evidence has been given;

(iii) submission of any point of law arising in the course of the proceedings, and the decision of the court thereon;

(iv) the summing-up of the judge and the finding of the jury (if any) and the judgment of the Court and observations made by the judge in giving judgment;

Provided that nothing in this part of this subsection shall be held to permit the publication of anything contrary to the provisions of paragraph (a) of this subsection.

If any person acts in contravention of the provisions of this Act, according to section 1(2), he shall in respect of each offence be liable, on summary conviction, to imprisonment for a term not exceeding four months, or to a fine not exceeding [level 5 on the standard scale),[50] or to both such imprisonment and fine. Again it is stated in this subsection that no person, other than a proprietor, editor, master printer or publisher, shall be liable to be convicted under this Act.

The Children and Young Persons Acts 1933 and 1963

Under the provisions of these Acts further restrictions were imposed. A Court may direct that no newspaper report of the proceedings shall reveal that the name, address or school of any child or young person concerned and that no picture shall be published as being a picture of any such child.

Section 49(1) of the Children and Young Persons Act, 1933[51] which was enacted on the 13th April, 1933 provides that:

[50] Standard scale set out in section 37(2) of the Criminal Justice Act, 1982. the Scale is: level 1: £200; level 2: £500; level 3: £1000; level 4: £2000, and level 5: £5000.
[51] (23 Geo 5c 12). See *Halsbury's Statute*, 4th Edn. (1992) Vol. 6, p. 18.

> "... no newspaper report of any proceedings in a Juvenile Court shall reveal the name, address or school, or include any particulars calculated either as being the person against or in respect of whom the proceedings are taken or as being a witness therein, nor shall any picture be published in any newspaper as being or including a picture of any child or young person so concerned in any such proceedings as aforesaid:
>
> Provided that the Court or the Secretary of State may in any case, if satisfied that it is [appropriate to do so for the purpose of avoiding injustice to a child or young person], by order dispense with the requirement of this section [in relation to him] to such extent as may be specified in order.[52]

Section 49(2) further runs as:

> "Any person who publishes any matter in contravention of this section shall on summary conviction be liable in respect of each offence to a fine not exceeding [level 5 of the standard scale].[53]

The above mentioned law of 1933 was amended on the 31st July, 1963 by the Children and Young Persons Act, 1963.[54] Section 57 of this Act provides restriction in addition to the provisions of section 49 of the 1933 Act that newspaper reports of proceedings in juvenile courts shall, with the necessary modifications, apply in relation to any proceedings on appeal from a juvenile court (including an appeal by case stated or, in Scotland, stated case) as they apply in relation to proceedings in a juvenile court.[55] This section also impose restrictions on television and others media on as they apply in relation to newspapers.[56]

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[52] *Ibid.*, p. 54.
[53] *Ibid.*
[54] (196c 37), See *Halsbury's Statute*, 4th Edn. Vol. 6 (1992), p. 89.
[55] *Ibid.*, p. 102.
[56] *Ibid.*

The Children and Young Persons (Harmful Publications) Act, 1955[57]

This Act is commonly known as Horror Comics Act. This Act was passed on the 6th May, 1955 and came into operation at the expiration of one month beginning with the date of its passing. This was enacted to prevent the dissemination of certain pictorial publications considered harmful to children and young persons.

According to section 1 this Act applies to any book, magazine or other like work which is of a kind likely to fall into the hands of children or young persons and consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying-

(a) the commission of crimes; or
(b) acts of violence or cruelty; or
(c) incidents of a repulsive or horrible nature;

in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall.[58]

According to section 2(1) a person who prints, publishes, sells or lets on hire a work to which this Act applies, or has any such work in his possession for the purpose of selling it or letting it on hire, shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding four months or to a fine not exceeding [level 3 on the standard scale] or to both.[59]

Section 3 provides that the Court may order copies, plates and the like which are found in the possession or control of a convicted person to be forfeited. On the information laid before a single justice, the police may obtain a warrant to search the premises on suspicion of containing publications covered by the Act.[60] The only danger to liberty of opinion would seem to come from the fact that it does attempt censorship, however beneficial the form thereof. This section may be compared with the Obscene Publications Act, 1959.

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[57] (3 & 4 Eliz 2 c 28), See *Halsbury's Statute*, 4th Edn., (1997) Vol. 12, p. 225.
[58] *Ibid.*
[59] *Ibid.*, p. 226.
[60] *Ibid.*, p. 227.

The Defamation Act, 1952[61]

This Act was passed on 30th October, 1952 to amend the law relating to libel and slander and other malicious falsehood.

A newspaper will not normally be required to disclose the origin of its source of information. If any newspaper published any defamatory article or news, it will be an offence within the law of libel and it will be punishable under section 2 of the Defamation Act, 1952.[62]

The Post Office Act, 1953[63]

This Act came into operation on the 31st July, 1953. Under the provision of section 58 of this Act, the post office may detain postal packets suspected to contain contraband. Not only that indecent or obscene articles dispatched through the post may also be detained and destroyed under the Post Office Act.[64]

The Newspapers, Printers, and Reading Rooms Repeal Act, 1869[65]

This Act was enacted to repeal certain enactment's relating to newspapers, pamphlets, and other publications, and to printers, typefounders, and reading rooms and it came into force on the 12th July, 1869.

Section 2 provides that the printer of any book or a paper meant to be published must print on the front of the paper, if printed one side only, or upon the first or last leaf of every paper or book consisting of more than one leaf, his name and address. The penalty for failing to do so is a fine not exceeding level 1 on the standard scale.[66]

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[61] (15 & 16 Geo 61 Eliz 2c 66), See *Halsbury's Statute*, 4th Edn., Vol. 24, p. 108.
[62] *Ibid.*, p. 109.
[63] (1 & 2 Eliz 2c 36), See *Halsbury's Statute*, Vol. 34, 4th Edn. (1987), p. 395.
[64] *Ibid.*, p. 419.
[65] (32 & 33 Vict c 36), See *Halsbury's Statute*, Vol. 24, 4th Edn. (1989), p. 92.
[66] *Ibid.*, p. 95.

According to section 29, printers must keep a copy of every paper they print for at least six months, and write thereon the name and address of the person employing them to do the work; the penalty for failure to do so is a fine corresponding to level 2 on the standard scale. Penalties under the schedule are recoverable summarily, but proceedings must be commenced within three months of the date the penalty was incurred and must be in the name of the Attorney General or Solicitor General.

The Printers Imprint Act, 1961[67]

This Act was enacted to make provisions for relaxing certain requirements of the Newspapers, Printers, and Reading Rooms Repeal Act, 1869 and it came into operation from the 22nd June, 1961. Section 1 of this Act makes provisions that there is no need for printing name and addresses of the printer and publisher etc. in publication of newspapers which was a compulsory provision in the Newspapers Printers and Reading Rooms Repeal Act, 1869. It also provides that there is no need of preserving or keeping a copy of every paper they print for at least six months.[68]

The Theft Act, 1968[69]

According to section 23 of this Act, the printer and publisher of a newspaper are liable to a penalty not exceeding level 3 on the standard scale for publishing an advertisement offering a reward for the recovery of stolen property stating that no question will be asked.[70]

Censorship

In England the press has not been subjected to any censorship law for several centuries except during the periods of national crisis, such as World War II. Restrictions on the press are roughly comparable to those in the United States of enforcement and application.

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[67] (9 & 10 Eliz 2c 31), See *Halsbury's Statute*, Vol. 24, 4th Edn. (1989), p. 121.
[68] *Ibid.*
[69] (1968 c 60), See *Halsbury's Statute*, Vol. 12, 4th Edn., (1997), p. 488.
[70] *Ibid.*, p. 512.

Perhaps the most contentious issue related to government control of information in England is the practice of labelling national security and defence information with defence notices or *"D-notices"*. These notices are formal letters outlining the information and requesting editors in the print and electronic media not to publish it. Compliance is expected but the notices are not binding. The labelling authority has no precise legal basis and is not directly authorized by the Official Secrets Act of 1911, although it is loosely based on it. The actual application of *"D-Notices"* is accomplished by the D-notices committee, consisting of representatives from the press and broadcast industries and officials from the Ministry of Defence and the Home, Foreign and Commonwealth Offices. Consequently, this represents a form of media self-censorship on national security matters.[71]

Anthony Smith summarized the status of censorship under the laws of the United Kingdom in his book, ***the British Press Since the War*** (1974), stating:

> "Newspapers have not lost any of the specific privileges won in previous generations ... but there is a series of specific issues which they cannot any longer deal with in the way they may want to and at the moment at which they may want it."
>
> "Successive interpretations of specific laws, some of which have existed for centuries, are beginning to interfere with the intangible asset of press freedom. Successive government ... have not found it expedient or possible to alter those laws ..."[72]

Special Press Law and Privileges of Newspapers

It is seen that according to the Law of Libel (Amendment) Act, 1888, no prosecution can be instituted against the proprietor, publisher, editor or any person responsible for the publication of a newspaper for any libel contained therein without the order of a judge in chambers, and before the order can be made the person accused must be given an opportunity of being heard. Such prosecutions are now a days very rare. This restriction, however, does not apply to an information laid by the Attorney General in respect of attacks upon the

[71] George Thomas Kurian *(Ed.), World Press Encyclopedia,* (Newyork: Facts on File, Inc., 1982), p. 932.
[72] *Ibid.*, p. 934.

Government. Newspapers have enjoyed various kinds of privileges. Such as in the case of Houses of Parliament, admission of members of the press is the same as that for the general public who are admitted on sufferance. Moreover publication of the proceedings can be restricted as a matter of privilege. The practice however is very different and the press is afforded special facilities for obtaining parliamentary news; secret sessions are confined to war time, and even they are rare. There have been occasions in the past when the general public has been excluded by reason of persistent misbehavior on the part of few individuals; the press gallery however has remained open on such occasions.

Though the press in England is enjoying freedom but inspite of that it does not enjoy any special rights other than those to which a citizen is entitled. The position of writers contributing articles to a newspaper is substantially the same as that of persons writing letter to the press. In this connection Dicey remarked:

> "The press law of England does not recognize in general any special privileges on behalf of the press. The law of the press as it exists in England is merely part of the law of libel and the so called liberty of the press is mere application of the general principle that no man is punishable except for a distinct breach of law."[73]

Everybody knows that the term "liberty of the press" is rarely found in any part of the statute book nor among the maxims of the common law. At no time has there in England been any proclamation of the right to liberty of thought or to freedom of speech. The true state of things cannot be better described than in these words from an excellent treatise on the law of libel:

> "Our present law permits any one to say, write and publish what he pleases; but if he make a bad use of this liberty he must be punished. If he unjustly attacks an individual, the person defamed may sue for damages; if, on the other hand, the words be written or printed, or if treason or

[73] A.V. Dicey, *op. cit.*, p. 240.

immorality be thereby included, the offender can be tried for the misdemeanor either by information or indictment."[74]

The liberty of the press in England is, then simply one result of the universal predominance of the law of the land. The terms "liberty of the press", "press offences:, "censorship of the press", and the like, are all but unknown to English lawyers. Simply because any offence which can be committed through the press is some form of libel, and is governed in substance by the ordinary law of defamation.[75]

Nowadays the press is the most powerful body in the land which can make public opinion. When a press is very much responsible to its duties, then we can easily make comment that those presses are the free presses. In ***Granada case***,[76] Lord Denning observed:

"In order to be deserving of freedom, the press must show itself worthy of it. A free press must be a responsible press. The power of the press is great. It must not abuse its power. If a newspaper should act irresponsibly, then it forfeits its claim to protect its sources of information."[77]

According to Denning that was a sensible statement of principle. But the media were outraged by it and by the decision. They formed up in a united bid against the judges, supported by some politicians, Mr. Michael Foot said, 'Denning is an ass'. The observer came out with a headline. "Why Denning is an ass". The Times, more sedately, said, 'Lord Denning this time, is on the wrong side ... The Court of Appeal has done a disservice to the cause of press freedom. When the House of Lords upheld the Court of Appeal, The Times denounced their decision, describing it as, A charter for wrong doing, 'and added:

"The decision of the House of Lords in the Granada Television case is restrictive, reactionary, and clearly against the public interest."[78]

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[74] *Supra.*, p. 240.
[75] A.V. Dicey, *op. cit.*, pp. 251-252.
[76] (1980), 2 W.B. 765.
[77] Lord Denning, *What Next in the Law* (New Delhi: Aditya Book Pvt. Ltd., 1993) p. 328.
[78] *Ibid.*, pp. 250-251.

Another case was in the Court of appeal. It is *Schering Chemicals* v. *Falkman Ltd.*[79] It was not going to the Lords. No leave was asked.

In the course of his judgment Lord Denning ventured to deal generally with the freedom of press. He said:

> "Freedom of the press is of fundamental importance in our society. It covers not only the right of the press to import information of general interest or concern, but also the right of the public to receive it. It is not to be restricted on the ground of breach of confidence unless there is a pressing social need for such restraint. In order to warrant a restraint, there must be a social need for protecting to outweigh the public interest in freedom of the press. No injunction forbidding publication should be granted except where the confidence is justifiable on moral or social grounds..."[80]

From the above discussion and analysis it is evident that three major controls were exercised over the press in England beginning the sixteenth century. They were licensing, taxation and seditious libel. Of the three licensing came closest to being a form of prior restraint of the press, although the fear of punishment for seditious libel constituted self-imposed restraint. Chief among the censors during a long period was the Court of the Star Chamber. The experience of English history during the last two centuries show that till the very recent times the law, has not recognized any privilege on the part of the press. It is hardly an exaggeration to say from this point of view, that in a true sense, the freedom of press in England is subject to the ordinary law.

(b) Development of Freedom of Press in the USA

Freedom of press is not, and was not exclusively an American idea. Today the most indeliable embodiment of the concept is the First Amendment to the United States Constitution, forged in the last half of the eighteenth century by men who built upon their memory of earlier experiences. After the revolution and beginning of this new nation, the

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[79] 51 (1981) 2 WLR 848.
[80] *Supra.*, p. 254.

government drafted its first Constitution, the Articles of Confederation. Many person criticized the national charter because it did not contain a single article which ensured citizens the freedom of conscience, freedom of press, or any other rights. The Articles of Confederation did no contain such provisions because the men who drafted the Articles did not believe such guarantees necessary. But after the demand from every corner of the State, most States had guarantees of freedom of expression in their State Constitutions. Virginia was fairly typical. In June 1776, a new Constitution of this State containing a declaration of rights or a bill of rights was adopted. Section 12 of that document states:

> "That the freedom of the press is one of the great bulwarks of liberty and can never be restrained except by despotic government."[81]

Other states soon followed Virginia's lead and declarations of rights and each included a provision for freedom of expression. A few made spare, unelaborated statements such as that of Massachusetts:

> "The liberty of the press is essential to the security of freedom in a state: it ought not therefore, to be restrained in this commonwealth. The right of free speech shall not be abridged."[82]

There were in the United States restricting freedom of press for almost thirty years before the first newspaper was published. Although newspapers in the colonies generally were not required to be licensed, some of the earliest ones followed English precedent by submitting to censorship. Thus the first continuously published newspaper in America, the ***Boston News Letter*** (1704-1776), carried ***"published by authority"*** under its nameplate, which meant that the colonial governor could disapprove of stories, thereby preventing their publication.[83] As early as 1662 statutes in Massachusetts made it a crime to publish anything without first getting prior approval from the government, twenty eight years before Benjamin Harries published the first and last edition of ***Publick Occurrances***.[84] The second and all subsequent issues of the paper were banned, because Harris failed to get permission to publish the first edition, which contained to be criticism of British policy in the colonies, as

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[81] Don R. Pember, *Mass Media Law* (Dubuque: Wm. C. Brown Company Publishers, 1977), p. 47.
[82] Harold L. Nelson (et. Al), *Law of Mass Communications*, (New York: The Foundation Press, Inc, 1978), p. 5.
[83] William E. Francois, *Mass Media Law and Regulations, 1978*, p. 4.
[84] Don R. Pember *op. cit.*, p. 42.

well as a report that scandalized the Massachusetts Clergy. The British Government attempted to use sedition laws to control the press in America, but did not attempt to organize guilds or printing monopolies. Licensing which died in England in 1695, continued until 1720's in the USA. By the mid 1700's the idea of prior restraint being the antithesis of press freedom had gained recognition from one of England's foremost legal authorities, Sir William Blackstone, whose ***"Commentaries on the Laws of England"*** was considered the definitive discussion of the meaning of the common law in America as well as in England. He wrote that punishment of "blasphemous, immoral, treasonable, schismatical, seditious, or scandalous libels" did not infringe freedom of press. These view of press would be very influential in America:

> "The liberty of the press indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications and not in freedom from censure for criminal matter when published. Every freedom has an undoubted right to lay what sentiment he pleases before the public; to forbid this, is to destroy the freedom of the press, but if he publishes what is improper, mischievous or illegal, he must take the consequences of his own temerity."[85]

British Stamp Acts also were applied against printers in the colonies and induced growing resentment. A special British Stamp Act of March 1765, aroused intense opposition, and most newspapers refused to pay the tax; inability or unwillingness to enforce the Act led to its repeal after one year.[86] Following revolutionary war, Massachusetts attempted to impose a tax on newspapers, but public reaction was so great that the law was rescinded before it could be put into effects.[87]

In recent times, licensing generally has not been a news media problem. It occasionally has surfaced in the form of City Ordinances that require a permit, license, or prior approval of a municipal office before the "poor peoples press"- pamphlets could be distributed. In one such case the U.S. Supreme Court in an opinion by His Lordship Hughes, C.J. held a municipal ordinance invalid which required that the city manager gave approval

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[85] William Blackstone, *Commentaries on the Laws of England*, Facsimile Ed. (Chicago: University of Chicago Press, 1979) Vol. 4, pp. 151-152.
[86] Frank Luther Mott, *American Journalism: A History* (New York: The Macmillan Co. 1969), pp. 71-74.
[87] *Ibid.*, pp. 143-144.

before literature could be distributed. Speaking for the Court, the Chief Justice said of the ordinance:

> "Whatever the motives which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship."[88]

The Court in its judgement invalidated a municipal requirement of written permission prior to distribution of hand bills and said that the principle of a free press covered distribution as well as publication and liberty of circulation was essential to that freedom of the press. Indeed, without circulation, the publication would be of little value.

The U.S. original Constitution did not bear any provisions regarding liberty of the press. In December 15, 1791, the First Amendment of the U.S. Constitution was adopted which *inter alia* states:

> "Congress shall make no law... abridging the freedom of speech, or of the press, ..."[89]

The Constitution does not confer an unqualified right to speak out at all times and all places and on very conceivable subject has never been seriously questioned. His Lordship Oliver Wendell Holmes, J. high lightened this point in the following way:

> "The most stringent protection of free speech would not protect a man falsely shouting fire in a theatre and causing a panic."[90]

The First Amendment affords extensive protection to the right to communicate ideas, opinions and information. But in the nature of things, this right cannot be as complete and absolute as the right to harbour a thought. In this regard, his Lordship Holmes, J. further observed:

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[88] *Level v. City of Griffin,* Ga, 303, US 444, 451 (1938).
[89] See, First Amendment to the US Constitution.
[90] John C. Klotter (et. al.) *Constitutional Law* (Ohio: Anderson Publishing Co., 1981), p. 40.

> "The First Amendment while prohibiting legislation against free speech as such, cannot have been and obviously was not intended to give immunity for every possible use of language ... Neither Hamilton nor Madison, nor any other competent person then or later, ever supposed that to make criminal the counseling of a murder within the jurisdiction of congress would be an unconstitutional interference with free speech."[91]

Alexander Hamilton was skeptical about freedom of press. He said:

> "What signifies a declaration that 'the Liberty of the Press' shall be inviolably preserved? What is the liberty of the press? Who can give it any definition which does not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer, that its security, whatever fine declarations may be inserted in any Constitution respecting it must altogether depend on pubic opinion and on the general spirit of the people and of the Government."[92]

The American Supreme Court had played a good role in upholding the freedom of press. Freedom of expression has been considered to be inseparable from the right to personal liberty. Cardozo J., of the United States Supreme Court says that freedom of expression is "the matrix, the indispensable condition, of nearly every other form of freedom."[93] His Lordship Douglas, J. stated:

> "Full and free discussion has indeed been the first article of our faith ... we have deemed it more costly to liberty to suppress a despised minority than to let them vent their spleen. We have above else feared the political censor. We have wanted a land where our people can be exposed to all the diverse creeds and cultures of the world."[94]

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[91] Geoffrey Marshall, *Constitutional Theory* (Oxford: The Clarendon Press, 1980), pp. 168-169.
[92] Donald Paneth, *The Encyclopedia of American Journalism*, (New York: Facts on File Publications, 1983), p. 172.
[93] *Palko* v. *Connecticut*, 302 US 319, 327 (1937).
[94] *Dennis* v. *U.S.* 341 V.S. 494, 584 (1951).

The Supreme Court issued a landmark ruling on the constitutionality of prior restraint in the ***Near v. Minnesota*** case.[95] The fact of the case, in short, is that the authorities in Minnesota acting under powers given them by a state law, had obtained a court order' forbidding J.M. Near and Howard Guilford to publish further issue of the weekly ***Saturday Press*** until they promised to print only the truth, and that ***"with good motives and justifiable ends."*** The Supreme Court ruled, five to four, that Near and Guilford could resume publication without making such promise. His Lordship Charles Evans Hughes, C.J. the author Judge, held that the freedom of press from prior restraint was not absolute; it usually violates the First Amendment Guarantee of freedom of speech and press. Prepublication censorship was allowable in respect to sensitive military information (such as the size and location of troops) obscenity, materials inciting "acts of violence" in disturbance of the public order, or inciting the overthrow of the government or publications that introduced on a persons privacy.

The concept of prior restraint deals with official restrictions imposed upon speech or other forms of expression in advance of actual publication. Prior restriction is an obstacles upon freedom of press. According to Madison:

> " ... This security of the freedom of the press requires that it should be exempt not only from previous restraints by the executive as in Great Britain; but from legislative restraints also."[96]

In the case of the ***New York Times Co. v. United States.***[97] (Popularly known as ***"Pentagon Papers case"*** where the U.S. Supreme Court had defined how much prior restraint the government could exercise over the media. The case began in 1971 when readers of the ***New York Times*** were offered the first installment of a top secret government study of how the United States became involved in the Vietnam war. The newspaper said it would publish those parts of the 7000 page document its editors believed to be of public interest. The U.S. National Security Authority raised the question that the disclosure came as a profound shock to the Administration. That shock quickly was converted into action of an unprecedented nature. Within three days, the Attorney General of the United States obtained

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[95] 283 U.S. 697 (1931).
[96] Report on the Virginia Resolutions, Madisons' works, vol. Iv p. 543.
[97] 403 U.S. 713, 91 S.ct. 2140, 29 L.Ed. 2d 822 (1971).

Court orders that stopped first ***the Times*** and then the ***Washington Post*** from publishing further installments of the documents.

In this case the Judges voted to three to lift the restraint immediately. The unsigned ***per curiam*** decision disposed in two short paragraphs of governments argument that the president had a right to restrain publication of information he believed to be harmful to national security. Quoting directly from some newspapers, the Court said it agreed with a New York Federal District Court and the District of Columbia Circuit Court, which had held that the government had not carried the "heavy burden" required to justify its request for a restraint. Thus, it had not overcome "the heavy presumption against" the restraint's constitutional validity. Even the three dissenters took pains to say that they opposed prior restraints in general but though this case had moved through the courts too quickly to develop a factual basis on which to judge whether national security was indeed in danger. They wanted the case returned to the lower courts for trail so that a record might be developed. In that case his Lordship Stuart, J. said to the American government:

> "When everything is classified, then nothing is classified ... the hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only if credibility is truly maintained."

Although the above mentioned decision broke no new legal ground the case was of great importance to the news media because for the first time the Department of Justice had asked the courts to restrain publication of government information. One of the lower-Court Judges involved in the case noted that it was the first time in 200 years that "the executive department has succeeded in stopping the presses."[98]

Within a decade after the adoption of the First Amendment, freedom of speech was put to the test and the United States Congress passed the Sedition Act in 1798 which was plainly a seditious libel law. The Act made it a crime, punishable by fine and imprisonment, to engage in harmful criticism of President John Adams and his policies. It soon became apparent that the Sedition Act was aimed primarily at the editors of Republican newspapers

[98] Judge J. Skelly Wright of the U.S. Court of Appeals for the District of Columbia Circuit in *United States* v. *Washington Post co.*, W., 446 F.Ed. 1322 (D.C. Cir. 1971).

viewed from the vantage point today, there is no doubt that the Sedition Act was a serious abridgement of freedom of such and of the press.[99] Examples of cases under this law would seem to evoke laughter. Dr. Thomas Cooper, editor of ***the Sunbury*** and ***North Umberl*** and ***Gazette*** was fined £1000 for writing an editorial taking issue with the President Adam's trade policies. He wrote that when Adams had taken office, he was hardly in the infancy of political mistake"[1] The Act expired, by its own terms, in March 1801 with the expiration of Adam's term.

After a long time the United States Congress enacted the Espionage Act of 1917 during the first world war. This law made it a crime to speak or write in a way that could be seen as helping the enemy.[2] The following remarks summarise the nature of cases under the Espionage Act of 1917:

> "It became criminal to advocate heavier taxation instead of bond issues, to state that conscription was unconstitutional, though the Supreme Court had not yet held it valid, to say that a referendum should have preceded our declaration of war, to say that war was contrary to the teachings of Christ. Men have been punished for criticizing the Red Cross and the Y.M.C.A., while under the Minnesota Espionage Act it has been held a crime to discourage women from knitting by the remarks. No soldier ever sees these socks" [3]

When the Espionage Act, 1817 turned out not to be broad enough to catch all who spoke their doubts about the war, Congress passed the much more stringent Sedition Act of 1918. This law made it a crime to talk against the draft, or the sale of war bonds or to interfere with production of war goods, as by advocating a strike.[4]

The Fourteenth Amendment of the United States Constitution protected freedom of speech and press from invasion by the States. The amendment which became effective in 1868, declares that no State shall "deprive any person of life, liberty or property without due

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[99] Holsinger, Ralph L., *Media Law*, (2nd Edn.), Mcgraw, Hill Inc., 1991, p. 14.
[1] *United States* v. *Cooper*, 25 Fed. Cas. 631, 635 (1800).
[2] Zechariah Chafee, I.R., *Free Speech in the United States*, Atheneum ed. (New York: Atheneum, 1969), pp. 37-39.
[3] *Ibid.*, p. 16.
[4] Holsinger, Ralph L., *op. cit.*, p. 44.

process of law"[5] According to this Amendment, a free press means, a press which is free from the compulsions from whatever sources government, social, external or internal. A free press is free for the expression of opinion in all its phases. Freedom of press includes the right to adopt and pursue a policy without governmental restriction.

The "liberty" was not until *Gitlow* v. *People of the State of New York*[6] interpreted to include liberty of speech and press and State Courts ruling on expression before that decision were allowed to stand without review by the United States Supreme Court. The fact of the case, in brief, is that Gitlow was a member of the left wing section of the Socialist Party. His crime was the publication of a ponderous Manifesto to calling for a general strike as a first step toward the toppling of the Capitalist system. A New York Court found him guilty of criminal anarchy and sentenced him to prison. In the Gitlow decision, the Court said:

> "... we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgment by Congress are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the states."

In 1936 the U.S. Supreme Court, in the case of *Grosjen* v. *American Press*[7] struck down a tax that was clearly designed to punish daily newspapers whose editorials opposed a state governor's rise to power. In that case, his Lordship George Sutherland J., observed that the evils to be prevented were not 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 to prepare the people for an intelligent exercise of their rights as citizens.[8]

In the above mentioned case the constitutionality of the taxes on newspapers was challenged and the U.S. Supreme Court unanimously declared it unconstitutional.

In another case the Supreme Court declared that press is not immune from regulation because it is an agency of press, saying, "The publisher of a newspaper has no special

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[5] U.S. Constitution, 14th Amendment.
[6] 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925).
[7] 297 U.S. 233, 56 S. ct. 444, 80L. Ed. 660 91936).
[8] *Ibid.*

immunity from the application of general laws ... like others he must pay equitable and nondiscriminatory taxes on his business."[9]

When the Sedition Act of 1918 was repealed in 1921, the Smith Act had been passed, which received a little publicity. Among others Zecharich Chafe writes:

> "Not until months later did I for one realize this statutes contains the most drastic restriction on freedom of speech ever enacted in the United States during peace."[10]

After the Second World War in the USA the issue of freedom of press changed quickly. The press was free to print what it liked, but its choices were narrow and conventional. In 1966 the Freedom of Information Act was passed which was extensively amended in 1974, again in 1976 and 1983. This Act provides for making information held by federal agencies available to the public unless it comes within one of the specific categories of matters exempt from public disclosure. Virtually all agencies of the executive branch of the federal Government have issued regulations to implement the Freedom of Information Act. These regulations inform the public where certain types of information may be readily obtained, how other information may be obtained on request, and what internal agency appeals are available if a member of the public is refused requested information. This Act is designed to prevent abuse of discretionary power of federal agencies by requiring them to make public certain information about their working and work product.[11]

There is no direct or overt state control of the press through subsidies, allocation of newsprint, advertising, manipulation of labour unions, import licenses for printing equipment or licensing of journalists to a great extent government policy lurks in the background of the free market generally; it similarly provides much of the context in economic matters directly affecting the press.[12]

Jefferson's eloquence about free newspapers, including the claim that a free press is even more important than a free government, was perhaps the most famous of his brilliant

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[9] *Associated Press* v. *National Labour Relation Board* U.S. 103 (1937).
[10] Don R.Pember, *op. cit.* pp. 68-69.
[11] Henry Campbel Black, *Black's Law Dictionary*, (St. Paul Minn: West Publishing Co. 1979), p. 598.
[12] George Thomas Kurians (ed.), *World Press Encyclopedia*, 1982, p. 1006.

libertarian arguments, made most powerfully in opposition to the Sedition Act of 1798. For example Jefferson wrote:

> "The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without government, I should not hesitate a moment to prefer the latter. But I mean that every man should receive these papers, and be capable of reading them.[13]

From the foregoing discussion it emerges clearly that though the restricted rules of the English law in respect of the freedom of press were in force in the earlier independent America but those laws were never accepted by the Americans and that by the First Amendment it was meant to preclude the national government and by the Fourteenth Amendment to preclude the states, from adopting by any form of previous restraint upon printed publications, or their circulation, including that which had therefore been affected by these two well known and odious methods. On the other hand, the Supreme Court of the United States of America, which is known as the guardian and protector of the Constitution, by deciding several numbers of cases and interpreting the concerned Articles is upholding the freedom of speech and expression, as well as freedom of press to a greater extent. In modern America, the press is most free and it can print freely whatever it likes. It is to pen here that the good will and consciousness of the authorities of America present the Americans a free and fair press.

(c) Development of Freedom of Press: The French Experience

The French derived their concepts of the freedom of expression and of the press, from the ideas already prevailing in England and embodied the idea in their Declarations of the Rights of Man and of the Citizen, 1789 and in the French Constitution of 1791 proclaiming the freedom of discussion and the liberty of the press as an inalienable rights.

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[13] *Ibid.*, p. 990.

In France, apart from the official ***Gazette de France*** (1631-1914) the only pre-revolution papers of any consequence were the weekly ***Mercure de France*** which was more of a magazine; and the first daily, the Journal de Paris, which was not started until 1777. Those responsible for clandestine papers were prosecuted without mercy.[14] ***Mercure de France*** and ***Journal des savants*** were published from Paris. Both these periodicals were semi-official and subject to close government censorship. From mid of 18th century a wide range of more independent journals some specialized and some not, became available. Most had an ephemeral existence. Indeed, the one it was always keenest to censor, ***Janenist Novellas ecclesiastiques,*** which from 1728 onwards kept up a regular critical commentary on the management and outlook of the established church, always eluded attempts to find its presses.[15]

In 1770's when censorship policies were fluctuated publishing of all books and journals needed permission by a Board of Censors headed by an official known as the Director of the Book Trade (Library) and they awarded privileges of publication. To win such a privilege they had to contain nothing contrary to religion, government and morals. The very number of censors rising from 41 in 1720s to 178 in 1789 reflects the expanding volume of their work. But in practice, a very few books were banned. Most of those which the censors fell unable to invest with the positive approval signified by a privilege were nevertheless granted 'tacit permission' to publish; and even more dubious ones could appear 'one simple tolerance', with the mere assurance that the police would not act against them.[16]

Up to the time of the revolution press was avowedly controlled by the state. The right to publish books was submitted to the strictest censorship, exercised partly by the University (an entirely ecclesiastical body), partly by the Parliament and partly by the Crown. The penalties of death, of the galleys, of the pillory, were from time to time imposed upon the printing or sale of forbidden works.[17] In 1775 a work entitled ***Philosophy de la nature*** was distorted by the order of the Parliament of Paris, the author was decreed quietly of treason against God and man and would have been burnt if he could have been arrested. In 1781,

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[14] *The New Encyclopedia Britanica,* Vol. 15, 15th Edn., (1981), p. 238.
[15] William Doyle, *The Oxford History of the French Revolution,* (Oxford: University Press, 1990, p. 45.
[16] *Ibid.*, p. 46.
[17] A.V. Dicey, *op. cit.*, p. 254.

eight years before the meeting of the states General Reynal was pronounced by the Parliament quietly of blasphemy on account of his ***Historie des Indies***.[18]

The Revolution put an end to restraints upon the press. On August 24, 1789 France become the first country in the world to formally adopt press freedom as a fundamental tenet of government. The greatest contribution of the revolution was that it introduced the ***"Declaration of Rights of Man and of the Citizen, 1789."*** Article 11 of the Declaration proclaims that the free communication of ideas and opinions is the most important rights of man and every citizen can freely speak, write and print whatever he likes, subject to responsibility for the abuse of this freedom in cases determined by law.

After the declaration, the French Constitution of 1790 guaranteed to everyman the natural right of speaking, printing and publishing his thoughts without having his writings submitted to any censorship or inspection prior to publication.[19]

The Constitution of 1793, contained not only declarations of rights but also guarantees of rights. The constitution of 1795 enacted freedom of speech but it could be limited by law. The Constitution of 1799 contained no provision whatsoever regarding freedom of speech. The Constitution of 1852 recognized, confirmed and guaranteed in its first article "great principles proclaimed in 1789." The Constitutional laws of 1875 and 1876 contained no provision on freedom of speech or other individual rights vis-à-vis the state.[20]

During the reign of Napoleon I press was strictly censored. In Napoloen's eyes, the press ought to function merely as a dutiful agent of the government's information and propaganda machine.[21] Many of articles in ***Le Moniteur***, the official government newspaper, were written by Napoleon himself. In 1809 censors were established and appointed to newspaper; as Napoleon wrote to ***Fouche***:

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[18] *Ibid.*, p. 255.
[19] William G. Andrews, *Constitution and Constitutionalism.* (New Delhi: East, West Press Pvt. Ltd., (1971), p. 70.
[20] S. Sharifuddin Pirzada, *Fundamental Rights and Constitutional Remedies in Pakistan,* (Lahore: All Pakistan Legal Decisions, 1966), p. 34.
[21] D.G. Wright, *Napoleon and Europe* (London: Longman, 1984), p. 27.

"The newspapers are always ready to seize on anything that might undermine public tranquillity.[22]

The press was subjected to more severe controls and censorship during the time to Louis VIII.[23] Press did not publish anything without the permission of the authority. Suppression of newspaper continued by Charles X. A sever press law that virtually hamstrung the publishers of news papers, pamphlets and circulars, a bill that one minister described, with monumental incertitude as "a law of justice and love."[24] Napoleon III narrowly restricted and controlled the press.[25]

The revolution of 1830 was occasioned by an attempt to destroy the liberty of the press. The charter made the abolition of the censorship part of the Constitution, and since that date no system of censorship has been in name re-established. But as regards newspapers, the celebrated decree of 17th February, 1852 enacted restrictions more rigid than anything imposed under the name of ***la censure*** by any government since the fall of Napoleon.[26]

The press is governed in France by the ***Loi Su la liberte de la presse,***[27] (laws relating to freedom of press) 29th July, 1881. This law repealed all earlier edicts, decrees, laws and ordinances on the subject and established freedom of press in France. After Passing the press law of 1881 French legislations exhibited, no doubt, a violent reaction against all attempts to check the freedom of press, but in its very effort to secure this freedom betrayed the existence of the notion that offences committed through the press required some sort of exceptional treatment.

In France several laws were passed since 1881 to repress the abuse of freedom in one form or another by the press, e.g. the law of 2nd August, 1882 modified and completed by the law of 16th March, 1898, for the suppression of violations of moral principles by the press, the law of 28th July, 1894, to suppress the advocacy of anarchical principles by the press and

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[22] *Ibid.*, p. 28.
[23] Gorden Wright, *France in Modern Times* (London: Mc. Nally & Co., 1962), p. 133.
[24] *Ibid.*, p. 135.
[25] *Ibid.*, p. 187.
[26] A.V. Dicey. *op. cit.* p. 257.
[27] *Ibid.*, p. 252.

the law of 16th March, 1893, giving the French government special powers with regard to foreign newspapers, or newspapers published in a foreign language.[28]

The Constitution of the Fourth Republic which was enforced in October 1946, guaranteed freedom of press. On 1st June, 1958 the Fourth Republic came to an end. The Constitution of the Fifth Republic was promulgated on October 4, 1958. The preamble of that Constitution provides:

> "The French people solemnly proclaim their attachment to the rights of man and to the principles of national sovereignty as defined by the declaration of 1789. Confirmed and completed by the preamble[29] to the Constitution of 1946."

Article 16 of the Constitution of the Fifth Republic also permits the Head of the State to take any action he feels necessary regarding the press. The effect of this ***"Sword of Damocles"*** has been to make newspaperman "think twice about printing some stories."

French free speech law lies scattered through the, Penal Code, Code of Criminal Procedure, the Code of Military Justice, the Law of 29th July 1881 and a host of special edicts. Together, they form a web of remarkable stickiness and breadth, one capable of free-flying comment. Some of the important restrictions involve punishment categories. Libel is merely one of the several causes of action involving fines and imprisonment up to one year. While it might be argued that from a monetary standpoint, damages differ little from fines, one dimension looms so large in free speech issues that it floats out all seeming similarity. Criminal actions bring in the intimidating factor of the full power of the state with its investigative policy and punitive resources, an awesome opponent even to the most powerful publisher. Civil actions allow a more manageable equation, as well as freedom from the potential stigma of a criminal record. The state merely provides an unbiased tribunal to resolve disputes between journalists and those they describe.[30]

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[28] *Ibid.*, p. 259.

[29] The preamble to the Constitution of 1946 proclaimed, "On the morrow of the victory won by free people over governments which have attempted to enslave and degrade mankind, the French people proclaim afresh that every human being, without distinction of race, religion, or creed possesses inalienable and sacred rights. It solemnly reaffirms the right and liberties of man and the citizen consecrated by the Declaration of rights of 1789 and the fundamental principles recognized by the laws of the Republic."

[30] George Thomas Kurian (ed.) *World Press Encyclopedia*, 1982, p. 349.

There is no government censorship on the press in modern France. Government policies however, contribute greatly to what the French call "auto-censorship" or self-censorship. References to it are frequent and open. Even the government Chairs Francaise quoted a leading journalist on the subject in a 1976 report on the daily press. An important part of the profession, said Claude Durien of ***Le Monde,*** involves occasional "prudent conformism ... the silence of complicity. "Founded deeply in tradition, self-censorship is reinforced by the seductive pull of state subsidies and the deterrent weight of laws limiting freedom of expression. Like mighty weapons, the press laws achieve their end most effectively by threatening targets rather than by actual use. The 1970's brought some striking insights into the working of the systems, many of them provided by a publication whose very existence says great deal about French attitude towards a free press.[31]

In France draconian laws are enforced upon the press only selectively. As per example, in 1978 Hurbert Heuve-Mery, fonder and Director Emeritus of Agency-France-Press (A.F.P.) resigns in protest against official interference and manipulations. When a certain line is crossed, however, Gaullist administrations have not hesitated to install wiretaps in newspaper offices or to bring criminal suits against the most respected newspaper in the country for what would pass in the United States for routine coverage of Court cases involving politics (***Le Monde*** in 1980)[32]

From the above discussion it appears that though the French Declaration of the Rights of Man and of the Citizen, 1789 formally adopted press freedom but rigorous measures were enforced upon the press in different ways at different times. Sometimes French Constitution was quiet silent to ensure Press Freedom. At present there is no strict law which curtail press freedom. In a broad sense, there is a freedom of press in France. But press does not circulate or publish anything what it likes. It is checked by the auto-censorship measure which is conventional and not statutory. Many statutory laws checked the press from publishing articles which is defamatory or which is harmful to the security of the state.

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[31] *Ibid.*, p. 351.
[32] *Ibid.*, p. 359.

2. Freedom of Press and International Conventions

(a) Development of Freedom of Press in the Regional Context

The Universal Declaration of Human Rights, 1948 which is inseparably linked with the United Nations Charter has a great influence all over the world to preserve freedom of information or of the press. It has exercised a powerful influence throughout the world, both internationally and nationally.[33] Not only that, the Universal Declaration has also had a significant impact in shaping the formulation of regional conventions to promote and protect the enjoyment of human rights and fundamental freedoms by all individuals living in particular parts of the world.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, which was the first multilateral regional treaty on human rights concluded in the framework of the Council of Europe and signed in Rome on 4th November, 1950 and came into force on 3 September 1953, refers to the Universal Declaration of Human Rights in the opening paragraph of its preamble and sets out in the fifth perambulator paragraph the resolution of "the Government of European Countries which are like minded and have a common heritage to political traditions, ideals, freedom and the rule of law, to take the first steps for the Universal Declaration. Article 10(1) of the European Convention guarantees freedom of expression, including freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers. It continues with a rider: This Article shall not prevent states from requiring the licenses of broadcasting, television or cinema enterprises. Once more the general affirmation of principle contained in paragraph (1) of the Article is subject to the limitations and restrictions set out in paragraph (2) of the Article. According to paragraph (2) of the Article this right may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of health or morals, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary. Subject to this limitations freedom of expression under article 10 should be considered as prohibiting censorship, whether in the form of prior authorization or

[33] Office of Public Information, United Nations, *The United Nations and Human Rights*, p. 24.

subsequent prosecution of books, the press, television and radio, the cinema and theater, or any other vehicle for the expression of ideas.[34]

The right to freedom of expression of any person has been protected under article 10 of the above mentioned convention. This freedom of expression has been considered and involved in some cases by the municipal Courts of the United Kingdom and other European countries. To begin with the case of ***Associated Newspapers Group Ltd. and others*** v. ***Wade***[35] in which Article 10 of the convention was involved. Lord Denning M.R. observed that it had been accepted in the United Kingdom as a "fundamental Principle" that "press shall be free". It would be at liberty to express opinions and to give news and information to the public at large without their organization: so long as they did not offend against the law of libel or confidential information or contempt of Court or such like. The fact that the law had admitted those special exceptions proved the existence of the general principles. On this issue his Lordship observed.

> "In this respect our law corresponds with Article 10(1) of the European Convention for the protection of human rights and fundamental freedom ... If there is to be no interference by public authority, all the more so there should be no interference by private individuals. Article 10(2) contains exceptions corresponding to these in our own law."[36]

His Lordship then concluded that a trade union had no right to use its industrial strength to invade the freedom of press. They had no right to interfere with the freedom of editors to comment on matters of public interest. His Lordship recognized that these freedoms are so fundamental in our society that no trade union has any right to interfere with them.[37]

In ***Attorney General*** v. ***British Broadcasting Corporation***[38] Article 10 of European Convention on Human Rights, 1950, was involved. In deciding this appeal the House of Lords held that the principle of freedom of expression and the principle of the administration of justice was to be kept freed from outside interference.

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[34] Francis G. Jacobs, *The European Convention on Human Rights*, (Oxford: Clarendon Press, 1975), pp. 22-23.
[35] (1979) 1 WLR 697, Per Lord Denning M.R. at pp. 708-709.
[36] *Ibid.*
[37] *Ibid.*
[38] (1978) A.C. 303.

In the ***Sunday Times*** v. ***the United Kingdom***[39] question of violation of right to freedom of expression was raised. In that case it was stated that following the thalidomic tragedy, a lot of parents issued writs for negligence against distillers, the British manufacturers. In 1972, while negotiations to settle the claims were pending, the ***Sunday Times*** planned the publication of an article which reviewed the evidence of the question whether distillers had been negligent. The Attorney General obtained an injunction from the Divisional Court preventing the publication of the article of the ground of contempt of Court. The injunction was discharged by the Court of Appeal but restored at the instruction of the House of Lords. All their Lordships were agreed that the proposed article was in contempt because it posed a real threat to the proper administration of justice. However, the injunction was eventually discharged in 1976 after almost all the claims against the company had been settled.

In their application the applicants claimed that the injunction to restrain them from publishing an article in the ***Sunday Times*** dealing with the thalidomic children and the settlement of their compensation claims in the United Kingdom constituted a breach of article 10 of the convention. They further alleged that the principles upon which the decision of the House of Lords was founded amounted to a violation of Article 10 and asked the commission to request the government to introduce legislation overruling the decision of the House of Lords and bringing the law of contempt of Court into line with the convention.

In the ***Sunday Times*** case the European Court of Human Rights noted that the Courts cannot operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that there can be no prior discussion of disputes elsewhere, be it in specialized journals, in the general press or amongst the public at large. Indeed, the Court observed that while the mass media must not overstep the bounds imposed in the interest of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the Courts just as in other areas of public interest. Not only do media have the task of imparting such information and ideas: the public also has a right to receive them. In this case their Lordships observed:

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[39] 2 E.H.R.R. 245, European Court of Human Rights, Judgment of 1976, (Strasbourg: Council of Europe, 1976), pp. 1-57.

> "Whilst emphasizing that it is not its function to pronounce itself on an interpretation of English Law adopted in the House of Lords; the Courts point out that it has to take a different approach. The Court is faced not with a choice between two conflicting principles, but with a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted."[40]

Lord Scarman in that case observed that this appeal would have been important one for it required the House to consider two interests of great public importance; freedom of speech and the administration of justice, and to decide which in the circumstances should prevail. Coming to the House, his Lordship said, so soon after the European Court of Human Rights had held in the ***Sunday Times*** case that decision of the House was an interference with the newspaper right to freedom of expression which could not be justified under Article 10(2) of the Convention as being "necessary in democratic society," it had enhanced importance.

In the case of ***Cassel and Co. Ltd.*** v. ***Broome and another***[41] Article 10 of the European Convention on Human Rights was involved. In that case Lord Kilbrandon stated that constitutional right of free speech was to be recognized in the law of the United Kingdom at least since the date when the Convention was ratified. He expressed his view:

> "I can see that it could be in the public interest that publication should not be stopped merely because the publisher knows that his material is defamatory. It may well be in the public interest that matter injurious to others be disseminated. But if it were suggested that this freedom should also be enjoyed when the publisher either knows that, or does not care whether, his material is libelous which means not only defamatory but also untrue it would seem that the scale is being weighed too heavily against the protection of individuals from attacks by media of communication."[42]

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[40] E.H.R.R. 245, at p. 281.
[41] (1972) 1 All E.R. 801 H.L. Per Lord Kilbrandon, p. 876.
[42] *Ibid.*

The next case is the most illustrative of all. It is the ***Granada case***.[43] In the British Steel Corporation there was a man supposed to be a high up. He took documents of the highest confidentiality out of their safe keeping and handed them secretly to Granada. He has been called 'mole'. He does his work underground and never comes out lest he be caught. Granada used the information for a television programme. British Steel sought to get the name of the 'mole', but Granada would not give it. The Court of Appeal ordered Granada to give it. In this case his Lordship Denning J. pointed out:

> "In order to be deserving of freedom, the press must show itself worthy of it. A free press must be responsible press. The power of the press is great. It must not abuse its power. If a newspaper should act irresponsibly, then it forfeits its claim to protect its sources of information."[44]

Freedom of Press among the nations of the world is becoming less and less a reality, according to a survey released on May 3, 1995 by ***Freedom House,*** a non-partisan, non profit organization devoted to the strengthening of free societies.[45]

The survey *"Press Freedom World Wide: 1995,* "assesses the degree to which the systems of mass communication including newspapers, radio and television permits the free flow of information to and from the public in 187 countries. Leonard Sussman, Co-ordinator of the Survey and Freedom House senior scholar in international communications, warns against relaxing a guard on press freedom. "Once a nation has permitted press freedom" Sussaman Says, "any regression is an ominous change. The most dangerous change that Sussaman sees is the regression in Western Europe, "The cornerstone of press freedom for generations." He spoke of a softening attitude toward irresponsible journalism in western Europe, where he said journalists are often gently coerced by governments to report stories that are aligned with government thinking.

This trend was reinforced in Prague when the 33 nation Council of Europe urged journalists to write self-controlling codes of practice implying that if the press does not restrain itself governments may. This falls back to article 10 of the councils "European

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[43] (1980) 3 WLR 774.
[44] *Ibid.*
[45] The Independent, May 8, 1995, Under the caption *"The State of Press Freedom Today."*

Convention on Human Rights" which states that since press freedom carries with it duties and responsibilities, in the interest of public safety "restrictions or penalties as prescribed by law are necessary in a democratic society." With the Council of Europe's stamp of approval, it is feared that Article 10 or similar laws will be reinforced toward press freedom, not only in Western Europe but in other areas of the world as well.[46]

> "Press Freedom Worldwide, 1995" also cited involvement of the United Nations in curbing freedom of Press.[47]

From the foregoing studies on the freedom of expression as specified in Article 10 of the European Convention it is apparent that the municipal courts of the United Kingdom have taken a very careful stand in applying and recognizing the provisions of the convention. All the courts have recognized the fact that the European convention has not yet been incorporated into the domestic law of the country by parliament, so it would not be recognized as part of the municipal law of that country and within this limitation the courts have to consider the provisions of the Convention and have to give verdict which must be based on the domestic law of the country.

In American region freedom of opinion and expression has been preserved by adopting declaration or convention . Article 4 of the American Declaration of the Rights and Duties of Man 1948 reads as follows:

> "Every person has the right to freedom of investigation of opinion and the expression and dissemination of ideas by any medium whatsoever."

The Inter-American Convention on Human Rights (the American Convention on Human Rights) was signed at the Inter-American specialized conference on Human Rights at San Jose, Costa Rica, on 22 November 1969 and entered into force on 18 July 1978. Article 13 (1) of the American convention guarantees freedom of thought and expression, including freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of ones choice. According to paragraph (2) of the Article this right may be subject to subsequent

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[46] *Ibid.*
[47] *Ibid.*

imposition of liability, which shall be expressly established by law to the extent necessary in order to ensure respect for the rights or reputations of others, or the protection of national security, public order, or public health or morals. According to the provision of this Article, the right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls.

The Organization of African Unity (OAU) established in 1963, adopted the African Charter on Human and Peoples Rights in 1981. The African charter established a system for the protection and promotion of human rights that is designed to function within the institutional framework of the Organization of African Unity. The charter protects freedom of information. The heart of the charter contained in Article 1 provides that every individual shall have the right to receive information and they have the right to express and disseminate their opinions within the law.

UNESCO held its 25th General Conference in Paris from October 17 to November 16, 1989, which reaffirms the principles of freedom of press and at the same time of the independence, plurality and diversity of the communication media. The principal programmes focus on encouragement of a free flow of information on the international and national levels, on promotion of broader and more balanced dissemination of information without any restrictions being placed on the freedom to expression, on development of the communication capacity of the developing countries, aimed at their growing involvement in the process of communication with assistance of the international programme for the development of communication and on better mutual knowledge and understanding among nations through support of their mass media.[48]

Confederation of ASEAN Journalists (CAJ) arranged their first conference of Asian and Pacific Press from November 28 to December 1, 1989, held in Singapore. It was attended by 123 delegates from 13 countries, who agreed that journalists from South East Asia should produce a special type of journalism which would be independent of the western model and would meet the conditions and needs of the countries in the region. The plenary meeting pointed out that the CAJ and the Asian Mass Communication Research and Information Centre (AMIC) shared the same objective, i.e. raising the standard of journalism and

[48] *International Journalism Institute Year Book, op. cit. at.* p. 68.

strengthening mutual understanding in the region, and provide financial assistance to the CAJ for furthering the development of the media and the welfare of their workers. Participants in a round-table debate, which was a part of the General Assembly, discussed expansion of foreign scholarships for training journalist from the ASEAN countries.[49]

An international conference on press councils and similar press regulation bodies took place in Kuala Lumpur from November 18 to 20, 1989, on the initiative of the Malaysian National Commission for Co-operation with UNESCO and the Malaysian Press Agency BERNAMA. The conference, held under the theme ***"Freedom of the press and the role of Press Councils"***, was attended by some 60 delegates from countries in Europe, Asia and North America. It provided a platform for exchange of views on the problems involved in freedom of press and the responsibility of journalists in connection with journalistic ethics.[50]

The South Asian News Agency (SANA), the first of its kind in South Asia, will feed media of the region, cover news from all the seven member states of the SAARC. The news agency will also provide news features of South Asian interest to both print and electronic media of the region. It starts from 31st October, 1995.

Therefore it is obvious that in modern time the regional instruments are playing a good role for preserving freedom of press and that measures are undoubtedly a green signal for the dissemination of news among the regional states which will protect freedom of press by mutual co-operation and understanding.

(b) United Nations Organization and Internationalization of Freedom of Press

The United Nations Organization had been concerned with freedom of information even before the drafting of the Universal Declaration of Human Rights, 1948.

The history of international efforts to promote freedom of information goes far back to 1893 since when many international conference of journalists have been held. These meetings in the early stages did nothing more than pass resolutions or pledged themselves to promote freedom of information. Little concrete action resulted, and whatever was

[49] *Ibid.*, p. 82.
[50] *Ibid.*, p. 95.

accomplished was wiped out by propaganda and censorship during the World Wars. The first press Congress attended by journalists from all over the world was held in May 1893 in Chicago. The conference discussed topics like the international role of the press, the press as a defender of human rights and the press and public morals. International Union of Press Associations was established in July 1893 as a result of an international meeting of journalists in Antwerp, Belgium. This Union sought to "organize common action between associations of journalists, newspaper associations of all countries in respect of professional matters of common interest and to bring about international conventions and agreements concerning journalism and literary rights and properties.[51] During the next forty years, this union organized numerous congresses to discuss questions such as false news and the right of reply as a remedy for false news. This union, however, become inactive after 1935.

The first international organization of working newspapermen called ***"The Federation International des Journalese"*** was founded in 1921 in Paris. This federation was primarily concerned with working conditions for journalist. It however took various steps towards self-discipline within the profession, including the setting up of an international code of honor in Hauge in 1931.[52]

The League of Nations initiated a series of conference beginning in 1927 with a conference of journalist at Geneva, followed by two conferences of governmental press bureaus and representatives of the press in Copenhagen in 1932 and at Madrid in 1933. Sponsored by the Council of the Leagues, the conference at Geneva was attended by 63 representatives of telegraphic agencies, newspapers, international organizations of journalists and official press bureaus from 30 countries. The purpose of the conference were:

> "(i).To inquire into means of ensuring more rapid and less costly transmission of press news, with a view to reducing the risk of international misunderstandings;

[51] B.N. Ahuja, *History of Press, Press Laws and Communications.* p. 31.
[52] *Ibid.*, p. 32.

(ii). To discuss the technical problems, the solution of which, in the opinion of experts, would be conducive to the tranquilization of public opinion in various countries."[53]

The conference considered facilities for journalists, peacetime censorship, press rates, coding of press messages, technological press and communications improvements. Resolutions were passed on all these subjects, and legislation concerning the protection of press information was formulated. Most of these resolutions were later referred to the League Committee on Communications and Transit and other resolutions, such as those concerning censorship in peacetime and the protection of news, sources were referred to the various governments. The desire of the League to combat the spread of false information was expressed at the 1932 conference of Governmental Press Bureaus and Representatives of the Press. The delegates from, thirty-two countries agreed that the rapid spread of accurate and abundant news was the best remedy. They insisted that measures taken to counteract inaccurate information must never be allowed to prejudice the basic freedom of the press, a freedom which, however, implied responsibility on the part of the journalist. The delegates also urged enactment of the resolution on peacetime censorship adopted by the 1927 conference, which indicated that very little had been done to carry out the resolution up to that time.

At the second conference of Governmental Press Bureaus and Representatives of the Pess problems of false news and ways of combating its spread were again discussed. The resolutions emphasized two main themes, freedom of press and the need for prompt circulation of adequate and accurate information.[54]

From the above discussion it is clear that no international community, nor League of Nations has succeeded to frame any concrete regulation, convention in promoting freedom of information at the international level but those efforts were very much helpful for preparing declarations regarding freedom of press by the United Nations Organizations and its specialized agencies next time.

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[53] *Ibid.*
[54] *Ibid.*

When the world delegates met in 1945 to set-up the United Nations in place of League of Nations, the matter including freedom of information as a human right received more concern and support. The Charter of the United Nations is the first international instrument in which the nations of the world community agreed to promote and observe human rights and fundamental freedoms at international level. Since it is the statute of an intergovernmental Organization, the Charter has the status of multilateral treaty, imposing on its state parties legally binding obligation. the United Nations Carter requires the member states, "To pledge themselves to take joint and separate action in cooperation with organization[55] in order to "promote... universal respect for , and observance of human rights and fundamental freedoms for all without distinctions as to race, sex, language or religion." The fact that human rights were mentioned seven times in the charter prompted the United Nations action in this field.

Since the United Nations is composed of official representatives from individual government, and government plays an important role in modern mass communication, this logically leads to a practical reason for the United Nations taking up the problem of freedom of information.

The General Assembly and the Economic and Social Council (ECOSOC) are the two bodies in the United Nations which have always voiced the cause of freedom of information. Although the main object of the United Nations is working for lasting peace in the world, the United Nations has become a campaign center for freedom of information and truth. It believes that truth alone can make men free from the scourge of ignorance, suppression, hate and war. The Constitution of the United Nations Economic, Scientific and Cultural Organization (UNESCO) says, "Since wars being in the minds of men, it is in the minds of men that the defence of peace must be constructed."[56]

(c) United Nations Conference on Freedom of Information

At its first session in 1946, the General Assembly had declared freedom of information "a fundamental human right the touchstone of all the freedoms to which the

[55] Art. 56 of the U.N. Charter.
[56] B.N. Ahuja, *op. cit.*, p. 168.

United Nations is consecrated" and "an essential factor in any serious efforts to promote the peace and progress of the world."[57]

The United Nations Conference on Freedom of Information met at Geneva in March-April, 1948. The conference prepared three draft conventions,[58] on the Gathering and International Transmission of News, on the Institution of an International Right of Correction, and on Freedom of Information as well as draft article for inclusion in the Universal Declaration of Human Rights. The final Act of the conference was referred to the Economic and Social Council, which in turn referred it to the General Assembly for action.

The Commission on Human Rights, a subsidiary body of the Economic and Social Council at its first session, in 1947, established the Sub-commission on Freedom of Information and of the Press. It was composed of 12 members serving in their personal capacity. Its duties were, primarily, to study what rights, obligations and practices should constitute the concept of freedom of information, to report to the Commission on Human Rights on all questions that might entail and to perform any other functions which might have been trusted to it by the Council or the Commission. The Sub-Commission held only five sessions. The first session of the Sub-Commission was devoted in large part to the preparation of the 1948 United Nations Conference on Freedom of Press. At its second session, the Sub-Commission drafted provisions on freedom of expression and of information to be included in the draft universal declaration and in the draft covenant on human rights. The third session was dedicated to the preparation of studies on freedom of information. At its fourth session, the Sub-Commission undertook to draw up a draft International Code of Ethics for everyone engaged in the gathering, transmission and dissemination of information. This body also deliberated on various specific issues concerning freedom of information.

In 1951, the Economic and Social Council decided to disband the Sub-Commission as soon as it completed a draft code of ethics at a final session called for that purpose. This goal was accomplished and the draft of the code was submitted to the council at the sub-Commissions final session in March, 1952.[59]

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[57] *Ibid.*, p. 34.
[58] Office of Public Information, *The United Nations and Human Rights*, New York, United Nations, 1968, p. 29.
[59] Department of Public Information, *The United Nations and Human Rights*, New York: United Nations (1995), pp. 17-18.

The Universal Declaration of Human Rights, with which began the real history of human rights at the level of international law, is the basic international statement of the inalienable and inviolable rights of all members of the human family. The General Assembly on 10th December, 1948 proclaims the declaration as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind shall strive by teaching and education to promote respect for these rights and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of territories under their jurisdiction.[60]

The rights of man expressed in international instrument, claim credibility only through dissemination of undiluted information among the nations. In this regard Article 19 of the Universal Declaration of Human Rights, 1948 reads as follows:

> "Everyone has the right of freedom of opinion and expression. This right shall include freedom to hold opinions without interference and to seek, receive and impart information and ideas by any means regardless for frontiers."

This text was formulated by means of "distillation" of a number of elements embodied both in national constitutions and legislations and in various drafts presented to the General Assembly.[61]

It briefly expressed the main idea and was used as the basis for the formation of the treaty provisions on the right to freedom of expression.

Similarly, Article 19 of the International Covenant on Civil and Political Rights, 1966 runs thus:

> "1. Everyone shall have the right to hold opinions without interference.

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[60] The ending paragraph of the preamble, the Universal Declaration of Human Rights, 1948.
[61] K.J., Partsch, *Freedom of Conscience and Political Freedoms* (1981), p. 216.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers either orally, in writing or in a print, in the form of art or through any other media of his choice.

3. The exercise of the rights provided in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as provided by law and are necessary,

(a) For respect of the rights or reputation of others;

(b) For the protection of national security or public order of the public health or morals."

The above provisions contain the essential and universally relevant elements of the right to freedom of expression. The rights of man, expressed in international conventants claim credibility only through flow of information across the boarder of the nations of the world. It is inevitable that none of the fundamental freedoms enshrined in the Universal Declaration and other instruments would be heard to be availed of without either acceptance by the respective states or support of world opinion for acceptance by the states.

Each nation which is a member state of the United Nations, each country committed to uphold the international instruments regarding flow of, and access to information to its citizen regardless of international boarder, must accept the obligation to allow flow of information and opinion both inward and outward.[62]

The General Assembly adopted in 1949 the draft convention on the International Transmission of News and the Right of Correction but decided that it should not be opened

[62] Justice Sultan Hossain Khan *"Freedom of Press and Expression Under International Law"* at A.B.M. Mafizul Islam Patwari (*ed.*) Human Rights in Contemporary International Law, (Dhaka: Humanists and Ethical Association of Bangladesh, 1995) pp. 11-12.

for signature until the Assembly had taken definite action on the draft convention on the freedom of information.

(d) Convention on the International Right of Correction

The Convention on the International Right of Correction was adopted on 16 December, 1952 by the General Assembly. It became effective on 24 August, 1962. The idea underlying the convention is that attempt to transfer to the international level an institution that has been part of national law of some countries. Its philosophy is that embodied in the maxim ***audiatur et altera pars,*** i.e. that the person referred to in a printed report shall have the right to convey to the readers his side of the question.[63] In the convention of 1952 the contracting states agree that in cases where a contracting state contends that a news dispatch capable of injuring its relations with other states or its national prestige or dignity transmitted from one country to another by correspondents or information agencies and published or disseminated abroad, is false or distorted it may submit its version of the fact (called ***communique***) to the contracting states within whose territories such dispatch has been published or disseminated. The receiving state has the obligation to release the ***communique*** to the correspondents and information agencies operating in its territory through the channels customarily used for the releases of news concerning international affairs for publication. The convention does not impose a legal obligation on the press or other media of information to publish the ***communiqué.*** The obligation of the receiving state to release the ***Communiqué*** arises, however, whatever may be its opinion of the facts with in the news dispatch or in the ***communiqué*** which purports to correct it. In the event that the receiving state does not discharge its obligation with respect to ***communiqué*** of another state, the latter may accord, on the basis of reciprocity, similar treatment to a ***communiqué*** submitted to it by the defaulting state. The complaining state further has the right to seek receive through the Secretary General of the United nations, who shall give appropriate publicity, through the information channels at his disposal, to the ***communiqué*** together with the original dispatch and the comments, if any submitted to him by the state complaint against. The convention also contains a compromise clause referring disputes to the International Court of Justice.[64]

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[63] *The United Nations and Human Rights* (1968), *op. cit.*, at. p. 29.
[64] United Nations, *Human Rights: Compilation of International Instruments, New York* (1988), pp. 326-331.

(e) Draft Convention on Freedom of Information

A Committee established by the Assembly in 1950 prepared a new version of the draft Convention on Freedom of Information.[65] On the basis of the work done by that Committee, the third Committee of the General Assembly, at its 1959, 1960 and 1961 sessions, approved the preamble and four operative paragraphs of the draft convention.

By Article 1 of the draft convention each contracting state undertakes to respect and protect the right of every person to have at his disposal diverse sources of information. Each contracting state shall secure to its own nationals and to such of the nationals of every other contracting state as are lawfully within its territory, freedom to gather, receive and impart without government interference, save as provided in article 2, and regardless of frontiers, information and opinions orally, in writing or in print, in the form of art or by duly licensed visual or auditory devices. The draft convention prohibits discrimination in regard to this right on political grounds or on the basis of race, sex, language or religion.

Article 2 of the draft convention provides that the exercise of the freedoms referred to in Article 1 carries with it duties and responsibilities. These freedoms may, however, be subject only to such necessary restrictions as are clearly defined by law and applied in accordance with the law in respect of national security and public order, systematic dissemination of false reports harmful to friendly relations among nations and of expressions inciting to war or national, racial or religious hatred, attacks on founders of religion, incitement to violence and crime, public health or morals, the rights, honour or reputations of others and the fair administration of justice. These restrictions shall not be deemed to justify the imposition by any state of prior censorship on news, comments and political opinions and may not be used as grounds for restricting the right to criticize the Government.

Article 3 of draft convention is a saving clause for rights and freedoms to which the convention may be guaranteed under the laws of any contracting state or any conventions to which it is a party. In article 4, the contracting states recognize that the right of reply is a corollary of freedom of information and may establish appropriate means for safeguarding that right.

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[65] *The United Nations and Human Rights* (1968), *op. cit.*, p. 30.

The Convention on the Gathering and International Transmission of Information has been approved but is not yet in force. The General Assembly decided in effect not to open it to signature by member states so long as the examination of the proposed convention concerning freedom of information, which is intimately connected with it, had not been finished.[66]

The General Assembly in 1950, recommended to all member states that when they were compelled to declare a state of emergency, measures to limit freedom of information and of the press should be taken only in the most exceptional circumstances and then only to the extent strictly required by the situation.[67] In 1951, the Economic and Social Council made recommendations to Governments to do all within their power to safeguard the right of correspondents freely and faithfully to gather and transmit news.[68] In 1958, the General Assembly recommended that governments should open their countries to greater freedom of communication by facilitating access to United Nations information programmes, supporting activities of the United Nations Information Centres and facilitating the free flow of accurate information through all media.[69]

The United Nations has done much often in collaboration with UNESCO, to encourage the growth of information media in developing countries, especially in Africa. It has organized since 1962 international seminars on freedom of information designed for journalists and officials concerned with information. The first took place in New Delhi for South East Asia. The second was in Rome in 1964 with participants coming from almost very country in Europe.[70]

A couple of footnotes in the *Mac Bride Report* also stress the international dimension of this branch of jurisprudence and may well be summarized as:

"(1) Katherine Graham, proprietor of the Washington Post, has written: If any limits on the disclosure of information are to be imposed, it is for the law-makers to say so as not for us.

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[66] Armand Gaspard, *International Action to Preserve Press Freedom* in Evan Luard (*ed.*) *The International Protection of Human Rights*, (Lodnon: Thames and Hudson, 1967), p. 185.
[67] *The United Nations and Human Rights* (1968), *op. cit.*, p. 31.
[68] *Ibid.*
[69] *Ibid.*
[70] Even Luard, *op. cit.*, p. 187.

Journalists are not elected by the people, their only job in the public arena is to tell what is happening. Of course this doctrine is based on a conviction that, at the end of the day, and in any society, ignorance of facts is always harmful.[71]

"(2) ... Either the journalists is as, many people believe, but a man like other man whose business, is purely and simply to publish what he knows or else the exercise of this profession entails both obligations and privileges which do not to be sure, pertain to a public service which would make him the equivalent of a public servant but to what might be termed, and the distinction is primordial the public interest ..."[72]

All this adds up to the conclusion that freedom of information is:

> "One of democracy's most precious acquisitions, frequently secured through arduous struggles with political and economic powers and authorities and at the cost of heavy sacrifice, even of life itself, and is at the same a vital safeguard of democracy. The presence or absence of freedom of expression is one of the most reliable indications of freedom in all its aspects in any nation. Today in many countries throughout the world, freedom is still trampled upon and violated by bureaucratic or commercial censorship, by the intimidation and punishment of its devotees, and by the enforcement of uniformity. The fact that there is said to be freedom of expression in a country does not guarantee its existence in practice. The simultaneous existence of other freedoms (freedom of association, freedom of assemble and to demonstrate for redress of grievances, freedom to join trade unions) are all essential components of man's right to communicate. Any obstacle to these freedoms results in suppression of freedom of expression."[73]

The Mac Bride report further argued "communication; now a days, is a matter of human rights. But it is increasingly interpreted as the right to communicate going beyond the right to receive communication or to be given information. Communication is thus seen as two way process, in which the partners individual and collective carry on a democratic and balanced dialogue. The idea of dialogue, in contrast to monologue is at the heart of much

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[71] Sean Mac Bride, *"Many Voices, One World,* Report of the International Commission for the Study of Communication Problems, UNESCO, 1980, p. 19.
[72] *Ibid.*
[73] *Ibid.*

contemporary thinking, which is leading toward a process of developing a new area of social rights. The right to communicate is an extension of the continuing advance towards liberty and democracy."[74]

The quoted passage shows the breadth of the horizon opened by the new notion of the right to communicate.

It is now generally agreed by international legal experts that the right to communicate is a composite concept which can be gradually realised through the realization of a variety of its elements.[75] Some of them are by no means new. These include according to Tomasevski, "The need for genuine pluralism of information sources, the right to express (political and other) ideas developed on the basis of information coming from different sources , the enjoyment of protection of freedom of expression by courts and as a result of this a genuine political dialogue which necessarily implies freedom of assembly and association and free and fair elections. Such sialogue may indeed lead to a process ... of developing a new area of social rights..."[76]

The UNESCO Declaration of 1978 clarifies that the exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamenal freedoms.[77]

The 45th session of the UN Commission for Human Rights was held in Geneva from February 30 to March 10, 1989 attended, besides the representatives of the 43 countries members of the Commission, by observers from other countries and by representatives of 150 non governmental organizations and United Nations specialized agencies. The Commission discussed *inter alia* problems relating to freedom of press. For the first time, the commission included among its official documents memoranda issued by the International Organization of Journalists (IOJ) on prosecution of journalists on censorship, and protection of journalists

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[74] *Ibid.*, p. 172.
[75] *Ibid.*, p. 265.
[76] K. Tomasevski, *Freedom of Information: An old Human Right and a New One.* (New Delhi, S. Chand & Co., 1987), p. 7.
[77] Quoted in V.R. Krishna I yer, *Freedom of Information,* (Lucknow: Eastern Book Company, 1990, p. 77.

in which the IOJ, pointed to the growing number of victims among journalists and to the generally detoriorating position of the media.[78]

The 11th session of the UN Committee on Information metal the UN headquarters in New York on March 6 and from March 11 to April 28, 1989. During the debate on the process of instituting a New International Information and Communication Odered (NIICO) a proposal was raised for convening a special UN General Assembly session on this problem. In dealing with NIICO problems and other one with problems deal with by the Department of Public Information (DPI). The committee noted that after more than ten years efforts the developing countries could neither acquire nor produce modern telecommunication technology and because of indebtedness could not maintain what technology of this kind they possessed.[79]

The 44th session of the UN General Assembly, which opened in New York on September 19, 1989, passed on December 8,1989 a resolution on information (NO.44/40). This document re- affirms the principles of freedom of press and information and the independence, plurality and variety of the mass media. It calls for continued effort to institute the NIICO which as evolving and gradual process can help eliminate the existing inequality between *the advanced and the developing countries in the area of communication and information. The resolution also points out that all countries should make provisions for the free exercise by journalists of their profession, and that any physical violence directed to journalists should be resolutely condemned. The document urges the UN system, UNESCO in particular, to provide broader assistance to the developing countries and their media according to their interests and needs. In its part devoted to the UN information system, the resolution lists proposals for improving information about UN activities in the main areas of their concern, and for broader co-operation with the press agencies of the developing countries and their associations and with intergovernmental and regional organizations.

The UN General Assembly also passed a resolution on public information activities in the human rights area (No. 44/61). It re-affirmed the conclusions stated in the report of the UN Secretary General on the development of public information to disseminate basic

[78] *Year Book 1990,* International Journalism Institute. (Prague, 1990), p. 66.
[79] *Ibid.*

documents on human rights in national and local languages, as well as to include the problem of human rights in school curriculum and in legislative texts in all important spheres.[80]

UNESCO held its 25th General Conference in Paris from October 17 to November 16, 1989, which re-affirms the principles of the freedom of press and at the same time of the independence, plurality and diversity of the communication media. The principal programmes focus on encouragement of a free flow of information on the international and national levels, on promotion of broader and more balanced dissemination of information without any restrictions being placed on the freedom of expression on development of the communication capacity of the developing countries, aimed at their growing involvement in the process of communication with assistance of the International Programme for the Development of Communication (IPDC) and on better mutual knowledge and understanding among nations through support of their mass media.[81]

To establish freedom of opinion and expression the United Nations is still working with its specialized and subsidiary agencies. Some of these organizations are UNESCO, International Telecommunication Union, Universal Postal Union etc. Besides these, some international organizations are working to establish freedom of press. These are International Press Institute, International Federation of Newspaper Publishers, International Organization of Journalists, International Federation of Journalists, Catholic International Press Union, Commonwealth Press Union, the Inter-American Press Union. The Inter-American Press Association etc. The Principal objectives of these organizations more or less are:

1. The furtherance and safeguarding of freedom of press, by which is meant: free access to the news, free transmission of news, free publication of newspapers, free expression of views.

2. The promotion of the free exchange of accurate and balanced news among nations.

[80] *Ibid.*, pp. 66-67.
[81] *Ibid.*, p. 68.

3. The correlation, publication and recording of statistical and other documents calculated to safeguard the interests of newspapers, and to give them professional information.

4. Participation in any international activity of interests of the profession and collaboration with any other international organizations.

5. To guard freedom of press, to foster and protect the general and specific interests of the daily and periodical presses.

6. The important of the practices of journalism.

Because of the cold war among the super-powers, the United Nations has not taken effective measures to establish freedom of press many times. This was described by Professor Holding Eek in these words:

> "In the language of the United Nations freedom of information means nothing definite, constant and uncontroversial. It means only an item on the agenda of various organs of the United Nations."[82]

A concise account of what the United Nations has done or has not been able to do to promote freedom of information has been narrated by Professor Michael Ta King Wei in his book ***"Freedom of Information and International Problem"*** published by the University of Missouri, Columbia. He says although the efforts of the United Nations to promote freedom of information do not seem satisfactory to many, and despite the fact that the long debates among nations seem hopelessly deadlocked in each session, it appears to him that the work undertaken with respect to freedom of information is important and significant and will contribute to the continuing work of promoting freedom of information in the future.[83]

From the above discussion it is clear that from the very beginning of its existence, therefore, the United Nations has concerned itself with the liberty of press and of information, and with the means of preserving these. We can also safely say that to ensure freedom of press the United Nations has taken many steps in the form of declarations, regulations, conventions etc. and in this way the concept, "freedom of press", for the first time took an international shape. Though the United Nations did not establish any effective machinery for

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[82] Cited by B.N. Ahjua, *op. cit.*, at p. 36.
[83] *Ibid.*

the implementation of this right, in spite of that lackness it is apparent that by being inspired from the UN, many countries of toady's world had incorporated freedom of press in their national constitutions and they are ensuring the freedom of press through their respective constitutions and laws of the land.

Chapter-III

Freedom of Press in the Subcontinent

(a) Pre-British Period

The history of press in the Indian Subcontinent is the history of its struggle for freedom. Journalism in an introductory form i.e. news-writing or *Waqa-i-Nawisi* as it was then called, existed in the Indian subcontinent as early as the middle of the sixteenth century. It is a history of how repressive measures were undertaken to control the press and how they were tightened or relaxed to meet newer exigencies and political vicissitudes through which the country passed over two centuries.

The Portuguese, the first Europeans to arrive in India, established themselves in Goa fifteen years before Babur, founder of the Mughal Empire, set himself up at Delhi. They adopted from the first a policy of securing political power in India. In 1506, Francisco de Alameda installed himself at Coachin as "Viceroy at the Indies"; in 1510 Affon so de Albuquerque established himself at Goa more modestly as "Captain General and Governor of India." With the blessings of the Papacy, they set about making converts and they used the printing presses they imported into India to reprint Catechisms. To the conflicts they provoked by these policies were added troubles in Portugal itself and the opposition of the Protestant Dutch and the English. The Dutch, who were the pioneers of the newssheet in Europe, were essentially traders in India but as a stepping-stone to the "specie islands." They seem to have created a problem for the English by offering extravagant sum to the Mughal Emperor for trading rights as their foothold in India became weak, thus sending up the price of trading licences.[1]

Edicts and proclamations were an early form of communication from the rulers to their subjects. The tax collecting and other agencies were also used for gathering and disseminating information. Besides the spies, there were the secret overseers attached to

[1] S. Nataranjan, *A History of the Press in India,* (Bombay: Asia Publishing House, 1962), P. 62.

many departments. There were also reports from the departments, and accounts from the monasteries. Kings writs were important and so were the writ writers. The newsletter was an early institution. In India these form of communication were improved under the Mughals. The news-writers in particular became an institution. The manuscript reports were meant exclusively for official use, but later they were copied for wider use.[2]

The newspapers as we know it, is primarily concerned with today. "As Stale as yesterday, newspaper" is a proverbial phrase with which we are all familiar. The newspaper is so much a part of our daily life that we assume there must always have been something like it in the past. Considerable ingenuity has been shown in tracing similarities between the modern newspaper and older manifestations of the written word. The proclamations of government, the reports of spies on which rulers depended, the writers maintained by Mughal rulers to keep them informed of the doing of governments in provinces, even the exchange of gossip at the market place or round the village well, all these have been mentioned as serving the role of the press. Considerable confusion has been caused by applying the term *"the press,"* to communications of official news-writers who at the Mughal Court also occupied ministerial posts.[3]

The Mughals had appointed news-writes at various points and centeres throughout the Kingdom for sending reports, outstanding happenings in their respective regions. These reports were considered to be of paramount importance and they played an important role in shaping the state policy in regard to particular issues. Great scholar and statesman of Akbar's regime, Abul Fazal, has devoted a full chapter to the rules covering the maintenance of news writers in his book ***Ain-i-Akbari***. He says:

"Though attract of this office may have existed in ancient times, its higher objects were but recognized in the present (Akbar's) reign. His Majesty has appointed fourteen zealous, experienced and impartial Clerks, two of whom do daily duty in rotation so that the turn of each comes after a fortnight."[4]

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[2] M. Chalapathi Rau, *The Press*, (New Delhi: National Book Trust, 1982), p.6.
[3] *Supra*, p. 5.
[4] Abul Fazal-i-Allami, *Ain-i-Akbari*, B. Blochmann (*ed.*), Translated by D.C. Phillott, (Calcutta: Asiatic Society of Bengal, 1927) 2nd Edn., pp. 92-93

Their duty was to write down "orders and doings" of the King and "whatever the heads of the departments reports." They also prepared a record of kings' purely personal engagements as well. It included his visits to shrines and *harem*, too.[5] the news-writers were, in fact, the diarists who recorded daily events of the day so that, as Abul Fazal remarks..., every duty may be performed properly." The second category of the ***Waqa-i-Nawis*** included those who performed the duties of modern Mofussil correspondent; but most probably, this type of ***Waqa-i-Nawis*** did not exist in Akbar's regime and was introduced sometime later. We, anyhow, see this system functioning and established when Aurongzeb was the ruler. It is alleged that reports sent by these ***Waqa-i-Nawis*** were not always correct and were sometimes misconstrued or falsified at the instance of those who had some grudge against the king.[6]

Newspapers and newsboys were also circulated during the Mughal regime. The following summary is the work of S.C. Sanial, an authority on Indian journalism in Hindu and Mohammedan times:

"The earliest distinct mention of antetypographic newspapers is to be found in the ***Muntakhabat-Al-Lubab*** of Kafi Khan where we find the death news of Raja Ram, of the House of Sivazi, brought to the Imperial Camp by the newspapers. The great historian also gives as clearly to understand that the common soldiers in Aurangzeb's time were supplied with their newspapers. We are told by the historian that Aurangzeb allowed great liberty to the press in the matter of news..."[7]

Writing about the "tyrannical" treatment of the provincial governors towards the public, Francis, Berier, a French doctor who served in India, in 1656-1668, said:

> "The provincial governors, as before observed, are so many petty tyrants, possessing a boundless authority; and as there is no one to whom the oppressed subject may appeal he cannot hope for redress, let his injuries be ever so grievous and ever so frequently

[5] S.M.A. Feroze, *Press in Pakistan*, (Lahore: National Publications, 1957) p. 9.
[6] *Ibid.*
[7] Margarita Barns, *The Indian Press*, (London: George Allen & Unwin Ltd., 1940), pp. 32-33.

repeated. It is true that the Great Mughal sends a ***Vakea Navis (wakiahnawis,*** a news-writer) to the various provinces, that is, persons whose business it is to communicate every event that takes place; but there is generally disgraceful collision between these officers and the governor, so that their presence seldom restrains the tyranny exercised over the unhappy people."[8]

John Fryer partly attributes Aurangzeb's defeat in the Deccan campaign (although he had a large number of troops there) to the false reports sent by his news writers. He says:

> "Notwithstanding all these formidable numbers, while the Generals and ***Voca–novees*** (news- writers) consult to deceive the Emperor, on whom he depends for a true state of things, it can never be otherwise but that they must be misrepresented, when the judgment he makes must be by a false perspective."[9]

But Mr. S. C. Sanial does not agree with this view. He says that Aurangzeb had "confidence in the good faith as well as accuracy of the press." He further remarked:

> "They *(Mughal Akhbar's)* were not of the nature of special news–letters for the eye of the emperor himself only, or the Emperor and his confidential Ministers. They were in every sense newspapers, that public vehicles for the dissemination of news of the day. And they constituted a genuine press."[10]

One of the founders of the early Indian press, Mr. Stanhope, is also of the opinion that during the rule of the Mughals "the press did its duty, without fear or favour. It was through the newspapers that Aurangzeb learnt the truth."[11]

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[8] Francois Bernier, *Travels in the Mogul Empire,* (London: Constable and Smith, 1671), p. 231.
[9] Quoted by S.M.A. Feroze, *op.cit.* p. 10.
[10] *Islamic Culture,* a Monthly Journal, published from Hyderabad: Deccan, Pakistan, January, 1928, pp. 122-123.
[11] Leicestar Stanhope, *Sketch of the History and Influence of the Press in British India* (1823), pp. 423-424.

The Venetian traveller, Niccola Manucci, who lived at the court of Aurangzeb tells us that when Aurangzeb sent his Ambassador to Iran, the latter was accompanied by a ***Waqa –i-nawis*** and ***Khufia-Nawis.*** Giving an account of the ***Waqa –i-nawisi***, he says:

> "It is a fixed rule of the Mughals that the ***Vaquia- Navis*** and ***Confianavis*** or the public and secret news –writers of the empire must once a week enter that is passing in a vaquia- what is to say, a sort of gazette or mercury, containing the events of most importance. These news –letters are commonly read in the kings presence by women of the *mahal* at about nine o'clock in the evening, so that by this means he knows what is going on in his Kingdom. There are, in addition, spies who are also obliged to send in reports weekly about other important business, chiefly what the princes are doing, and this duty they perform through written statements. The King sits up till mid – night, and is unceasingly occupied with the above sort of business."[12]

The famous Bengali historian, Sir Jadunath Sarker, in his book ***Mughal Administration*** said that in order to collect news from various part of the Kingdom the central government of the Mughals had appointed (1) ***Waqa-i-nawis,*** (2) ***Sawanihnigar,*** (3) ***Khufia-nawis*** and (4) ***Harkarah.*** The ***Waqa-i-nawis*** was the regular and public reporter, while the ***sawanih-nigar*** was required to report important cases only. The ***Khufia- nawis*** reported secretly on matters of importance without previously referring them to the local authorities.

The code of action for a newly appointed news-writer was the following:

> "Report the truth lest the Emperor should learn the facts from another source and punish you! Your work is delicate; both sides have to be served. Deep sagacity and consideration should be employed so that 'both the *shaikh* and the book may remain in their proper places! In the wards of most high officers forbidden things are done. If you report them truly, the officers will be disgraced. If you do not, you yourself will be undone.

[12] Niccolao Manucci, *Storia do Mogor* or Mogul India 1653-1708, Translated with introduction and notes by William Irvine, (New Delhi: Oriental Books Reprint Corp., 1981) Vol. II, pp. 331-332.

> Therefore, you should tell the lord of the ward: In your ward forbidden things are taking place; stop theme. If he gives a rude reply, you should threaten the Kotwal of the ward by pointing out the misdeed. The lord of the ward will then know it. Although the evil has not yet been removed from the ward, yet if anyone reports the matter to the Emperor, you can easily defend yourself by saying that you have informed the master of the ward and instructed the Kotwal. In every matter write the truth; but avoid offending the nobles! write after carefully verifying your statements.[13]

During the reign of Mughal Emperors news- sheets were prepared under the supervision of the Government and by their employees. This kind of news- sheets were published as form of Gazette, which was in another word known as *Akbars*. Commenting on them the authors of the ***"Indian Press"*** remarks that "considerable freedom of discussion was allowed in the *Mughal Akhbars;* an example which was certainly not always followed by their English successors."[14]

Lord Mecaulay, a member of the Governor General's Council, wrote in his minute dated 2nd September 1836:

> "The gazettes *(Akbars)* which are commonly read by the Natives are in manuscript. To prepare these gazettes, it is the business of a numerous people who are constantly prowling for intelligence in the neighbourhood of every *Cutchery* and every *Durbar*. Twenty or thirty news- writers are constantly in attendance at the palace of Delhi and the Residency. Each of these news- writers has among the richer natives, several customers whom he daily supplies with all the scandal of the court and the city. The number of manuscript gazettes daily dispatched from the single town of Delhi cannot of course be precisely known, but it is calculated by persons having good opportunities of information at hundred and twenty. Under these circumstances it is perfectly clear that the influence of the manuscript gazettes on the native population must be very much more extensive than that of the printed papers (in the native

[13] Jadunath Sarker, *Mughal Administratin*, (Calcutta: M.C. Sarker, 1935), pp. 97-101.
[14] Margarita Barns, *op.cit.*, p.5.

languages whose circulation in India by post does not now- 1836- exceed three hundred).[15]

The newspapers of the Mughal times, were not only exhaustive, but also served as the best medium for nourishment of public mind. The news- gazettes of Akbar regime were prepared under the supervision of government and by their employees. But it was during the rule of Aurangzeb that something nearer to a newspaper had also evolved out of this Government Gazette. Manuscript newspapers were also prepared which contained information of a general character and were circulated both under Government and private auspices. Now they were no more "State papers written for the State." Manuscript newspapers were also allowed to enjoy the liberty of criticizing the administration of the State though their object in the main was to educate and to inform."[16]

Aurangzeb was a conformist Muslim. His cosmopolitan approach to the freedom of press remains unsurpassed even today. Many important books bears out the fact that there existed a well organized system for dissemination of news. ***Akhbars,*** as they were then called, issued by private people has a free hand to write what they liked.[17]

The customs of appointing news writers remained into vogue for about one hundred and fifty years after the demise of Aurangzeb. In the first half of the eighteenth century, the factors of the East India Company availed themselves often of the services of news writers to acquaint the Indian courts of items of news. The company's representatives also had their complaints published in the news letters and they sought to get them redressed.[18] Sanial says that the ***Waqa-i-nawisi*** was functioning as a successful medium of dissemination of news until 1765. He remarks:

> "All this shows that the imperial news agent or *Intelligencer* was a powerful functionary in the Mughal regime, and that the indigenous news agency was in full swing to the last day of the Mughal Empire."[19]

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[15] *Islamic Culture,* (Hyderabad: Deccan), July, 1928, p. 454.
[16] S.M.A. Feroze, *op.cit.*, p. 11.
[17] *Ibid.*, p. 119.
[18] M. Chalapathi Rau, *op. cit.*, p.8.
[19] *Islamic Culture,* January 1928, p. 138.

News writers were in great use under the East India Company, confined in the beginning to reporting the affairs of the English and occasionally reporting the grievances of the employees of the Company. The Company's news writers were under greater control than those under the Mughal Emperors. There could be no free expression of views or even free communication of news in the prevailing atmosphere of grab, favoritism and profiteering. The East India Company's establishment in India was the close preserve of the Company's servants and they saw to it that no true or coherent account of their extra service activities reached the headquarters in London. There was thus no newspaper in English, though the company had installed presses in Bombay, Madras and Calcutta and provided types and paper.

From the above discussion it is apparent that in the pre –British period, particularly during the time of Aurangzeb, the newspapers enjoyed full liberty of discussion on current topics, as well as criticizing the governments actions- a practice which never fully existed under the democratic English. After perusing the position of early newspapers it is evident that contribution of Mughal newspapers towards advancement of journalism in the Indian sub continent was of no mean order. All what is meant to be stressed is that Muslim genius of the Mughals were the real founder of the modern art of journalism in mediaeval India. The most important step was taken by the Mughals was the framing of the Code of action for the newly appointed news-writer, undoubtedly a mile-stone to preserve freedom of press in the Indian sub continent, because in modern time many countries of this region has already adopted the code of ethics of journalism in various forms.

(b) **British Period**

The history of the press in India starts with the Englishmen in the days of the East India Company. It was in the second half of the eighteenth century that the Anglo-Indians and Europeans started their journals. The object of those journals was two fold: information and amusement. Those journals contained lengthy extracts from newspapers and journals published in England or Europe.[20] The laws relating to press in this sub continent were first introduced to restrict the liberty of the press and to protect the interest of the East India Company and its corrupt staff and officers in India. The East India Company in India had

[20] V.D. Mahajan, *British Rule in India and After* (New Delhi: S. Chand and Company Ltd., (1978) p. 487.

also in their service many unprincipled persons and fortune seekers who came to India to build their own fortunes. Even many petty employees of the East India Company used to think of themselves as masters. Their main concern was to collect by any means, even restoring to oppression.

William Bolts, who was merchant of Dutch extraction, had been employed by the East India Company, who made first but unsuccessful attempt, to set up a printing press at Calcutta was deported from Bengal to Madras *en route* to Europe. This happened in 1768. The next twelve years passed without any occurrence connected with the annals of evolution of journalism in India. It was not until twelve years later that the first English newspaper was published by James Augustus Hickey, entitled the ***Bengal Gazette*** or ***Calcutta General Advertiser;*** this journal, which first appeared on January 29, 1780, became known as ***Hicky's Gazette.*** Hicky was a printer by trade and he described himself as "the first and the late printer to the Honourable Company." As for his newspaper venture, he explained, "I have no particular passion for printing of newspapers, I have no propensity; I was not bred to a slavish life of hard work, yet I take a pleasure in enslaving my body in order to purchase freedom for my mind and soul."[21] Only a few months of its appearance, ***Hickey's Gazette*** was deprived of the privileges of being circulated through the channel of the General Post Office as a punishment for containing "several improper paragraphs tending to vilify private characters and to disturb the peace of the settlement."[22] This action was taken vide Governor General's order dated 14th November 1780.

Hicky bitterly complained against this order of the Government and in the 44th issue of his paper declared that the order was the "strongest proof of arbitrary power and influence that can be given."[23]

To state the fact Hicky's pen was a blind man's stick which spared none of those who happened to come within its circle of beat. Everyone was crying against this "high-handedness" on Hicky's part. Colonel Thomas Dean Pearse Governor General's friend, wrote to him from Madras on April 21, 1781, to take immediate action against the paper. Another complaint came from the Swedish Missionary, John Zachrich, against whom Hicky had some

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[21] Margarita Barns, *Indian Press*, p. 46.
[22] S.M.A. Feroze, *op.cit.*, p. 120.
[23] *Ibid.*, p. 121.

grudge since he had a hand in the appearance of a rival paper, the ***Indian Gazette.***[24] This is a point of interest that Hicky's "favorite method of lampooning those he disliked" was to publish program of an imaginary play or concert and to assign to his enemies parts which could only ridicule them in the eye of the public. As a result of Hicky's provocating attitudes the Government became hostile towards him. But Hicky did not give up his provocative role, and his practice to attack authorities in his paper. He declared:

> "Mr. Hicky considers the Liberty of the Press to be essential to the very existence of an Englishman, and a free G-t. The *subject* should have full liberty to declare his principles, and opinions, and every act which tends to *coerce* that liberty is tyrannical and injurious to the community."[25]

In June, 1781, Hicky was fined and imprisoned, but all this neither stopped his paper nor him from pursuing the previous policy. But at last after a historic struggle with Warren Hastings, he was finally crushed. It is to mention here that, despite all his short comings, Hicky deserves to be remembered as the pioneer champion of the freedom of press in India.

Censorship was first introduced in Madras in 1795 when the ***Madras Gazette*** was required to submit all general orders of the Government for scrutiny by the Military Secretary before publication. The newspaper protested against this pre- censorship with the result that free postage facilities were withdrawn. However, by and large, the Bombay and Madras newspapers generally kept themselves on the right side of the Government, the rare recalcitrants being summarily dealt with on charges of gross libel of the government,. In Calcutta, one William Dune, Editor of the ***Bengal Journal,*** was prosecuted, his house broken into and searched and he was ultimately sent back to England without being given any compensation for the property left behind by him. In a despatch to the Board of Directors, the Governor General said that newspapers in Calcutta had assumed "a licentiousness too dangerous to be permitted in this country" and that he, therefore, had to be deported to England. In general, papers were pulled up for various offences, the most important of which related to military subjects. Those editors who were found inconvenient were deported to England. The most significant aspect of this period was that there were no press laws as such

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[24] *Ibid.*
[25] *Ibid.*

in this country during the latter part of the 18th century,[26] but Government took summary action against offending newspapers. Despite that the pattern of governmental action was to deport incorrigible editors, deny postal facilities to the unrepentant and to require those who persisted in causing displeasure to the government to submit either a part or the whole newspaper for censorship.

Describing the early days of the Indian press, James Mill wrote:

> "In the early portion of its carrier, the Indian press had been left to follow its own course with no other check than that which the law of libel imposed. The character of the paper of early days sufficiently shows that the indulgence was abused, and that, while they were useless as vehicle of local information of any value, they were filled with indecorous attacks upon private life and ignorant censures of public measures."[27]

Regulations of 1799 (Regulation V of 1799)[28]

Every newspaper today is required to carry in print the name of the printer, publisher and the editor and this requirement seems to have its origin in the early 19th century. In 1798, when Lord Wellesley took up the office of Governor General, at the age of 37, Britain's hold on India, was being threatened. So just after his arival in India, he declared a strong policy about the press. Early in 1799, the ***Asiatic Mirror*** published some conjectures on the relative strength of European and native population, which were extremely disapproved by lord Wellesley and the article was declared to be mischievous. So in April, 1799, he wrote to Sir Alurd Clark the Commander-in-Chief:

> "I shall take an early opportunity of transmitting rules for the conduct of the whole tribe of editors; in the meantime if you cannot tranquillize the editors of this ***(Asiatic Mirror)*** and other mischievous publications, be so

[26] J.R. Mudholkar, *Press Law*, (Calcutta: Eastern Law House, 1975) p. 14.
[27] James Mill, *The History of British India*, (New Delhi: Associated Publishing House, (1984) p. 581.
[28] See F.G.W Gley, *Chronological Tables and Index of the Indian Statutes*, Calcutta: Office of the Superintendent and Government Printing Press, 1897, Vol. 1, p. 299.

good as to suppress their papers by force, and send their persons to Europe.[29]

Wellesley lost no time in fulfilling his undertaking and on May 13, Monday 1799, he issued his notorious Regulations, the five points of which were:"

(1) Every Printer of a newspaper to print his name at the bottom of the paper.

(2) Every Editor and Proprietor of a paper to deliver in his name and place of abode, to the Secretary to the Government.

(3) No paper to be published on Sunday.

(4) No paper to be published at all, until it shall have been previously inspected by the Secretary to the Government, or by a person authorized by him for that purpose.

(5) The penalty for offending against any of the above regulations to be immediate embarkation for Europe.

At the same time Rules were also framed for the guidance of the Secretary in his role as Censor. These banned the publication of all information relating to the finances of the Company, troop movements, shipping news, naval or military preparations, movement of supplies or specie, reprinting of extracts from European newspapers which might affect the credit of the British power with Indian states, observations conveying information to an enemy or statements with regard to the probability of war or peace with any of the Indian powers and all private scandals or libels on individuals. This was the system under which the press functioned in India till practically 1835. From time to time, there were additions to extend the control to all printed matter.[30]

From the above discussion it is seen that pre-censorship measures were adopted during the reign of Lord Wellesley to curtail the freedom of press and this law has been treated as the first censorship law promulgated by the British Raj in this sub-continent. Censorship law was modified in 1813 by Lord Hastings who was a liberal minded person. Soon after his arrival at Calcutta he enforced on 16th October, 1813, new rules for the control

[29] Margarita Barns, *op. cit.*, p. 74.
[30] S. Natarajan, *op. cit.*, pp. 23-24.

of the printing offices. A circular letter containing revised rules[31] was immediately sent to the proprietors of the ***India Gazette, Telegraph, Mirror, Calcutta Gazette, Hurkaru, Star*** and ***Hindostanee,*** which *inter alia* said:

First: That the proof sheets of all newspapers including the supplements and all extra publications be previously sent to the Chief Secretary for his revision.

Secondly: That all notices, handbills and other ephemeral publications, be in like manner previously transmitted to the Chief Secretary for his revision.

Thirdly: That the titles of all original works proposed to be published be also sent to the Chief Secretary for his information who will thereupon either sanction the publication of them or require the work itself for his inspection, as may appear proper.

It may be recalled here that the system of pre-censorship was abolished by Lord Hastings in 1818 for it lacked legal authority as the Government did not possess powers to enforce rules for the regulation or control of the press censorship was however substituted by general rules for the guidance of editors. According to these rules, newspapers were prohibited from publishing certain categories of criticism such as attacks on the Directors of the East India Company and their officials and such as calculated to create unrest among the natives. Pre-censorship came to an end when Healty, the editor of ***Morning Post,*** could not be touched for refusing to exclude certain portions from his newspaper because he was an Indian by birth. So Lord Hastings abolished pre-censorship and made the editor responsible for publishing anything affecting the authority of the Government or anything injurious to the public interest. However, Lord Hastings was of the view that the most effective safeguard for the Government was to permit full freedom of discussion by the press as this would help in detecting the weakness of the administration, resulting in strengthening the hands of the administration.[32]

During this period three men played an important part in establishing freedom of press in these subcontinent, James Silk Buckingham was an indefatigable fighter for the freedom of press and was on several occasions threatened to be deported but was saved by

[31] Margarita Barns, *op. cit.*, pp. 84-85.
[32] J.R. Mudholkar, *op. cit.*, p. 15.

Lord Hastings, who adopted a benevolent attitude towards the press despite the strong opposition from his council and censure from the Court of Directors. Lord Hastings relaxed some of the existing restrictions. Raja Ram Mohan Roy's papers ***East India Gazette*** and ***Brahman,*** which resolutely opposed Hindu social and religious beliefs, were considered as fraught with danger and likely to explode all over India like a spark thrown into a barrel of gunpowder. In official quarters they were viewed with some apprehension. The newspapers, which favoured orthodox viewpoint, however, did not attract the same measure of hostile attention. The tireless campaign by Buckingham and Raja Ram Mohan Roy convinced many eminent minds both in this country and in England of the useful role as a free press could play its exposure of lapses in the administration and its criticism of the Government's policies.[33]

The Government of India deputed Sir Thomas Munro on the 20th November, 1821 to examine and report on the problem of press in India. He studied the whole question and made his recommendations to the Government. His view was that the problem of the European press was not a serious one. according to him "As far as the European only, whether in or out of service, the freedom or restriction of press could do little good or harm , and would hardly deserve any serious attention." However he recommended the maintenance of censorship in their case and also the retention of the power to deport editors and pressmen out of the country. In the case of the Indian press, Munro expressed both anxiety and fears. According to him, "But though the danger be distant, it is nevertheless there. It could corrupt and disaffect the Indian Army and work for the overthrow of the British power. It might spread among the people, the principles of linearity and simulators them to expel the strangers who rule over them and to establish a national government... A free press and domination of strangers are things which are quite incompatible and cannot long exist together."[34]

Regulation of the Press Ordinance, 1823 (Regulation III of 1823)[35]

After the departure of Lord Hashing, the new Governor General John Adam had no faith in a free press. He did not like the idea that newspapers should sit in Judgment on the acts of government or that they should bring public measures and the conduct of public men

[33] *Ibid.*, p. 16.
[34] V.D. Mahjan, *op. cit.*, p. 488.
[35] See W.G. Wigley, *op. cit.*, p. 330.

as well as the conduct of private individuals before what is called; public opinion; After accepting the recommendations of Munro he, therefore, issued an Ordinance in 1823 introducing "licensing "of the press, under which all matters pointed in the press, except commendations of Munro he, therefore, issued an Ordinance in 1823 introducing "licensing" of the press, under which all matters, printed in the Press, except commercial matters, required a previous license from the Governor General. Such licence could be granted on the submission of an application stating the names and other particulars of the press, such as the location of the press, title of the newspaper and the names of the printer, publisher etc. Certain penalties were imposed in cases where the printing or publishing was done without the requisite licence and the Governor General had the power to revoke the licence. Regulations (The Bengal Press Regulations of 1823) made under the ordinance empowered magistrates to dispose of both unlicensed printing presses and presses which continued to function after the notice of recall.[36] Similar regulations were made in Bombay in 1825 and 1827.

Raja Ram Mohan Roy, the greatest leader of Bengali *Renaissance* and his five colleagues submitted a petition to the Supreme Court, to protest against the measure. The petition which became known as the ***"Areopagitica of the Indian Press"*** concluded by saying:

> "Every good ruler, who is convinced of the imperfection of human nature, and reverences the Eternal Governor of the world, must be conscious of the great liability to err in managing the affairs of a vast empire, and therefore he will be anxious to afford to every individual the readiest means of bringing to his notice whatever may require his interference. To secure this important object, the unrestrained liberty of publication is only effectual means that can be employed."[37]

The petition was rejected by the Supreme Court and the rule, ordinance and the regulation became law. After this Judgment, Rajaji addressed an " Appeal to the King–in-Council' where he compared the privileges which have been enjoyed by the Hindus under Maghal rule with their position under British regime. He wrote:

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[36] R.C.S. Sarker, *The Press in India,* (New Delhi: S. Chand & Company Ltd., 1984) pp. 19-20.
[37] Margarita Barns, *The Indian Press,* p. 124.

> "Notwithstanding the despotic power of the Mogul Princes who formally fled over this country, and that their conduct was often cruel and arbitrary, yet the wise and virtuous among them always employed two intelligence at the residence of their Nawabs or Lord Lieutenanta ***Akhbar Novees,*** news- writer who published an account of whatever happened, and a ***Khoofea- naves,*** or a confidential correspondent, who sent a private and particular account of every occurrence worthy of notice; and although these lord lieutenants were often particular friends of near relations to the prince, he did not trust entirely themselves for a faithful and impartial report of their administration, and degraded them when they appeared to deserve it, either for their own faults or for their negligence in not checking the delinquencies of their subordinate officer's which shows that even the Mogul princes, although their form of Government admitted of nothing better, were convinced, that in a country so rich as so replete with temptations, a restraint of some kind was absolutely necessary, to prevent the abuses that are so liable to flow from the possession of power ..."[38]

This is to be noted hereto that the "Appeal to the King-in –Council" was, anyhow, also rejected.

It is apparent that these regulations were aimed at the vernacular language press of those days. These regulations may be said to be the forerunners of the Vernacular Press Act of 1878.

Registration of the Press Act, 1835

In the period that followed, both Lord Bentinck and Sir Charles Metcalf adopted a more liberal attitudes towards the press. Lord William Bentinck's rule (1828-1835) as a Governor General marks a turning point in the history of the press in the Indian sub-continent. Press was never seriously molested under his regime. Lord Bentinck did everything possible to encourage liberal discussion in newspapers, but "editors were still

[38] *"Raja Ram Mohan Roy O Sangbad Patter Shadhinata"* (Raja Ram Mohan Roy and Freedom of Press) Published in the Monthly *"Probashi"*, Baisakh, 1336.

being cautioned against publishing seditious articles."[39] On the whole Lord Bentinck's attitude towards the press was one of liberalism and understanding.

It may be recalled that Sir Charles Metcalf, the Successor of Lord Bentinck, had shown keen interest and took active part in conferring freedom of press. Expressing his views on the connections of the Company's servants with the press, Sir Charles wrote in minute on December 29, 1828:

> "I take it as universally granted that the press ought to be free, subject, of course, to the laws, provided it be not dangerous to the stability of our Indian Empire.[40]

The abolition of press rules was one of the main demand of the Journalists in the early British regime, but no Government authority took necessary action in that connection. When lord Metcalf was the Governor- General, asked Lord Macaulay, Legislative Member of the Supreme Council, to draft an Act on the subject of the press which could be applicable to the whole of India. Consequently, Act XI of 1835 was passed by Sir Charles with the unanimous support of his Council. The new Act *ipso facto* repealed all the previous press laws e. g. the Bengal Press Regulations of 1823 and the Bombay Press Regulations of 1825 and 1827, in force in various provinces. This Act is conceded to have established liberty of the press in India. But the directors and powerful officers of the East India Company, however, were opposed to the liberty of the press, In this connection, the observation made by Mr. Edward Thomson may be noted:

> "It was not the Indian press that he (Sir Charles Metcalf) liberated but the British press in India, which existed under a cat and mouse regime in its first days under James A. Hickey in Warren Hasting's time. Physical violence was the main check in its scurrility and irresponsibility. Calcutta Society, highly tolerant of immorality and indecorum, disliked frank commentary on its doings, and Hicky was frequently assaulted. As the century ended Lord Wellesley presiding over a great crisis which permitted the intervention of no scruples and complications (luxurious in

[39] S. Natarajan, *op. cit.*, p. 333.
[40] Margarita Barns, *op. cit.*, p. 185.

any case not much in his time) tightened up control. Journalists had leave to write what he approved; if they worked otherwise, they left India ... .

"It is our policy in those days to keep the natives of India in the profoundest possible state of barbarism and darkness a policy which, operated outside the company's own territory . . ." In India, Metcalf liberated the press as Governor General and it angered the directors and that powerful immovable mass, the retired officials.[41]

Press Act of 1857 (XV of 1857)

The revolt of 1857 aroused grave apprehensions in the mind of the Government and it felt that sedition had been poured to an audacious extent into the hearts of the people of India. It was not until the dark days of the Mutiny of 1857 that the press was deprived of freedom by promulgation of Act XV of 1857, which was introduced by Governor General Lord Canning. This Act, nevertheless, remained inforce only for a short period of one year. The Act was entitled: ***"An Act to regulate the establishment of printing presses and to restrain in certain cases the circulation of printed books and papers."***[42] The last section of the said Act said, "This Act shall continue in force for one year."

It is to pen here that the new Act restored the system of licensing and the restrictions, with slight modification, which were previously imposed under the Press Regulations of 1823 and other subsequent rules. An important feature of the law was it did not draw a line of demarcation between European and Indian publications. This law applied to every kind of publication, be it in English or in vernacular language owned by Indians or by Europeans. Under this Act, keeping or using of printing presses without a licence from the government was prohibited and the government assumed discretionary powers to grant liences and to revoke them at any time. The Act was applicable to the whole of India. The prohibition imposed was that "no newspaper, etc. shall contain any observations or statements impounding either in England or in India or in any way tending to bring the said government into hatred or contempt to excite disaffection or unlawful resistance to its orders or to weaken its lawful authority or the authority of its civil or military servants, or observations or

[41] Abu Nasr Md. Gaziul Hoque, *Mass Media Laws and Regulations in Bangladesh* (Singapore): Asian Mass Communication Research and Information Centre, 1992), p. 21.
[42] F.G. Wigley, *op. cit.*, p. 83.

statements having a tendency to create alarm suspicion among the native population any intended interference by the Government with their religious opinions and observances or having a tendency to weaken the friendship towards the British Government of Native Princes, Chiefs . . . or alliance with it."

Commenting on the circumstances which led to enforcement of Act XV of 1857, a western writer remarks:

> "A state of officers existed, which in the opinion of the Governor General, could not be allowed to continue and, on june13, 1857, a new Act to regulate the establishment of printing presses and restrain in certain cases the circulation of printed books and papers was promulgated. This measures became known as the *Gagging Act.*"[43]

Indian Penal Code, 1860

The Indian Penal Code was passed in 1860. Though the Act was not directed specifically against the press, it laid down offences which any writer, editor, publisher must avoid, e. g. the offences of defamation and obscenity, later amendments introduced the offences of sedition (section 124A), promoting enmity between classes (section 153A), imputations or assertions prejudicial to national integration (Section 153B), and outraging religious feelings (section 295A).

Press and Registration of Books Act, 1867 (Act XXV of 1867)

The earliest surviving enactment specifically directed against the press was passed in 1867 which was entitled: ***"An Act for the Registration of Printing Press and Newspapers for the Preservation of Books Printed in British India, and for the Registration of such Books."***[44] The Preamble of this Act reads as:

> "Whereas it is expedient to provide for the regulation of printing presses and of newspapers, for the preservation of copies of every book and

[43] Margarita Barns, *op. cit.*, p. 250.
[44] See AIR Manual, Vol. XIX, 4th Edition (1979), p. 482

newspaper printed in India and for the registration of such books and newspapers; It is hereby enacted ..."

The title and preamble of the Act show that the Act was passed for regulating printing presses and newspapers, for the preservation of copies of every book and newspaper printed in India and for the registration of such books and newspapers. The primary concern of the Legislature was to pass an enactment which would help regulate printing press and newspapers and the preservation of copies of books and newspapers printed in the country.

Vernacular press Act, 1878.

The Act of 1878, generally known as the Vernacular Press Act, became law on the 14th March of the said year. The Vernacular Press Act came into force in the teeth of opposition from the 15th March of the year. It was entitled, ***"An Act for the better control of Publications in Oriental Languages."*** The opening part of the Act reads:

> "Whereas certain publications in Oriental Languages printed or circulated in British India have of late contained matter likely to excite disaffection to the Government established by law in British India, or antipathy between persons of different races, casts, religions or sects in British India, or have been used as means of intimidation or extortion."[45]

When Lord Lytton assumed the office of Viceroy in 1876, relations between the Government and the press were very unsatisfactory, because the press had become most critical of the Government policy in regard to a number of issues. Lord Lytton was anxious to restore friendly relations between the two and he took some practical steps in this behalf. On the 13th March, 1878 he send a telegram to the Secretary of State for India requesting his consent by telegram to press law on the lines of the Irish Coercion Act of 1870. His justification was "the increasing violence of the native press, directly provocative of rebellion." He got Sanction for that bill the next day. As soon as the sanction was received,

[45] S. Natarijan, *op. cit.*, p. 341.

the bill was enacted into law within a couple of hours. The law was known as the Vernacular Press Act, 1878 although it was nick- named as *"The Gagging Act."*[46]

The Vernacular Press Act empowered a Magistrate, with the previous sanction of the provincial Government to require a printer or publisher to deposit a security or enter into a bond binding himself not to print or publish anything likely to incite feelings of disaffection towards the Government or hatred between the different races in India. The Government was authorized to warn as well as to confiscate the plant, the deposit, etc. in the event of the publication of some undesirable matter. The printer was given the option of submitting proofs to the official censor and dropping all rejected matter and thus escape from the clutches of law.[47]

Divergent views were held with regard to the Vernacular Press Act. While Englishmen in general and the Government of Indian in particular justified its enactment, the Indians condemned it in the strongest possible terms. As a result of this legislation, seditious and disloyal writings stopped completely and there was no interference with the legitimate expression of opinion. According to Shri S. N. Banarjea, "within less than fifteen months, the vernacular press all over India save that of Madras was muzzled."[48] A big meeting was held in the Town hall at Calcutta. It was one of the most successful meetings ever held in India. It sounded the death knell of the Vernacular Press Act.[49] Many eminent personalities of that time criticized this Act in this way that the Vernacular Press was not guilty of disloyalty to the British rules.

According to Mody, "The Act was utterly uncalled for unduly repressive in character and inspired by sinister motives. It was a draconian piece of legislation based for the most part on the Irish Coercion Act 1870 and in some respects more stringent than the latter, which was a special measure brought into existence to deal with special emergency."[50]

Reaction to the enactment of the Vernacular Press Act was very severe. While reading a paper on the Native Press before the Society of Acts, on march 23, 1877, Sir George

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[46] B.N.Ahuja, *History of Press, Press Laws and Communications* (New Delhi: Surjeet Publications, 1988) p. 59.
[47] *Ibid.*
[48] *Ibid.*
[49] *Ibid.*
[50] Quoted by B.N. Ahuja in *"History of Press, Press Laws and Communications"* at p. 60.

Birdwood, said that considered in view of the political and social background, the Indian Press "is commendably loyal". He pointed out:

> "The best English literature is the literature of discontent and opposition attack. Content, indeed seldom finds expression in any literature but that of the national age of faith, and against attack the surest defence of power is also silence. It, therefore, happens that the native students of our Indian schools and colleges have been nurtured in the strength and spirit of the masterful English literature of the last century."[51]

The above quoted comment made by Sir George Bidrdwood shows that the step taken by Lord Lytton was based on whimsical ground and was an unwarranted action. That is why the measure was opposed even by British nationals. Another important event which came in the wake of Passage of the Vernacular Press Act was that the *Amrit Bazar Patrika* which was hitherto published in the Bengali language, was overnight converted into an English paper, and thus avoided coming within the scope of the Act.

From the above discussion it is apparent that the vernacular Press Act, 1878 was enacted for the better control of the Indian Press and in this way the British Rules cut- off the freedom of press in this subcontinent.

Repeal of the Vernacular Press Act

When Lord Lytton was criticized by both the English and Indians for his whimsical action about press, then he was called from India and Lord Ripon was appointed his successor, who came out to India with clear instructions to repeal the Vernacular Press Act. Inspite of the sympathetic attitude of Lord Ripon, it was not possible to repeal the said Act at once. On December 7, 1881, a Bill was introduced for the repeal of the Vernacular Press Act at the initiative of the Governor General. It is said in the opinion of the government circumstances no longer justified the existence of the Act. In his Presidential address to the Council, Lord Ripon observed while concluding the proceedings that "he did not wish to detain them by any observations of his own nor did he think that he was in any way called

[51] Margarita Barns, *op. cit.*, p. 276.

upon to review the reasons or motives for which the Act was originally passed. All he desired to say was that it would have been during the time he held office of Viceroy that the Act had been removed from the Indian State Book.[52] However, the Vernacular Press Act was repealed in 1881. Although the Indians praised Lord Ripon for his gesture of good will on his part, Englishmen were not happy. According to Prof. Dedwell, "The freedom of the Indian press was bound to be injurious to the interests of the British Government in India. A free Indian Press was bound to criticize the acts or omission and commission of the Government and thereby bring it into disrepute."[53]

Official Secrets Act 1889

When the Vernacular Press Act was repealed; the press in India remained in peace but only a few years, as only within a short period of nine years after the 1881 event, another Act was promulgated on 26th August, 1889, "to prevent the disclosure of official documents and information." [54]Because, during the Viceroyalty of lord Lansdown (1888-94) the ***Amrita Bazar Patrika*** published a Foreign Office document about Kashmir. This led to the enforcement of an Act called ***"An Act to Prevent the Disclosure of Official Documents and Information."***

The objects and reasons of the Act were:

> "The object of this Bill is to re-enact for India, *mutatis mutandis,* the provisions of the Official Secrets Act, 1889 (52 and 53 Victoria, C.52), which has recently been passed by Parliament. That statute applies to all acts made offences by it when committed in any part of Her Majesty's dominions, or when committed by British officers or subjects elsewhere, but the working in India of criminal law enacted by Parliament has not in frequently, notwithstanding the provisions of 37 and 38 Vict. C. 27, s.3, been found to be beset with practical difficulty. Under these circumstances it seems desirable to take advantage of the saving for laws of British possessions contained in Section 5 of the statute and re-enact it for India

[52] Lucien Wolf, *Life of Lord Ripon,* (New York: Macmillan, 1921), vol. II at pp. 402-403.
[53] B.N. Ahuja, *op. cit.*, at p. 61.
[54] For datails see, *A Collection of Statutes Relating to India,* vol. II, Calcutta: Office of the Superientendent of Goernment printing, India, 1901, p. 858.

with such adaptations of its language and penalties as the nomenclature of the Indian statute book requires.'[55]

Section 2 of this Act provided:

> "Where a person having possession of any document, sketch, plan, mode or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place, belonging to Her Majesty, or to the Naval or military affairs of her Majesty, in whatever manner the same has bun obtained or taken at any time willfully communicates the same to any person whom he knows the same ought not in the interest of the State to be communicated at that time he shall be punished with imprisonment for a term which may extend to two years or with fine or with both."[56]

On 4th December 1903, the Government sought to amend the Indian Official Secrets Act 1889. The object was to include civil matters within the scope of this Act. It has seen that previously the Act prohibited among other publication of Naval and Military secrets. It was also intended by making this amendment to extend the jurisdiction of the Act to "whoever without lawful authority or permission goes to a government office, and commits an offence under the Act." All the offences under the Act were cognizable and non bailable.

Code of Criminal Procedure 1898

Though the Criminal Procedure Code, 1898, was a general law laying down the procedure in criminal matters, it came to include matters of interest to the Press e.g., section 108 particularly after the insertion of sections 99A-99G in 1922, which conferred certain procedural powers upon the Government to search for and forfeit publications which offended against the provisions of Sections 124-A, 153-A or 295-A of the Indian Penal Code.

From the above discussion it is clear that different steps were taken by the state authorities in the 19th century for tackling the press, but those measures helped for growing political consciousness among the peoples of this sub- continent. Writing about the press in the 19th century in India, Dr. Pattabhi Sitaramayya points out that "popular agitation gives

[55] Margarita Barns: *op. cit.*, at pp. 301-302.
[56] Section –2 of the Official Secrets Act, 1889.

birth to repression on the ground that, unless the people are thoroughly beaten, no concession should be made to popular demands. Lord Lytton's press Act of 1878 which was however, quickly withdrawn, was the real forerunner of this policy. The Arms Act was another reply to the growing self-consciousness of the nation and contained a festering sore."[57]

Newspapers (Incitement to Offences) Act, 1908

It is well known that the partition of Bengal by Lord Curzon and his anti – Indian policy resulted in a lot of agitation through out the length and breadth of the country. A movement was set on foot to drive out the Englishmen bag and baggage from the country. As time passed on the situation became critical. This state of affairs led to the passage of another Act affecting the press in June, 1908. The new Act was entitled "Newspapers ***(Incitement to Offences)*** Act" bearing the sub heading *"An Act for the Prevention of incitements"* to murder and to other offences *in newspapers."*[58] In the preamble of the Act it is stated, "whereas it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers; it is hereby enacted ..."[59]

Section 3 of the Act provided,

> "(1) In cases where upon application made by order of or under authority from the Local Government, a Magistrate is of opinion that a newspaper printed and published within the province contains any incitement to murder or to any offence under the Explosive Substances Act 1908 or to any act of violence, such Magistrate may make a conditional order declaring the printing press used or intended to be used for the purpose of printing or publishing such newspaper, or foured in or upon the premises where such newspaper is, or at the time of such newspaper, wherever found, to be forfeited to His Majesty, and shall in such order state the material facts and call on all persons concerned to appear before him, at time and place to be fixed by the order, to show cause why the order should not be made absolute.

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[57] J.R. Mudholkar, *op. cit,* at p. 20.
[58] For details see, *A Collection of Statutes Relating to India,* vol. I, Calcutta: Office of the Superintendent of Government Printing, India 1912, p. 540.
[59] *Ibid.*

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper ... or of any other premises in which such newspaper is printed, and the fixing of such copy shall be deemed to be due service of the said order on all persons concerned."[60]

So, it is seen that under the provisions of this Act, the Government got the powers to take judicial action against the editor of any paper which published matter liable to incite to rebellion. A statistics shows that in all nine prosecutions were instituted under this Act. Seven resulted in the confiscation of presses; four in Bengal, two in the Punjab and one in Bombay.[61]

It is to be noted here that the Government was not very rigid in taking action under this Act. There is an instance that an offender got his press back from the Government of Bengal by tendering apology and giving the undertaking "that the liberties accorded would not be misused in future." There is another instance that the Governments' order under this Act was set-aside by the High Court on appeal. It may be pointed out that all these prosecutions took place within a year after the enforcement of the Act, and for eleven years hence (until the Act was repealed) it remained a dead letter.[62]

Indian Press Act, 1910

The Act I of 1910 introduced as *"An Act to Provide for the Better Control of the Press"*[63] in India which is known to us as the Indian Press Act, 1910. Section 3(1) of the Act read as follows:

"Every person keeping a printing press who is required to make a declaration ... shall, at the time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less then five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India.

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[60] *Ibid.*
[61] Margarita Barns, *op.cit.*, p. 325.
[62] *Ibid.*
[63] See. *A Collection of Statutes Relating to India,* vol. I, 1912, *op.cit.*, p. 897.

Provided that the Magistrate may, if thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security, or may from time to time cancel or vary any order under this sub-section"[64]

It is clear that this Act empowered the Government through proper channel to demand security from any newspaper publishing matter considered to be offensive. In other words, punitive action could be taken at the discretion of the Executive.

Under section 8, sub-section (1) similar restrictions were placed on the Publisher of a newspaper in accordance with Section 5 of the Press and Registration of Books Act, 1867. It was however, left at the discretion of the Magistrate to exempt anyone from depositing the necessary amount of security "if he thinks fit." Section 6 of the Press Act, 1910 also provided for forfeiture of security money, printing press and the newspaper.

From the above it is observed that the Indian Press Act, 1910 was draconian in nature, which re-imposed the strict rules regarding press. It is also take into consideration that the Press and Registration of Books Act, 1867, and this law hampered the freedom of Press in the early twentieth century.

Indian Official Secrets Act, 1923 (Act XIX of 1923)

The Next important law on the subject is the Official Secrets Act, 1923 of which object was to consolidate and amend the law relating to official secrets.[65] It is a general Act but has an important impact on the press. It is aimed at maintaining the security of the State against leakage of secret information, sabotage and the like. It is an existing law which is still in force in the Indo-Pak Bangladesh sub continent. Three sections of the Official Secrets Act, 1923 deserve special notice, namely, Sections 3, 5 and 14. Section 3 of the Act provides penalty for spying for any purpose prejudicial to the safety or interests of the State and the punishment is imprisonment which may extend to fourteen years in some cases and to three years in other cases.[66] Section 5 is the most controversial provision in the Act. It says that if

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[64] *Ibid.*, p. 898.
[65] *See*, the AIR Manual, 4th Edn., vol. XXVII, p. 45.
[66] Section 3 of the Official Secrets Act, 1923.

any person has in his possession or control any secret official code or password or any sketch, plan, model, article, note, document or information which relates to or is used in prohibited place 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, he commits an offence if he willfully communicates the same to any person who is not authorized to receive it. An offence is committed not only by the person who passes an official secret but also by the person who voluntarily receives an official secret. There is also a specific provision on the communication of secrets to a foreign government. Section 5 provides penalty for wrongful communication of any official secret and the punishment is imprisonment which may extend to three years or fine or both.[67] The chief vice in this section is its catch-all character covering all kinds of secret official information whatever be the effect of the disclosure. The section does not define what is secret or what is an official secret. In the absence of any definition in the Act, it is for the Government to decide what it should tread as secret and what it should not. The section gives a blanket power to the executive to prosecute any person disclosing official information as also any person receiving such information. Another important characteristic of this Act is that it is as near as same piece of legislation of the official secrets Act, 1889 (Act XV of 1889) and this Act also curtailed freedom of information.

As the offences committed under this Act may affect safety of the state, the court has been specifically empowered under section 14 to exclude all or any portion of the public from any proceeding before it if the court is of opinion that the publication of any evidence would be prejudicial to the safety of the State.[68] Obviously, under this provision, newspaper reporters may also be excluded from court proceedings in certain circumstances.

Press Ordinance, 1930

Besides the existing laws, the authorities of British India again declared the Press Ordinance of 1930 "to provides for the better control of the press,[69] and it came into force with effect from May 30, 1930. The ordinance gave powers to the Magistrates to demand securities from printing presses and newspapers as provided in sections 4 and 5 of the Press

[67] Section 5 of the Official Secrets Act, 1923.
[68] Section 14 of the Official Secrets Act, 1923.
[69] Margarita Barns, *op. cit.*, p. 370.

and Registration of Books Act, 1867. If we compare this Ordinance with the Act of 1867 we should find that this Ordinance was adopted for controlling the native press to a greater extent and it gave the Government the authority to order the suspension of newspapers and in this way the authority had curtailed the press freedom at that time.

Indian Press (Emergency Powers) Act, 1931

After the repeal of the Acts of 1908 and 1910 in 1922, there were no repressive press laws and newspapers flourished. But the launching of the Civil Disobedience Movement by Gandhiji in 1931 prompted the Government to promulgate an Ordinance to "Control the Press" which was later enacted as the Indian Press (Emergency powers) Act, 1931. The Act No. XXIII of 1931, entitled as "The Indian Press (Emergency Powers) Act of 1931, was *"an Act to provide against the publication of matter inciting to or encouraging murder or violence."*[70] Originally the Act was to "remain in force for one year only," but according to section 1(3) the Governor General had power, by notification in the *Gazette of India,* to direct that it should remain in force for a further period not exceeding a year.

Salient features of this Act were the revival of security deposits and other allied restrictions which were previously embodied in sections 4 and 5 of the repealed Indian Press Act, 1910. The sweeping nature of section 4 of this Act may be noticed from the fact that it provided that whenever it appears to the Government that any printing press in respect of which any security had been ordered to be deposited under Section 3 was used for the purpose of printing of publishing any newspaper, etc., containing any words, signs or visible representations which (a) incite to or encourage, or tend to incite to or to encourage, the commission of any offence or murder or any cognizable offence involving violence or (b) directly or indirectly express approval or admiration of any such offence or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence, the local Government may forfeit the security or, where no security has been deposited, declare the press to be forfeited. On the other had, the security to be deposited by the press could be up to ten thousand rupees. Power was also conferred on the Postal and Customs authorities to seize articles in course of transmission if they are suspected to contain matter of the nature described above.

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[70] *Ibid.*, p. 450.

Foreign Relations Act, 1932 (Act No. XII of 1932)

On April 2, 1932, the Government of India introduced another Bill which ultimately became known as the Foreign Relations Act, 1932. The object of this Act was "to provide against the publication of the statements likely to prejudice the maintenance of friendly relations between His Majesty's Government and the Government of certain foreign States."

Section 2 of these Act declared that where an offence falling under Chapter XXI of the Indian Penal code is committed against a Ruler of a State outside but adjoining India, or against the consort or son or Principal Minister of such Ruler, the governor General in Council might make, or authorize any Person to make, a complaint in writing of such offence and any court competent in other respects to take cognizance of such offence might take cognizance of such a complaint.[71]

Section 3 of this Act shows that any book, newspaper or other document containing such specified defamatory matter which tended to prejudice the maintenance of friendly relations between His Majesty's Government and the government of such State could be detained in the same manner as seditious literature.[72]

After reviewing this Act it is therefore, revealed that this law was also enacted to control the press and to curtail the freedom of press in the Indian subcontinent, for the interests of the authorities in British India.

The Indian States (Protection Act, 1934 (Act No. XI of 1934)

During the winter session of the Legislative Assembly the Indian States (Protection) Act, 1934 was passed which was directly connected with the press and affecting its liberty. Its object was," *to protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to obstruct such Administrations.*[73]

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[71] *Ibid.*, Appendix IV, p. 461.
[72] *Ibid.*
[73] *Ibid.*, Appendix V. p. 463.

According to section 3 it was made punishable, *"to bring into hatred or contempt or to excite disaffection towards the administration established in any State in India.*[74] In short, only the 7 sections of this Act deprived the newspapers of their privilege to criticize administration of the native State

The Government of India Act, 1935

With the passage of the Government of India Act, 1935, relations between the press and Government began to improve as the previous bitterness was gradually abating. This Act protected the freedom of speech and of the press.

The Defence of India Act, 1939

When the Second World War broke out the Government of India passed the Defence of India Act, 1939 in order to meet the difficult situation. The government also framed rules known as the Defence of India Rules, 1939. These rules enabled the Government to control the Indian press for six years long. Actions were taken against those newspapers which dared to violate the above rules and laws. However, the Act and rules lapsed after the ending of the Second World War.

The Indian Independence Act, 1947 does not contain any provisions relating to freedom of press and for that reason it is not necessary to discuss the law in this chapter.

[74] *Ibid.*

Chapter –IV

Freedom of Press and Constitutional Guarantee in Post-Independent Sub-Continent

In August, 1947, two independent dominions, India and Pakistan, were created by the Indian Independence Act, 1947.[1] The Constituent Assembly drafted the Indian Constitution, which was signed by the President of India on November 26, 1949. This Constitution came into force on January 26, 1950. It adopted some justifiable fundamental rights. Among these, freedom of press is one, which is treated as the mother of all liberties. One of the main objectives of the Indian Constitution, as envisaged in the Preamble, is to secure liberty of thought and expression to all the citizens. In order to give effect to this objective, "freedom of speech and expression" has been guaranteed as a fundamental right under Article 19(1) (a) available to all citizens, subject only to the restrictions which may be imposed by the state under clause (2) of that Article. The relevant portion of Article 19 reads as follows:

> "19(1). All citizens shall have the right (a) to freedom of speech and expression; .....
> (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 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."

In the Indian Constitution, there is no separate provision guaranteeing the freedom of press, as in countries like the USA, where the written constitution exists. The First Amendment to the US Constitution declares, Congress shall make no law... abridging the freedom of the speech or ... of the press. In India this freedom is guaranteeing in the head of freedom of expression. This issue of freedom of press predictably come up before the

[1] Section 1 of the Indian Independence Act, 1947, 10 & 11 Geo. VI C. 30.

Constituent Assembly and there was some controversy whether specific mention should be made of freedom of press and whether the expression "freedom of speech and expression" includes the press.

The constitution makers had before the experience of the First and Fourteenth amendments of the U.S. Constitution as also the judgments of U.S. Supreme Court thereon and they deliberately did not incorporate the language of the First Amendment. Freedom of expression is a term of much wider import and includes all possible forms of expressing thoughts, feelings and convictions. In this connection Dr. B.R. Ambedkar, the architect of the Indian Constitution, explained the position as follows:

> "The press is merely another way of stating an individual or citizen. The press has no special rights which are not to be given to or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and, therefore, when they choose to represent any newspapers they are merely exercising their right of expression and in my judgment no special mention is necessary of the freedom of press at all."[2]

So, it is seen that freedom of expression includes freedom of press and there is no need to mention freedom of press separately. Since freedom of press is derived from Article 19(1) (a) which is guaranteed to all citizens, the press stands on no higher footing than any other citizen and cannot claim any privileges as such as distinct from those of any other citizen. On the other hand, the press cannot be subjected to any special restrictions which could not be imposed on private citizens.

Pakistan followed the Indian pattern regarding freedom of press. The first Constitution of Pakistan, which came into force on the 23rd March, 1956, did not contain any direct provision concerning freedom of press. Article 8 of that constitution proclaims:

> "Every citizen shall have the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law in the interest of the

[2] See *Constituent Assembly Debates*, 2nd December, 1949, Vol. VII, P. 780.

> security of Pakistan, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

The constitutional protection for freedom of press, which was found under the heading of the term "freedom of speech and expression" was shattered, when Martial Law was Proclaimed on the 7th October, 1958, the direct consequence of which was that the Constitution of 1956 was abrogated. The constitution of 1962 enacted by President Ayub Khan, originally did not contain any justifiable fundamental right; but due to the public pressure the President bound to incorporate some justifiable fundamental rights by amending the Constitution of 1962. The amendment contained *inter alia* specific provision for the protection of the right to freedom of speech and expression. Article 9 of this Constitution deals with freedom of press under the caption "freedom of speech and expression." It is very interesting to note here that both the constitutions i.e. constitution of 1956 and 1962 bear the same language regarding this right in their respective articles.

The Constitution of the Islamic Republic of Pakistan, 1973, emphasized on the freedom of press. Article 19 of this Constitution runs as follows:

> "Every citizen shall have the right to freedom of speech and expression, and their shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign states, Public order, decency or morality, or in relation to contempt of court, or incitement to an offence."

From the above discussion it can be said that the language of Article 8 of the Constitution of Pakistan 1956 and Article 9 of the same Constitution of 1962 are same. The language of Article 19 of the Islamic Republic of Pakistan is almost same in comparison to the previous provisions of the Constitutions of 1956 and 1962.This Article guarantees freedom of Press separately which is the mouth-piece of the public opinion. The distinct character of Article 19 of the Constitution of Pakistan which guarantees freedom of speech, expression and press makes it subject to reasonable restrictions imposed by law in the interest

of glory of Islam etc., and decency or morality. The restrictions given therein cannot be imported into any other fundamental right.

It has been pointed out that the East wing of the then Pakistan, after a bloody war of independence, emerged on the 16th December, 1971, as an independent State called Bangladesh. After the independence, this new State enacted and adopted its constitution, which came into force on the 16th December 1972. Article 39 of the Constitution of Bangladesh highlighted the freedom of press, which provides:

> "(1) Freedom of thought and conscience is guaranteed.
> (2) Subject to any reasonable restrictions imposed by law in the interests of 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-
> (a) the right of every citizen to freedom of speech and expression; and
> (b) freedom of the press, are guaranteed."

From the above discussion it is evident that the Constitution of India 1950 and the Constitutions of Pakistan of 1956 and 1962 did not contain any direct provision concerning freedom of press. Besides these, the languages of the Constitution of India, 1950 and the Constitution of Pakistan of 1956 and 1962 are almost same and both of them imposed same restrictions on the press. The language of the Constitution of Bangladesh is also almost same in comparison to the Indian, Constitution of 1950 and Pakistan Constitution of 1956 and 1962. As regards the restrictions, the language of the Constitution of Bangladesh 1972 and the Constitution of Pakistan 1973 is same except in one case i.e. in the glory of Islam. They ensured freedom of press through their respective constitutions under the heading "freedom of speech and expression." But the 1973 Constitution of Pakistan for the first time specifically mentioned the term "freedom of the press" and gave it the Constitutional guarantee. On the other hand, Constitution of the People's Republic of Bangladesh is directly concerned with the freedom of press. It is also apparent that all the three Constitutions of the above mentioned countries have guaranteed freedom of press with a reasonable restrictions imposed by the law. Therefore, this freedom is not unlimited.

The Constitutions of India, Pakistan and Bangladesh have not imposed any undue restrictions on the freedom of speech and of the press granted to the citizens. Freedom of speech is restricted in all States of the World because if it were not so, there would be absolute chaos in the society. It has been seen that in the U.S.A. freedom of speech is guaranteed under the First Amendment but it does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or unrestricted and unbridled licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. Conversely, in England also the freedom of speech though guaranteed by the Court over a period of years, is liable to reasonable restrictions. So, after examining the Constitutional provisions of these three countries it can be safely said that the fundamental right of freedom of expression is subject to the restrictions mentioned in those Articles.

Besides these Constitutional provisions it will be seen how the superior Courts of India, Pakistan and Bangladesh have interpreted the concerned Constitutional provisions in deciding cases coming before them. The relevant cases and the role played by the judiciary in this regard will be discussed and analyzed.

(a) Freedom of Press and Constitutional Guarantee in India

We have seen that the Constitution of India has given a pride of place to this right in the preamble when it refers to the "freedom of thought and expression" and again in Article 19(1)(a). The Constitution does not speak specifically of freedom of press as such, but superior courts in India have so interpreted the Constitutional provisions as to encompass within the expression "freedom of speech and expression" the freedom to publish newspapers without any government interference, subject only to the limitations that Parliament can enact under clause (2) of that article.

The earliest case to enforce freedom of press which came before the Supreme Court of India soon after the commencement of the Constitution was ***Ramesh Thappar*** v. ***State of Madras.***[3] In this case, the petitioner was the printer, publisher and editor of the then recently started weekly journal in English called ***"Cross Roads"*** printed and published in Bombay.

[3] AIR (1950) SC, p. 124, in Writ Petition No. 16 of 1950.

The Government of Madras, the respondent of this case, in exercise of their powers under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 (Madras Act XXIII of 1949) purposed to issue an order No. MS. 1333 dated 1st March, 1950, whereby they imposed a ban upon the entry and circulation of the journal in that state. The order as issued was in the following terms:

> "In exercise of the powers conferred by section 9(1-A), Madras Maintenance of Public order Act, 1949, His Excellency, the Governor of Madras, being satisfied that for the purpose of security, the public safety and the maintenance of public order, it is necessary so to do, hereby prohibits with effect on and from the date of publication of this order in the Fort St. George Gazette the entry into or the circulation, sale or distribution in the State of Madras or any part thereof of the newspaper entitled ***Cross Roads*** an English weekly published at Bombay."[4]

Mr. Thapper moved the Supreme Court under Article 32 of the Constitution and challenged the order of the Madras Government on the ground that the said order contravenes the fundamental right of freedom of speech and expression as guaranteed by Article 19(1)(a) of the Constitution. Contesting on this case the respondent said that the notice has been issued for the purpose of securing public safety and for the maintenance of public order. The question that fell for consideration before the Supreme Court was whether the impugned Act was a law relating to any matter which undermines the security of the State or aims to overthrow the State. It was a majority judgment delivered on the 26th May 1950, by Patanjali Shastri, J. on behalf of himself, Kania C.J., Mahajan, B.K. Mukherjea, and S.R. Das, JJ. Fazal Ali, J. had dissented. The gist of the majority view is:

> "... Unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the state or the over through of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that section 9(1-A) which authorize imposition of restrictions for the wider

[4] *Ibid.*, p. 126.

> purpose of securing public safety or the maintenance of public order falls outside the scope of authorized restrictions under clause (2), and is therefore, void and unconstitutional. In other words, clause (2) of Article 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to public security is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent."[5]

In the instant case per Shastri J. observed:

> "... There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value."[6]

Fazal Ali, J., although he dissented, yet, in conclusion, was also very much in favour of freedom of press, and he differed only on the point of validity of the laws involved in the petition. The difference in the majority and the minority views consisted not in the principle but in the application of the principle. The majority had a greater scope for freedom of press whereas the minority justified the curtailment of this liberty in the interest of security of the State.[7]

This case has thus firmly established that the freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. The court emphatically pointed out that without circulation the publication would be of little value.

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[5] *Ibid.*, per Sastri J. at p. 129, Para 12, 13.
[6] *Ibid.*, p. 127.
[7] *Ibid.*, pp. 125-126.

In ***Brij Bhusan and another*** v. ***State of Delhi***,[8] an application under Article 32 of the Constitution was filed in the Supreme Court for the issue of writs of *certiorari* and *prohibition* to the respondent, the Chief Commissioner of Delhi, with a view to examine the legality of and quash the order made by him in regard to an English weekly of Delhi, called the ***Organizer*** of which the first applicant was the printer and publisher, and the second was the editor. On 2nd March, 1950, the Chief Commissioner had passed an order under Section 7(1)(C) of the East Punjab Public Safety Act, 1949, requiring the printer, publisher and editor of the paper to submit for security in duplicate, before publication, all communal matters and news and views about Pakistan including photographs and cartoons. The contention of the Petitioners was that the orders of the Chief Commissioner infringed their fundamental right to freedom of speech and expression conferred upon them by Article 19(1)(a) of the Constitution.

The Supreme Court accepted the petition and it was a majority judgment delivered by Patanjali Shastri, J. on behalf of himself, Kania C.J., Mahajan, B.K. Mukherjea and S.R. Das, JJ., Fazal Ali, J. had dissented. The majority view was that the law and the order challenged in the petition before the Supreme Court was regarded as a pre-censorship law. Basing its judgment on the theory of Blackstone, the majority expressed in paragraph 25 of the judgment as follows:

> "There can be little doubt that imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Article 19(1)(a)."[9]

The judgment of this case was delivered on the 26th May, 1950, that is soon after the commencement of the Constitution. The test case of ***Ramesh Thapper*** was decided the same day and it also involved a restraint directly on the freedom of circulation of matter through newspapers and the matter was ruled by the same majority and the same dissent of Fazal Ali, J. The reasoning of the majority in ***Ramesh Thapper's*** case were affirmed and applied in ***Brij Bhusan's*** case.

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[8] AIR (1950), SC, p. 129, Writ Petition No. 29 of 1950.

[9] *Ibid.*, p. 134. In this respect Blackstone said, "... the liberty of the press consists in laying no previous restraint upon publication, and not in freedom from censure criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public, to forbid this, is to destroy the freedom of the press." See Blackstone's Commentaries, Vol. IV, pp. 152-152.

Although his Lordship Fazal Ali, J. dissented and dismissed the petition but in conclusion he was also very much in favour of freedom of press, and he differed only on the point of validity of the laws involved in the petition. In ***Brij Bhusan's*** case his Lordship observed:

> "It must be recognized that freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the Courts. It must also be recognized that free political discussion is essential for the proper functioning of a democratic government, and the tendency of modern jurists is to deprecate censorship though they all agree that "liberty of the press" is not to be confused with its "licentiousness." But the Constitution itself has prescribed certain limits for the exercise of the freedom of speech and expression and this court is only called upon to see whether a particular case comes within those limits. In my opinion, the law which is impugned is fully saved by Article 19(2) and if it cannot be successfully assailed it is not possible to grant the remedy which the petitioners are seeking here."[10]

In both the above cases, the question before the Supreme Court was about the constitutional validity not only of executive action but also of the Acts under which executive action was taken. On an examination of the provisions of the impugned Acts, the Supreme Court held that the terms "Public Order" and "Public Safety" cover much wider field than the words "undermines the security of, or tends to overthrow the State" used in the Constitution. Criticism of the Government or exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press unless it is such as to undermine the security of or is such as to tend to overthrow the State. It was further pointed out that unless a law restricting freedom of speech and expression is dissected solely against the undersigning of the security of the State or the overthrow of it, such law could not fall within the reservations of clause (2) of Article 19 although the restrictions which it seeks to impose may have been conceived generally in the interests of Public Order. According to the majority of the judges in each of these cases, the Constitution

[10] Per Fazal Ali J., in *Brij Bhusan* v. *State of Delhi,* AIR (1950), SC, p. 133.

had placed in a distinct category those offences against public order which aim at undermining the security o the State or overthrowing it and made their prevention the sole justification for legislative abridgement of freedom of speech and expression. That is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the right of the freedom of speech and expression.

The next important case in this respect was the ***State of Bihar*** v. ***Shailabala Devi.***[11] It was charged that the respondent, keeper of the ***Bharati Press*** had printed at the said press a pamphlet under the heading ***"Sangram"*** and had it circulated in the town of Purulia. The Government of Bihar considered that the pamphlet contained objectionable matter of the nature described under section 4(1) of the Indian Press (Emergency Powers) Act and hence ordered the Press to furnish security in the sum of Rs. 2000 under section 3(3) of the Act by the 19th September, 1949. The respondent applied to the High Court for setting aside the order. The application was allowed by the High Court. The State of Bihar appealed to the Supreme Court. The Supreme Court held:

> "The restrictions imposed by section 4(1) (a) of the Indian Press (Emergency Powers) Act on freedom of speech and expression are solely directed against the undermining of the security of the State or the overthrow of it and are within the ambit of Article 19(2) of the Constitution.[12]

The Supreme Court has pointed out that the decisions in ***Ramesh Thapper*** and ***Brij Bhusan*** had been more than once misapplied and misunderstood and have been construed as laying down the wide proposition that restrictions of the nature imposed by section 4(1)(a) of the Indian Press (Emergency Powers) Act or of similar character are out side the scope of Article 19(2) of the Constitution inasmuch as they are connived generally in the interests of public order. Referring to the Madras Maintenance of Public Order Act, (Act XXIII of 1949) the Court observed "... Whatever ends the impugned Act may have been intended to susbserve and whatever aims its framers may have had in view, its application and scope could not, in the absence of delimiting words in the statute itself, be restricted to those aggravated forms of prejudicial activity which are calculated to endanger the security of the

[11] AIR (1952) SC, p. 329, Case No. 273 of 1951, Judgment delivered on 26th May, 1952.
[12] *Ibid.*, Per Mahajan, J. on behalf of Patan Jali Sastri, C.J. and himself at p.331.

State, nor was there any guarantee that those authorized to exercise the powers under the act would, in using them, discriminate between those who act prejudicially to the security of the State and those who do not."[13]

As a result of these decisions, Article 19(2) was amended with retrospective effect from 1950. This amendment has introduced not only public order but two other subjects, namely, friendly relations with foreign states and incitement to an offence. In addition, the word "reasonable" has been added to permissible legislative restrictions to be imposed must be reasonable, which means that the courts will be entitled to examine whether the restrictions imposed are reasonable or not. The amendment has made the categories enumerated in clause (2) exhaustive.

The Supreme Court of India in the case of ***Virendra*** v. ***State of Punjab***[14] upheld the pre-censorship as a reasonable restriction under Article 19(1)(a). The fact of this case in short is that under Article 32 of the Constitution of India the petitioner called in question the validity of the ***Punjab*** Special Powers (Press) Act, 1956 (Act 38 of 1956) and prayed for an appropriate writ or order directing the respondents to withdraw the Notification issued by them on the petitioner as the editor, printer and publisher of the Newspaper ***Pratap***. The ***Daily Pratap*** was started about 38 years back in Lahore (as described in the Writ Petition), the Capital of the United Punjab. It was a daily newspaper printed in the Urdu language and script. Since the partition of the country the ***Daily Pratap*** was being published simultamounly from Jullundur and from New Delhi. The petitioner contends that on 13.7.1957 the Home Secretary to Government State of Punjab issued a notification prohibiting the publication of the ***Daily Pratap*** under Section 2(1)(a) of the said impugned Act, which is *ultravires* to the State Legislature, because it infringe the fundamental rights of the petitioner guaranteed by Articles 19(1)(a) and 19(1)(g) of the Constitution.

The Court delivered its judgment on the 6th September, 1957 where his Lordship S.R. Das C.J. observed:

> "... It is certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented

[13] *Ibid.*, p. 330.
[14] AIR (1957), SC, p. 896, Writ Petition No. 95 of 1957.

from publishing its own views or the views of its correspondents relating to or concerning what may be the burning topic of the day."[15]

Taking note of the need for placing reasonable restrictions, his Lordship further said:

> "... It cannot be overlooked that the Press is a mighty institution wielding enormous powers which are expected to be exercised for the protection and the good of the people but which may conceivably be abused and exercised for anti-social purposes by exciting the passions and prejudices of a section of the people against another section and thereby disturbing the pubic order and tranquillity or in support of a policy which may be of a subversive character. ... Our social interest ordinarily demands the free propagation and interchange of views but circumstances may arise when the social interest in public order may require a reasonable subordination of the social interest in free speech and expression to the needs of our social interest in public order. Our Constitution recognizes this necessity and has attempted to strive a balance between the two social interest. It permits the imposition of reasonable restrictions on the freedom of speech and expression in the interest of public order and or the freedom of carrying on trade or business in the interest of the general public."[16]

The question whether Article 19(1)(a) is inclusive of the freedom of the press cropped up in the case of ***W.N. Srinivasa Bhat*** v. ***The State of Madras***.[17] A Special Bench of the Madras High Court comprising Govinda Menon, Panchapagesh Sastri and Baseer Ahmed Syeed JJ. held that the term "freedom of speech and expression" would include the liberty to propagate not only one's own views but also the right to print matters which are not one's own but have either been borrowed from some one else or are printed under the direction of that person. The freedom of press is a guaranteed right under Article 19(1)(b) of a citizen who keeps a printing press or is an editor or a publisher.[18]

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[15] *Ibid.*, p. 900.
[16] *Ibid.*
[17] AIR (1951) Madras, p. 70.
[18] *Ibid.*, Per Govinda Menon, J. at pp. 70-71.

In *Ramjilal Modi* v. *State of U.P.,*[19] the editor, printer and publisher of a newspaper was convicted for publishing an article with the deliberate and malicious intention of outraging the religious feelings of Muslims. There the Court had to consider whether section 295-A of the Indian Penal Code could be supported as a law imposing reasonable restrictions on the exercise of the right conferred by Article 19(1)(a) and is saved by clause (2) of Article 19. The contention raised on the appellant's belief was that the law in question had no bearing on the maintenance of public order or tranquility and consequently such law could not claim protection of clause (2) of Article 19 on the ground that it merely place reasonable restrictions on the right of freedom of speech and expression. The Court held that right to freedom of religion assured by Articles 25 and 26 is expressly subject to public order, morality and health. It could not, therefore, be predicated that freedom of religion should have some or no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion could not, under any circumstances, be said to have been enacted in the interest of public order, restrictions may be imposed on the rights guaranteed. On an examination of the provisions, the Court found that clause (2) of Article 19 permitted making of law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interests of" public order, which is much wider than the expression "for the maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, the law penalizing such activities as an offence could not but be held to be a law imposing reasonable restrictions "in the interests of public order", although in some cases these activities may not actually lead to a breach of public order. Secondly, section 295A does not penalize any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens, but it penalizes only those acts which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of a class of people. The law penalizes only aggravated forms of insults to religion which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class, when such insults have a tendency to disturb public order. Therefore, a section which penalizes such activities is well within the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(a).[20]

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[19] AIR (1957), SC, p. 620.
[20] *Ibid.*, Per S.R. Das, C.J. at pp. 666-667.

In *Express Newspapers Ltd.* v. *Union of India,*[21] the term "freedom of press" came to be examined from an industrial point of view. The occasion arose on the passing of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act of 1955, came to be challenged before the Supreme Court as violative of Article 14 and 19(1)(g). The enactment of this statute had a history behind it. The newspaper businesses had no industrial background in the very beginning. The newspaper industry did not originally start as an industry, but started as individual newspapers, founded by leaders in the national, political, social and economic fields. The rationale behind the enactment of the statute has been expressed by N.H. Bhagwati J., in the following passage occurring in the beginning of the judgment (Judgment delivered on the 19th March, 1958) in the above case:

> "During the last half of a century, however, it developed characteristics of a profit-making industry in which big industrialists invested money and combines controlling several newspapers all over the country also became the special features of this development. The working Journalists except for the comparatively large number that were found concentrated in the big metropolitan cities, were scattered all over the country and for the last ten years and more agitated that some means should be found by which those working in the newspaper industry were enabled to have their wages and salaries, their dearness allowance and other allowances, their retirement benefits, their rules of leave and conditions of service, enquired into by some impartial agency or authority who would be empowered to fix just and reasonable terms and conditions of service for working journalists as a whole."[22]

In the present case 8 writ petitions and 5 civil appeals were tried together. These petitions under Article 32 of the Constitution raise the question as to the vires of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 45 of 1955, and the decision of the Wage Board constituted thereunder. The vires of the Act was challenged on the ground that the provisions thereof were violative of the fundamental rights guaranteed by the Constitution under Article 19(1)(a), Article 19(1)(g), Article 14 and Article 32 of the Constitution. The decision of the Wage Board about the fixation of wages under section 8

[21] AIR (1958) SC, p. 578.
[22] *Ibid.*, p. 587, para 3.

were challenged on various grounds. The Supreme Court held that the Act except Section 5(1)(a)(iii), did not violate Articles 19(1)(a), 19(1)(g), 14 and 32 of the Constitution but that section 5(1)(a)(iii) of the Act violated Article 19(1)(g) of the Constitution and was therefore unconstitutional. Since this portion of the Act was severable from rest of the Act, it did not invalidate the other provisions of the Act. The reason for striking down the particular provision of section 5(1)(a)(iii) was that the principles which should guide the Wage Board in fixing the rates of wages were not laid down with sufficient clarity and that major responsibility was left to the subjective satisfaction of Wage Board. The concept of freedom of press was summarized in paragraph 142 of the judgment by his Lordship N.H. Bhagwati J. that:

> "(a) the freedom of speech comprehends the freedom of press and freedom of speech and press are fundamental personal rights of citizens;
> (b) The freedom of press rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public;
> (c) Such freedom is the foundation of free government of a free people;
> (d) the purpose of such a guarantee is to prevent public authorities from assuming the guardianship of the public mind; and
> (e) freedom of press involves freedom of employment or non-employment of the necessary means of exercising this right or in other words, freedom from restriction in respect of employment in the editorial force."[23]

This concept was stated to be that which obtained in the United States of America and its was stated in paragraph 143 of judgment that the necessary corollary of this concept is that no measure can be enacted which would have the effect of imposing a pre-censorship curtailing the circulation or restricting the choice of employment or unemployment in the editorial force. Such a measure would certainly tend to infringe the freedom of speech and expression and would therefore be liable to be struck down as unconstitutional. It was thereafter observed that the press is not immune from the ordinary forms of taxation for support of the Government nor from the application of the general laws relating to industrial relations. N.H. Bhagwati J. put the matter clearly in para 150 of the judgment as follows:

[23] *Ibid.*, Per N.H. Bhagwati at p. 616.

> "While therefore no such immunity from the general laws can be claimed by the press it would certainly not be legitimate to subject the press to laws which take away or abridge the freedom of speech and expression or which would curtail circulation and thereby narrow the scope of dissemination of information, or fetter its freedom to choose its means of exercising the right or would undermine its independence by driving it to seek Government aid. Laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its right to choose the instrument for its exercise or to seek an alternative media, prevent newspapers from being Government aid in order to survive, would therefore be struck down as unconstitutional."[24]

The decision delivered in the case of ***Sakal Papers (Pvt.) Ltd. and others*** v. ***Union of India***[25] was an important land mark in the history of the subject of freedom of press. A matter of far reaching importance affecting the freedom of press was raised in this case wherein the constitutionality of the Newspaper (Price and Page) Act, 1956, and the Daily Newspaper (Price and Page) order, 1960, was questioned. The case setup by three petitioners under Article 32 of the Indian Constitution was that the impugned Act and the impugned order are pieces of legislation designed to curtail and which in effect did curtail the freedom of press and were consequently violative of Article 19(1)(a). The petitioners asserted that if they continued to give in their newspapers the same number of pages as that the time of passing of the Act, they would have to increase its selling price and this would adversely affect its circulation. If, on the other hand, they reduce the number of pages in conformity with the impugned order, their right to disseminate news and views will be directly interfered with. It was also pointed out on behalf of the petitioners that the impugned order reserved to the government the power to permit the issue of supplement without permission of the government only on two occasions, namely 26th of January and 15th of August. This meant that in the matter of issuing supplements, newspapers were placed entirely at the mercy of the Central Government. The Act and the order were also alleged to be violative of Article 14 inasmuch as the object of the Act and the order was to arbitrarily augment the interests of the big newspapers at the cost of smaller ones and further that there was neither a reasonable

[24] *Ibid.*, p. 617.
[25] AIR (1962) SC, p. 305.

classification nor any basis nor any relationship between the restrictions imposed and the objects sought to be achieved, with the result that while the bigger newspaper establishments could hardly be affected thereby, those struggling to come up were liable to be frustrated in their progress.

His Lordship J.R. Mudholkar, J. on behalf of B.P. Sinha, C.J., A.K. Sarkar, K.C. Das Gupta, N. Rajagopala Ayyangar JJ. and himself opined that Section 3(1) of the Act, which was its pivotal provision, was unconstitutional, and therefore, the Daily Newspapers (Price and Page) order, 1960 made thereunder was also unconstitutional. It followed that if section 3(1) was struck down as bad, there remained nothing in the Act itself.[26]

Delivering the judgment his Lordship further observed:

> "Our Constitution does not expressly provide for the freedom of press but it has been held ... that this freedom is included in freedom of speech and expression guaranteed by Cl (1)(a) of Article 19. This freedom is not absolute for, Cl (2) of Article 19 permits restrictions being placed upon it in certain circumstances."[27]

Bennett Coleman and Co. Ltd. v. ***Union of India***[28] illustrates that in India freedom of press has adequate protection. The Union Government issued Newsprint Control Order, 1962 under section 3, Essential Commodities Act, 1955 laying down that no consumer of newsprint should, in any licensing period, consume or use newsprint in excess of quality authorized by the controller. The 1973 newsprint policy laid down a system of newsprint quota for newspapers. The year 1970-71 or 1971-72 was taken to be the base year on the basis of which entitlement was allowed. It was further laid down that newspapers with less than 10 pages daily could increase the number of papers by 20 percent but subject to ceiling of 10 pages. It appears to be evident that the idea behind newsprint policy was to curtail the growth of monopoly press. The Supreme Court, by majority, declared the policy unconstitutional. The majority observed that the Government had the power to evolve a policy of distribution of newsprint on a fair and equitable basis, keeping the interest of small,

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[26] *Ibid.*, p. 315.
[27] *Ibid.*, p. 312.
[28] AIR (1973) SC, p. 106.

medium as well as big newspapers in view, it could not under the pretext of regulating the distribution of newspapers. Thus, it would appear, the Supreme Court missed the opportunity of considering the question from the point of view of the right to listen. Should the monopoly press have the right to dictate to the people as to what they have to read or listen and the State could not interfere on behalf of the citizens? It was this aspect of matter which led Mathew, J. to dissent. He held the view that in the interest of listeners, regulations could be imposed even outside Article 19(2). His Lordship A.N. Ray J. on behalf of S.M. Sikri, C.J., P. Jaganmohan Reddy, J. and himself observed:

> "Protection against Government is not enough to guarantee that a man who has something to say will have a chance to say it. The owners and the managers of the press determine which persons, which facts, which version of facts, which ideas shall reach the public. Through concentration of ownership, the variety of sources of news and opinion has become limited ... A realistic view of our freedom of expression requires the recognition that the right of expression is somewhat thin if it can be exercised only on the sufferance of the managers of the leading newspapers. Then freedom of speech, if it has to fulfil its historic mission, namely the spreading of political truth and the widest dissemination of news, it must be freedom for all citizens in the country. What is, therefore, required is an interpretation of Article 19(1)(a) which focus on the idea that restraining the hand of the Government is quite useless in assuring free speech, if a restraint on access is effectively secured by private groups. A constitutional prohibition against Government restriction on the expression is effective only if constitution ensures an adequate opportunity for discussion."[29]

In the result the learned judge was of the view that any scheme of distribution of newsprint which would make the freedom of speech a reality by making possible the dissemination of ideas and views with as many different facts and colours as possible would not be violative of the fundamental right of the freedom of press.

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[29] *Ibid.*, pp. 139-140, para-124/125

The *Sakal Papers case* and the ***Bennet Coleman cases*** therefore establish that discrimination in favour of samaller newspapers or against the bigger ones could not be committed by the state by resorting to its paper to regulate business or commerce, in the matter of supply of newsprint or fixation of pages or the price of newspapers.

From *Sakal Newspaper's case*[30] it is evident that the freedom of newspaper amounted to the freedom to publish any number of pages and to circulate it to any number of persons, and these two are to be integral parts of the freedom of speech and expression. The restraint placed upon either of them must be held to be a direct infringement of the right of freedom of speech and expression. In that case the inevitable raising of the price of newspapers, because of the provisions of the Price Page Act, had the effect of minimizing the circulation of the newspaper and the test, therefore, was successfully applied in holding that the law had directly infringed the fundamental freedom of press.

The question of advertisements whether curtail freedom of press arose in a different context before the High Court of Andhra Pradesh in ***Ushodaya Publications (P) Ltd. and others*** v. ***Government of Ardhara Pradesh and others***[31] which was decided by Full Bench on order of reference made by Ramachandra Rao and P.A. Chowdary, JJ. on 9.4.1980. By filling writ petition no. 7632 of 1979, the petitioner challenged the validity of G.O. Ms. No. 572, General Administration (I.P.R.) Department, dated 10.8.1979 by which all advertisements, Public Sector Undertakings and Government Companies were directed to be released only by the Director, Information and Public Relations to the various newspapers keeping in view the subject matter of the advertisement.

The first petitioner Ushodaya Publications (P) Limited owns a leading Telugu daily ***"Eenadu"***, which was published from Hyderabad, Visakapatnam and Vijayawada. The second petitioner was the Chairman of the Board of Directors of the first petitioner company and was the printer and publication of ***"Eenadu."*** ***Eenadu*** was started in the year 1974 and within a period of five years it has reached a daily circulation of over two lakhs which, according to the petitioner was the hightest circulation for a newspaper in the State. But according to the petitioner the said G.O. had hampered their good will as well as curtailed the right of freedom of speech and expression and of the press.

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[30] *Sakal Papers (Pvt.) Ltd.* v. *Union of India,* AIR (1962), SC, p. 305.
[31] AIR (1981), AP (F.B.), p. 109.

The question for consideration was whether the impugned G.O. read with the guide lines issued subsequently infringed the petitioners fundamental right to freedom of expression under Article 19(1)(a) of the Constitution. By delivering the judgment his Lordship Alladi Kuppuswami, Ag. C.J. opined:

> "It is well settled that, though the expression "freedom of press" does not occur in Article 19(1)(a), freedom of press is a part of the right of free speech and expression and is covered by Article 19(1)(a). Freedom of press is nothing but an aspect of freedom of speech and expression and is an integral part of free speech and expression and is the same right applicable in relation to the press."[32]

In this connection it is sufficient to refer to the decisions in ***Express Newspapers case***[33], ***Sakal Papers case***[34], ***Bennet Coleman and Co. Ltd.*** v. ***Union of India***[35] and the decision of the Supreme Court in ***Maneka Gandhi*** v. ***Union of India***[36] Further freedom of circulation of newspapers is necessarily involved in freedom of speech and expression and is part of it and enjoys the protection of Article 19(1)(a), vide ***Romesh Thappar's case***[37]. In ***Sakal Papers (P) Ltd.*** v. ***Union of India***[38] it was held that section 3 (1) of the Newspapers (Price and Page) Act, 1956 in so far as it permitted the allocation of space to advertisements, directly affects the freedom of circulation. The Supreme Court observed, "If the area for advertisements is curtailed, the price of the newspaper will be forced up. If that happens, the circulation will inevitably go down. This would be no remote, but a direct consequence of curtailment of advertisements."[39]

The Supreme court further pointed out that the guarantee of freedom of speech and expression would be impinged either by placing restraint upon it directly or by placing restraint upon something which is essential part of that freedom. The freedom of a newspaper

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[32] *Ibid.*, pp. 113-114.
[33] AIR (1958), SC, p. 578.
[34] AIR (1962), SC, p. 305.
[35] AIR (1973), SC, p. 106.
[36] AIR (1978), SC, p. 597.
[37] AIR (1950), SC, p. 124.
[38] AIR (1962), SC, p. 305.
[39] *Ibid.*

to publish any number of pages or to circulate it to any number of persons is each an integral part of the freedom of speech and expression. A restraint placed upon either of them would be direct infringement of the right of freedom of speech and expression.[40]

In ***Bennet Coleman & Co. Ltd.*** v. ***Union of India***[41] we have seen that the petitioners challenged the Import Policy for Newsprint for the year 1972-73 which put restrictions on the right of freedom of speech and expression. The Supreme Court observed that 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. If the price goes up circulation will go down. This was held in ***Sakal Papers case*** 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 held by the Supreme Court to be an integral part of the freedom of speech and expression. This freedom is violative by placing restraints upon it or by placing restraints upon something which is an essential part of that freedom. A restraint on the number of pages, restraint on circulation and a restraint on advertisements would affect the fundamental rights under Article 19(1)(a) on the aspect of propagation, publication and circulation. The loss on advertisements may not only entail the closing down but also affect the circulation and thereby impinge on freedom of speech and expression.

In ***Hamdard Dawakhana*** v. ***Union of India case***[42] a batch of petitions were filed under Article 32 of the Constitution challenging the constitutionally of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. The Act was passed in order to control the advertisements in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to posses magic qualities and to provide for matters connected therewith.[43] Sections 4, 5 and 6 are prohibitive sections, prohibiting respectively advertisements of magic remedies said to be efficacious for purposes specified in Section 3, misleading advertisements relating to drugs and the import and export to and from India of certain advertisements. On delivering the judgment his Lordship G.L. Kappor, J. observed:

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[40] *Ibid.*
[41] AIR (1973), SC, p. 106.
[42] AIR (1960), SC, p. 554.
[43] *See* the Preamble of the Act.

> "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. It assumes the attributes and elements of the activity under Article 19(1)(a) which it seeks to aid by bringing it to the notice of the public. When it takes the form of commercial advertisement which has an element of trade or commerce, it no longer falls within the concept of freedom of speech because the object is not propagation of ideas, social, political or economic, or the furtherance of literature or human thought, but the commendation of efficacy value and importance of certain goods."[44]

The professional aspect of the freedom of press relatable to Article 19(1)(g) came to be thoroughly discussed in the case of ***Indian Express Newspapers (Bombay) Pvt. Ltd. & others*** v. ***Union of India.***[45] The petitioners in this case were publishers of daily newspapers and periodicals, they challenged the imposition of the import duty and levy of auxiliary duty on the newsprint stating that these duties had infringed the freedom of press by imposing a burden beyond the capacity of the industry and also affecting the circulation of newspapers and periodicals. Delivering the judgment on behalf of the Court per E.S. Venkataramish J. said:

> "The expression 'freedom of press' has not been used in Article 19 but it is comprehend within Article 19(1) (a). This expression means freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers. There cannot be any interference with that freedom in the name of public interest. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgment. Freedom of press in the heart of the social and political intercourse. It is the primary duty of the courts to uphold the freedom of press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate."[46]

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[44] *Ibid.*, Per Kapur, J., p. 563.
[45] (1985), 1 SCC, p. 641.
[46] *Ibid.*, p. 642.

His Lordship further observed that newspaper industry enjoys two of the fundamental rights, namely, the freedom of speech and expression guaranteed under Article 19(1)(a) and the freedom to engage in any profession, occupation, trade, industry or business guaranteed under Article 19(1)(g) of the Constitution, the first because it is concerned with the field of expression and communication and the second because communication has become an occupation or profession and because there is an invasion of trade, business and industry into that filed where freedom of expression is being exercised while there can be no tax on the right to exercise freedom of expression, tax is leviable on newspaper industry. But when such tax transgresses into the field of freedom of expression and stifles that freedom, it becomes unconstitutional. As long as it is within reasonable limits and does not impede freedom of expression, it will not be contravening the limitation of Article 19(2). The delicate task of determining when it crosses from the area of profession, occupation, trade, business or industry into the area of freedom of expression and interferes with that freedom is entrusted to the Courts.[47]

It is obvious that much as the Constitution has held freedom of press in a very high esteem, it has not been oblivious to the reasonable degree of social control on this freedoms. The civil liberties enumerated under the various sub-clauses of Clause (1) of Article 19, have been made subject to reasonable restrictions which the Government can by law impose under one or the other, in clauses (2) to (6) of Article 19. However, since the freedom of press is a composite freedom sharing both the freedom of speech and expression as well as freedom to carry on any trade, business or profession, the freedom of press has made itself subject to a double set of limitations; one impossible under clause (2) and another under clause (6) of Article 19.

The above two decisions, one in ***Hamdard Dawakhana case***[48] and the other in ***Indian Express Newspapers***[49] case, can, thus, be reconciled by holding that advertisements, whether commercial or otherwise, are, of course, part of the freedom of expression, yet a law prohibiting advertisements being obscene, objectionable, unethical or otherwise injurious to public morals, cannot be said to impose an unreasonable restriction either upon the freedom of speech or on the freedom of carrying out any trade or business. Advertisements can never

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[47] *Ibid.*, pp. 643-644.
[48] *Hamdard Dawakhana* v. *Union of India*, AIR (1960), SC, p. 554.
[49] *Indian Express Newspapers* v. *Union of India* (1985) 1 SCC, p. 641 (712).

be divorced from the scope of the activity of expression, but since the activity of expression, is made subject *inter alia* to decency or morality a ban on objectionable advertisements in the interest of decency or morality will very well be protected under clause (2) of Article 19.

As there is no separate guarantee of freedom of press in India, certain consequences flow. Since freedom of press is derived from Article 19(1)(a) which is guaranteed to all citizens, the press stands on no higher footing than any other citizen, and cannot claim any privileges as such as distinct from those of any other citizen. On the other hand, the press cannot be subjected to any special restrictions which could not be imposed on private citizens. Though the press can comment freely on any topic but under the Constitution of India, this privilege is not unlimited and unrestricted. In this regard A.P. Sen J. has pointed out:

> "... that the freedom of thought and expression, and the freedom of press are not only valuable freedoms in themselves but are basic to a democratic form of Government which proceeds on the theory that problems of the Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation ...The vital improtance of freedom of speech and expression involves the freedom to dissent to a free democracy like ours. Democracy relies on the freedom of press. It is the inalienable right of everyone to comment freely upon any matter of public importance. This right is one of the pillars of individual liberty freedom of speech, which our court has always unfailingly guarded ..However precious and cherished the freedom of speech is under Article 19(1)(a), this freedom is not absolute and unlimited at all times and under all circumstances but is subject to the restrictions contained in Article 19(2). That must be so because unrestricted freedom of speech and expression which includes the freedom of press and is wholly free from restraints, amounts to uncontrolled licence which would lead to disorder and anarchy and it would be hazardous to ignore the vital importance of our social and national interest in public order and security of the State.[50]

[50] *Express Newspapers (Pvt.) Ltd. and others* v. *Union of India,* AIR (1986), SC, p. 872. Per A.P., Sen J. at pp. 908-909.

Delivering the judgement on behalf of the court his Lordship further observed:

> "It is now firmly established by a series of decisions of the Supreme Court and there is a rule written into the Constitution that freedom of press is comprehended within the right to freedom of speech and expression guaranteed under Article 19(1)(a)."[51]

Though there is no separate provision to ensure freedom of press, but the Supreme Court of India has held that there was no need to mention freedom of press separately, because it is already included in the guarantee of 'freedom of expression', which comprehends not only the liberty to propagate one's own views but also the right to print matters which have either been borrowed from someone else or are printed under the direction of that person. In this connection the judgment which was delivered by the Indian Supreme Court, in ***Reliance Petrochemicals Ltd.*** v. ***Proprietors of Indian Express Newspapers Bombay (Pvt.) Ltd. and others***[52] is remarkable. The question involved in this case was whether pre-stoppage of newspaper article or publication on matters of public importance was uncalled for and contrary to freedom of press enshrined in the Constitution of India and in their laws. After the full deliberation Per Sabyasachi Mukharji, J. clearly held:

> "Our Constitution is not absolute with respect to freedom of speech and expression, as enshrined by the first amendment to the American Constitution ...Though the Indian Constitution does not use the expression 'freedom of press' in Article 19 but it is included as one of the guarantees in Article 19(1)(a)."[53]

Freedom of Press is one of the items around which the greatest and the bitterest of Constitutional struggles have been waged in all countries where liberal constitutions prevail. Article 19 of the Universal Declaration of Human Rights, 1948 declares the freedom of Press and so does Article 19 of the International Covenant on Civil and Political Rights, 1966. Article 10, of the European Convention on Human Rights, provides as follows:

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[51] *Ibid.*, p. 904.
[52] AIR (1989), SC, p. 190, C.M.P. Nos. 21903-06 of 1988.
[53] *Ibid.*, pp. 196-107.

> "(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprise.
> (2) The exercise of these freedom, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or pubic safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Freedom of speech and expression means the right to express one's belief and opinions and also to seek, receive and impart information's and ideas, either orally or by written or printed matter or by legally operated visual and auditory devices, such as the radio, cinema, photograph, loudspeaker and the like. A man under the Constitution of India can express his views through any media, subject to the reasonable restrictions imposed by law and the State cannot curtail this right, because the right is guaranteed under Article 19(1)(a) of the Constitution. In this regard the Supreme Court of India observed:

> "The freedom of speech under Article 19(1)(a) means the right to express one's opinion by words of mouth, writing, printing, picture or in any other manner. It would thus include the freedom of communication and the right to propagate or publish opinion. The communication of ideas could be made through any medium, newspaper, magazine or movie. But the right is subject to reasonable restrictions in the larger interests of the community and country set out under Article 19(2) ... The State cannot prevent open discussion and open expression, however hateful to its policies. Everyone has a fundamental right to form his opinion on any issue to general concern. He can form and inform by any legitimate means. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its

inability to handle the hostile audience problem. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessary and not the quicksand of convenience of experience. Open criticism of government policies and operations is not a ground for restricting expressions."[54]

Freedom of press includes the freedom of the radio, the television and the movies which are, therefore, entitled to seek the protection guaranteed by the Constitution. Assertions have been made that freedom of press exists only when there is no prior restraint on publication. A debate on freedom of press cannot, in the present context, exclude the electronic media of the radio and the television which have a much wider reach than the print media. Certain aspects of the television media have come to be judicially noticed. The question was whether the right of a citizen to exhibit films on the *Doordarshan* (the state owned television) subject to the terms and conditions to be imposed by the *Dooradarshan* is part of the fundamental right of expression guaranteed under Article 19(1)(a) of the Constitution in the case of ***Odyssey Communications (Pvt.) Ltd.*** v. ***Lokvidayan Sanghatan and Others***.[55] Answering the question in the affirmative, the court held that this right can be curtailed only under circumstances which are set-out in clause (2) of Article 19 of the Constitution. The Court observed that this right is similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisements, hoardings, etc., subject to the terms and conditions of the owners of the media.[56]

The Court held that the petitioners had not produced any material apart from their own statements to show that the exhibition of the T.V. serial ***"Honi Anhoni"*** was *prima facie* prejudicial to the community. Therefore, any *prima facie* evidence of grave prejudice that was likely to be caused to the public generally by the exhibition of the serial, it was not just and proper on the part of the High Court to issue an order of temporary injunction restraining

[54] *S. Rangarajan* v. *P. Jagjivan Ram,* (1989), 2 SCC, p. 592.
[55] AIR (1988), SC, p. 1642.
[56] *Ibid.*, Per Venkataramiah J., at pp. 1642-1643.

the authorities from telecasting the serial in question. The court ruled that the serial in question was not in contravention of any specific law or direction issued by the Government.

In the last week of February 1986, Indira Jaisingh, a public spirited lawyer, was invited to give an interview on television in the programme called *"Such Ki Parchaiah."* In the course of her interview she *inter alia* expressed that the Muslim Women (Protection of Rights on Divorce) Bill, 1986 was discriminatory and unconstitutional. The programme as telecast on the 3rd March, 1986 revealed that her views on the Bill were totally deleted.

A writ petition was filed in this context by Mrs. Indira Jaisingh where Mrs. Sujata Monohar J. upheld Mrs. Jaisingh's plea on the reasoning that a citizen who is invited by *Doordarshan* for an interview has the fundamental right of using the media of television for expression of his or her views and *Doordarshan's* contention that the guarantee of free speech under Article 19(1)(a) of the Constitution does not apply to television programme was "somewhat alarming." The court held that "a portion of the interview may, at times, have to be deleted while editing the programme. But, in the process of such deletion there should not be any gross distortion or misrepresentation of that had been said. Nor should important points raised be completely omitted." The court rued that as no statutory guidelines were formed by *Doordarshan,* its action in deleting vital portions of the interview was without authority of law and therefore violative of the right to free speech.

In that case the learned Judge further pointed out that "freedom of expression is a preferred right very zealously guarded by the Supreme Court."[57]

The term 'freedom of press' was considered in a different shape by the Indian Supreme Court. The question whether the press has privilege not to disclose the source of information arose in ***Javed Akhtar*** v. ***Lana Publishing Co. (Pvt.) Ltd. and others.***[58] In this case, the plaintiff a well-known film script writer had claimed damages of Rs. 25 lakhs for defamation from the Lana Publishing Co., who, in their magazine called *"Star Dust"* for the month of April 1987, had published an article written by a journalist on the plaintiff and his wife Shabana Azmi, a noted film actress, making certain comments on the life style of both of them, considered to be highly defamatory. The counsel for the magazine and the journalist,

[57] *Ibid.*
[58] AIR (1987), Bombay, p. 339.

Mr. Soli Sorabji, contended that it was a settled practice in England that in the case of newspapers the source of information was not decided to be disclosed by interrogatories at an interlocutory stage under a rule prescribed as the "newspaper rule." It was obvious from the contents of the impugned article that the same had no connection with the work of the plaintiff script writer and his star wife, but had dealt with the private life of the plaintiff and his wife. After the hearing the Court said that the impugned article could not be considered as an article a matter of public interest, since private life of a script writer and his actress wife may cater to the curiosity of a certain kind of reader, but what is interesting to the public is not necessarily of public interest. The court referred to ***British Steel Corporation*** v. ***Granade Television Ltd.***[59] wherein it was ruled that the Court had to weigh the public interest in not brining the wrongdoer to book as against the public interest in bringing him to book.

Similarly, in ***Branzbury*** v. ***Hayes***[60] the Court, in ordering evidence to be given, held that the public interest in prosecuting a criminal had, in that case, outweighed the public interest of protecting a newspaper's source of information. The Court relied on ***Garland*** v. ***Torre***[61] a U.S. case, wherein the ***New York Herald Tribune*** had published an article highly defamatory of a film actress. The article was published by a columnist who said that she had got the information from an executive of a broadening network and the Court had ordered the columnist to disclose the name of the informant. Delivering the judgment Mrs. Sujata Monohar, J. of the Bombay High Court observed:

> "There can be no hard and fast rule as to when a newspaper may be asked to disclose and when not to disclose its source of information. It will depend on the balancing of various public interests which may be involved."[62]

The court hold that the newspaper has no special privilege, protecting its source of information and newspaper could conceal the source only there, where public interest is involved. Her Lordship further pointed out:

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[59] (1981) 1 All. E.R. 417.
[60] (1972) 408 U.S. 665.
[61] (1958) 250 F. 2d. 545.
[62] AIR (1987), Bombay, p. 345.

"It is undoubtedly true that a disclosure of a newspaper's source of information should not be ordered if such disclosure would be injurious to public interest. Freedom of the media to investigate and report on matters which are of public interest is essential to a free society. As a result, information which would otherwise not be available is made available to the public. If the name of a person who gives confidential information to a newspaper is required to be disclosed by the newspaper, it is possible that a newspaper's source of information may dry up and the public would not have the benefit of disclosures of matters which are of public importance. But this protection can be extended only when the information or material published is of public importance, as for example, if the information relates to malpractice in a government organization. Even information relating to the private life of a public figure may be of public importance if such information has a bearing on the manner in which the public figure discharges his duties or if such information reflects on the suitability of such a public figure to hold the office that he occupies. But, unless it can be shown that the information is such as needs disclosure and publicity in public interest, there is no reason for extending any special protection to the source of everything which may be published in a newspaper, periodical, journal or any other publication."[63]

In ***Javed Akhtar's case*** the Court finally opined that:

"The disclosure of names asked for is directly material to the plaintiff's case. It is not a case where any special protection needs to be given to the ... defendant. There is no investigative journalism involved here, which may be of value to an open and free society. It is merely muckraking."[64]

Like some other fundamental rights freedom of speech and expression and of the press is also suspended during the emergency period. When an emergency is declared under Article 358 and Article 19 is suspended, censorship may be imposed without interference from courts. Now the position is that when Article 19 is suspended on the ground of war or

[63] *Ibid.*, p. 343.
[64] *Ibid.*, p. 344.

external aggression under Article 358 or by a Presidential Order under Article 359 on the ground of armed rebellion, Government will be free to impose pre-censorship without any interference from Court.

So, it is clear that during the proclamation of Emergency, the courts will refrain from pronouncing upon the validity of laws under Article 19(1), for the reason that after the proclamation of Emergency, nothing in Article 358 would restrict the power of the State of making laws or of taking any executive action, which but for the provisions contained in Part-III of the Constitution, the State would have been competent to make or take.

From the foregoing survey of case laws, it would be seen that the freedom of speech and expression is the most cherished fundamental human right of the citizens in a democratic society. Press is one of the modes of expression of this right. Though freedom of press is not mentioned anywhere in the Constitution of India but the Supreme Court as the final interpreter and guardian of the Constitution has interpreted it as to be included within the scope of speech and expression and Article 19(1)(a).

It is also evident that through many remarkable judgments the Supreme Court of India has ensured freedom of press and established that under the Constitution of India the fundamental right to freedom of speech and expression which includes the freedom of press is not an absolute right in all circumstances. The Executive, the Legislative, the local and other authorities within the territory of India or under the control of the Government of India are not prevented from making any law, ordinance, order, bye-law, rule, regulation, notification imposing reasonable restrictions on the exercise of this fundamental right in the interest of the sovereignty and integrity of India, the security of the state and friendly relations with foreign States. The press in India does not enjoy any special rights or privileges which cannot be claimed or exercised by an ordinary individual who is a citizen. Since freedom of press is included in the freedom of speech and expression guaranteed to citizens only, the press stands on no higher footing than any other citizen and cannot claim any privilege not exercisable by other citizens. It reveals that the press is subject to the same laws and regulations as are applicable to other citizens and a general law which is applicable to the press as also to other citizens would not be unconsitutional. From the above discussion it is further apparent that when an executive action has been taken against the press to abridge

freedom of press, the Supreme Court of India has interfered there and upheld the freedom of press.

(b) Freedom of Press and the Constitution of Pakistan

Like the Indian Constitution freedom of press was not also specifically mentioned in Article 8 of the Constitution of Pakistan, 1956 but it was considered to be included under the guarantee regarding the freedom of speech and expression. Though the first Constitution of Pakistan did not contain clear- cut provision regarding freedom of press, but at different times the Supreme Court of Pakistan through the decisions of many cases, ensured freedom of press. Like the learned judges of the Indian Supreme Court, the learned judges of Pakistan Supreme Court interpreted the phrase 'freedom of speech and expression' to include freedom of press also. The higher courts of Pakistan played a significant role in upholding freedom of press. Let me begin with the case ***Begum Zeb-un – Nissa Hamidullah*** v. ***Pakistan***.[64] In this case Begum Zeb-un –Nissa Hamidullah, Editor and Publisher of *the Mirror published* from Karachi filed the petition for an appropriate order under Article 22 of the constitution challenging the validity of an order of the central government made under paragraph (c) of the clause (1) of sub-section (1) of section 12 of the Security of Pakistan Act (XIIV of 1952) prohibiting for a period of six months the publication of The Mirror an illustrated English Monthly. The order was accompanied by an annexure in which the ground for the action was stated to be that the Magazine, in its issue of November, 1957, had printed under the caption *MATTERS OF MOMENT* an article which "is defamatory in the first place, and in the second trespass beyond the limits of legitimate comments and is of a nature which tends to bring or attempts to bring the Government into hatred and contempt."

After the fill deliberation their Lordships struck down section 12 of the Security of Pakistan Act, which sought to empower the government to prohibit printing and publication of newspaper for any reason whatsoever. This Act, namely the Security Act of Pakistan, 1952, was enacted before the Constitution of Pakistan in 1956, but after the constitution came into force the said offending provision of the Act became inconsistent with freedom of expression as enshrined in the Constitution of Pakistan, 1956. Their Lordships in this

[64] PLD 1958 (SC) p. 35.

connection on the question of violation of right of freedom of speech and expression stated the law as follows:

> "The Constitution expressly provides that the freedom of speech and expression is subject to reasonable restrictions to be imposed by law and it can never be contended that the right to free speech included the right to defame or the right of the press to undermine the security of the State. All that we say in this case is that section 12 of the Security of Pakistan Act, in so far as it permits the government to prohibit the publication of a newspaper for any reason whatsoever, has, after the Constitution, became enforceable and that section could not be taken in the present case."[65]

Their Lordships held that freedom of speech and expression is a sacred right and the government has no power to curtail this right without the lawful authority. In this regard his Lordship Munir, C. J. on behalf of the Court observed:

> " ... Neither the legislature nor the Government could impose any restriction on the freedom of speech or expression except for the purposes mentioned in Article 8 of the Constitution of Pakistan, 1956."[66]

In the case ***Hussain Bakhsh Kausar*** v. ***The state***[67] the broad question which requires determination was, whether the speech delivered in Hastings Memorial offends against section 134-A of the Pakistan Penal Code.

The petitioner Hussain Bakhsh Kausar, aged about 35 year of Peshawar City has been convicted by the District Magistrate, Peshawar, under section 124-A of the Pakistan Penal Code, and sentenced to imprisonment till the raising of the Court and a fine of Rs. 300. He appealed against his conviction to the Court of Sessions Judge, but later on withdrew the appeal from there, he has presented the case before the High Court of Peshawar.

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[65] *Ibid.*, Muhammad Munir, C.J. on behalf of M. Shahabuddin, Muhammad Sharif, Amiruddin Ahmed JJ. and himself at p. 40.
[66] *Ibid.*, p. 39.
[67] PLD 1958 (WP) Peshawar, p. 15.

The case arose as a result of the speech which was delivered *inter alia* by the accused on the 5th October, 1956, at Hastings Memorial, which incidentally is situated in the heart of Peshawar City, in a meeting arranged by the action of the Government of West Pakistan, was then moved by him, and he described the action of the Government in power as the Government of thieves and the Ministers were men of straw and of no consequence whatsoever in the eyes of the public.

After full hearing his Lordship Muhammad Shafi, J. acquitted the appellant and held:

> "...Section 124-A, Pakistan Penal Code, whatever its significance and the scope of its application was before the Constitution, will have to be read in the light of the changed circumstances, and subject to article 8 of the constitution of Islamic Republic of Pakistan, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."[68]

His Lordship said that freedom of speech, subject to the restrictions mentioned above is essential, because without it the society banned on the ideas of peace, order or justice, cannot take shape, nor can the people who wish to live in freedom can be assured of greater security guaranteed to them under the Constitution. Constitution, as is clear from the wording of Article 8, has been very careful to secure to even most repellent of the citizens the common right of free expression so long as it does not transgress the limitations placed by law.[69]

Muhammad Shafi, J. in delivering the judgment further observed:

> "To criticize a Minister is no offence ... Freedom of speech is only curtailed when it affects the security of Pakistan, friendly relations with foreign States, public order, decency and morality, etc."[70]

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[68] *Ibid.*, p. 18.
[69] *Ibid.*, Per Shafi J.
[70] *Ibid.*, p. 19.

An order under section 7(1) of the Press (Emergency Powers) Act, 1931 calling upon the printer and publisher of a newspaper to deposit security was held unconstitutional in ***Mahmud Zaman*** v. ***District Magistrate***[71] Lahore, since it aimed to restrain him from expressing himself freely before he actually expressed himself.

In this case, the petitioner, Mahmud Zaman, who was printer and publisher of a newspaper called ***The patriot*** prayed for the cancellation of an order made by the District Magistrate, Lahore, under section 7 (1) of the Press (Emergency Powers) Act 1931 (XIII of 1931) calling upon him to deposit to deposit security in Rs . 1000.

Delivering the judgment on behalf of the Court, his Lordship M. R. Kayani, C. J. observed:

> "Article 8 of the Constitution guarantees to every citizen the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law ... In other words, the restrictions to which the right of freedom of expression is subject must be relatable to the objects mentioned in Article 8. Sub- section (1) of section 7 of the Press Act, however, empowers the District Magistrate to deposit security for a reason which may not be one of the reasons stated in Article 8.To that extent, therefore, it is in excess of the constitutional requirement."[72]

The Press (Emergency Powers) Act, 1931 empowered a Provincial Government to forfeit a press which published any document which, *inter alia*, encouraged the commission of violent crime, or promoted communal ill-feeling, of encouraged interference with the administration of the law. All these restrictions on the right of freedom of expression come within the scope of the objects for which restriction is permissible, and could be impugned, if at all, on the ground that they were unreasonable. But the same law imposed the same penalties if the published document tended to cause annoyance to any person and induce him

[71] PLD 1958 (WP) Lahore, p. 651.
[72] *Ibid.*, Per Kayani, C.J., at p. 653, Para-6.

to do something he was not legally bound to do; it is at least arguable that a restriction with such an object is not permissible, whether reasonable or not.[73]

In the case of ***Muhammad Zafar Khan*** v. ***The State***[74] an order under the Press (Emergency Powers) Act, 1931passed by the District Magistrate, Peshawar, was challenged.

The fact of the case in short was that ***"Laar"*** a Pashto journal in respect of which a declaration was made by Muhamad Muzaffar "Zafar" under Section 5 of the Press and Registration of Books Act, 1867, on the 27th march 1956, before the District Magistrate, Peshawar. On the 9th May 1958, the Governor of West Pakistan, purporting to act under sub-section (3) of section 7 of the Press (Emergency Powers) Act, XXIII of 1931, ordered Muhammad Mazaffar 'Zafar' to deposit with the District Magistrate, Peshawar, on or before the 21st of May; 1958, a security amount of Rs. 3000.00 or the equivalent thereof in securities of the Government as he might choose. Mr. Zafar has applied to Peshawar High Court for setting- aside the aforementioned order under section 23 of the said Act.

After the detailed discussion their Lordships Muhammad Shafi, Abdul Hamid and Habibullah Khan, JJ. set- aside the impugned order of the District Magistrate and said that the notice which was given by the District Magistrate was defective and unenforceable.

In that case Muhammad Shafi J. observed:

> "After the Constitution of the Islamic Republic of Pakistan came into force, these two clauses [4(1)] shall have the right to read in conjunction which, and as limited by Article 8 of the Constitution, which enjoins that every citizen shall have the right to freedom of speech and expression subject to any reasonable restrictions imposed by law...The purpose of the Constitution is that there should be as few restrictions on the freedom of the press as in the light of the conditions, prevailing in a country are absolutely essential. In fact, no restriction should be placed on the freedom of press except in times of grave emergencies, such as war, civil

[73] Alan Gledhill, *Pakistan: The Development of its Laws and Constitution*, (London: Stevens and Sons Ltd., 1957) p. 136.
[74] PLD 1959 (WP) Peshawar, p. 77.

> commotion on a large scale, and even then only in respect of matters involving the security of the State. Press is the mouthpiece of the public opinion. Its free functioning is more important now when the country become free than it was before. It has to work as a link between the Parliament which frames legislation and the public which express their hope and aspirations through it."[75]

The 1956 Constitution did not contain any separate provision regarding freedom of press but the Constitution should ensure this freedom through the caption "freedom of speech and expression" enshrined in the Article 8 of the Constitution. In this regard the distinguished Pakistani lawyer A. K. Brohi remarked:

> "Under our Constitution freedom of press has not been separately mentioned, but it would be seen that the freedom of press would flow logically from the citizen's right to freedom of speech and expression for, after all, freedom of press means nothing more than ones ability to express oneself in print. Press is thus under our Constitution in much the same position as the ordinary citizen; it has no special privileges."[76]

The Constitution of the Islamic Republic of Pakistan which came into force on the 23rd March, 1956, had obviously a fateful start when the then Governor General Major General Iskandar Mirza was elected as the country's first President under the Constitution. But the operation of this Constitution came to an end, when Martial Law was proclaimed on the 7th October, 1958 throughout the country .The Martial Law, was withdrawn on the 8th June, 1962, and the Constitution of Pakistan, 1962, came into effect. Originally, the Constitution of Pakistan, 1962, did not contain any provision regarding fundamental rights. But subsequently fundamental rights were incorporated to the Constitution by the Constitution (First Amendment) Act, 1963[77] (Act 1 of 1964). Article 9 of the Constitution of 1962 deals with freedom of speech and expression. The Constitution contains no express declaration in favour of the freedom or liberty of the press.

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[75] *Ibid.*, p. 79.
[76] A.K. Brohi, *Fundamental Law of Pakistan,* (Karachi: Din Muhammad Press, 1958), p. 375.
[77] For the text of the Constitution (First Amendment) Act, 1963, See PLD Central Statutes, p. 33.

The freedom of speech would be no freedom if the views and ideas cannot be communicated to other. In ***Khawaja Mahammad Safdar*** v. ***Province of West Pakistan***[78] case, the West Pakistan Use of Loudspeakers (Prohibition) Ordinance (XXXI of 1963) came for examination. The short history of that case was, Khawaja Muhammad Safdar, a Member of the Provincial Assembly and General Secretary of the Punjab Zonal Muslim League (Council) made an application to the Deputy Commissioner, Lahore, under Section 2 of the West Pakistan Use of Loudspeakers (Prohibition) Ordinance (XXXI of 1963) on the 5th of March 1964 for the grant of permission to use loudspeakers in a public meeting to be held on 23rd March, 1964, outside the Mochi Gate, Lahore, to celebrate the Pakistan day. The Deputy Commissioner, Lahore, by his order dated 19th March 1964 refused him permission to use loudspeakers. The petitioner appealed to the Commissioner of Lahore Division, under Section 3 of the Ordinance, who rejected the appeal on 21st of March 1964 on the ground *inter alia* that if the required permission was granted, it might lead to a breach of the peace. The Petitioner thereupon filed the writ petition under Article 98 of the Constitution praying that the Ordinance may be declared as void, being opposed to the fundamental right of freedom of speech and expression guaranteed by the Constitution and that the respondents be restrained from interfering with the use of loudspeakers by the petitioner, his organization and the people throughout the Province.

After hearing of the petition, a Full Bench of the West Pakistan High Court held that section 2 of the Ordinance was violative of the ninth fundamental right and therefore void. Mr. S.A. Mahmood, J. observed that the use of loudspeakers is "a necessary accompaniment of public speaking and indispensable instrument of effective public speech. " The learned judge also observed:

> "The Deputy Commissioner stands athwart the channels of communication as an obstruction to effective public speaking. He has the power of a previous restraint, and a more drastic power is difficult to think of. Thus the right to be heard and to communicate one's views on religious, political and other subjects is placed in the uncontrolled discretion of the Deputy Commissioner which renders the power conferred

[78] PLD 1964 (WP) Lahore, p. 718.

under section 2 of the Ordinance violative of the guarantee provided in the ninth fundamental right,"[79]

In the same case the learned judge pointed out that the holding of public meeting is the birth right of the people in a free democratic State ... the denial of permission to use a loudspeaker, means a denial of the right to communicate one's views and thoughts even to those who want to hear them. Section 2 of the Ordinance places a previous restraint on the right to public speaking and to be heard. It not only places a previous restraint on the right, but also an arbitrary and an uncontrolled discretion in an executive authority to refuse the licence or the permission for any reason or no reason at all. The section is also capable of being used discriminately, as the Deputy Commissioner may grant permission to one person or party and refuse it to another, there being no guiding principles laid down by the legislature, no check and no objective standard or control on the exercise of the power.[80]

So from the above mentioned cases it emerges that when an executive order restricted freedom of speech and expression and of the press, the Higher Courts of Pakistan has taken necessary action to uphold freedom of press. It has also been held that curtailment of freedom of press or freedom of expression are void.

Freedom of speech and liberty of the press are not absolute and unqualified rights, but are relative, that is freedom of speech and press is not absolute at all times and in all circumstances, and it does not mean that one can talk or distribute where, when and how one chooses. The right to freedom of speech and expression, including the right of freedom of press, which is merely a form of speech and expression, is subject to an reasonable restrictions that may be imposed by law in the interests of the security of Pakistan, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.

Where orders were passed under section 9 of the East Pakistan Public Safety Ordinance, 1958 (LXXVVII of 1958) prohibiting the printer and publisher of the ***Daily Ittefaq*** from publishing any matter relating to students strikes, meetings, grievances, agitation, unrest etc, the questions whether they imposed reasonable restrictions upon the

[79] *Ibid.*, p. 727.
[80] *Ibid.*, p. 725.

freedom of speech and expression guaranteed by the Constitution of 1962 was answered in the negative. In so far as the provision of section 9 left everything to the subjective satisfaction of the authority it was the sole judge as to the necessity of passing the orders for the purpose of securing public safety or the maintenance of public order. Satter J., in saying that powers must be conceded to the executive to judge, "as to what preventive measures are to be taken to avoid the threatened breach of the peace, did not fail to notice that powers conferred by section 9 were indeed very wide and that they are to be exercised only if it (the executive) were satisfied as to the necessity of using them for securing public safety or the maintenance of public order" and further added that "a case of malafide exercise of power is always subject to judicial interferrence."[81]

In the case of ***the Sangbad Ltd. and another one*** v. ***The Deputy Commissioner, Dhaka and others***[82], the Press and Publications Ordinance, 1960 (XV of 1960) was challenged. In that case, Petitioner No. 1 "***the Sangbad Ltd.***" a company incorporated under the Companies Act, 1913, is the proprietor of the Bangla daily newspaper ***Sangbad*** which has been in continuous publication since the year 1951. The petitioners asserted *inter alia* that they sent letters to the Deputy Commissioner, Dhaka, and Additional Deputy Commissioner (General), Dhaka, on 26.4.67 and 27.4.67 respectively for a fresh declaration in the name of the Petitioner No. 2. A regular declaration was also sent for authentication. But on 22.5.67 the Petitioners received a refusal letter of authentication from the Deputy Commissioner, Dhaka. Having been aggrieved by that Order of Respeondent No. 1 the Deputy Commissioner, Dhaka refusing to authenticate a declaration made by Petitioner No. 2 under section 7 of the Press and Publications Ordinance, 1960, as printer and publisher of the newspaper entitled ***Sangbad*** the petitioners obtained the *rule nisi* upon the respondents to show cause why the impugned order dated 22.5.67 should not be declared to have been made without lawful authority and why Respondent No. 2 should not be directed to accept and authenticate the said declaration.

After the hearing of the petition their Lordships declared that the impugned order has been made without lawful authority and was of no legal effect. His Lordship Mr. Salahuddin Ahmed, J., on behalf of the Court, observed:

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[81] *Tofazzal Hossain v. Government of East Pakistan,* PLD (1965) Dac. 68 at p. 78.
[82] 19 DLR (1967) Dhaka, p. 581.

"The Press and Publication Ordinance has not excluded the application of the principles of natural justice and it requires the Deputy Commissioner to base his decision on an objective determination of facts."[83]

From analyzing the above mentioned case it appears that though the Press and Publication Ordinance, 1960 put a previous restraint upon freedom of press but the then Dhaka High Court had curtailed the unnecessary restrictions of the said ordinance and saved the freedom of press through interpretation of the relevant laws.

In ***Reazuddin Ahmed, on behalf of the detenu Abdul Momen*** v. ***Deputy Commissioner, Dhaka and others***,[84] rule 32(1)(b) of Defence of Pakistan Rules, 1965 has been challenged. In that case, detenu Abdul Momen, an Advocate of the then East Pakistan High Court has been detained under rule 32(1)(b) of the Defence of Pakistan Rule, 1965. The impugned order of detention has been passed by the Deputy Commissioner, Dhaka for the purpose of preventing the said detenu from acting in a manner pre-judicial to the defence of Dhaka District, the maintenance of supplies and services essential to the life of the community and the maintenance of peaceful conditions in the District of Dhaka. It is stated by the respondent that on 8.4.66 the detenu had addressed a public meeting organized by Awami League in Bogra town and in his address "he bitterly criticized the government for its maintaining alleged disparity between the two wings of Pakistan and repressive and oppressive measures perpetrated on the people of Pakistan and by that he excited the people and brought hatred, contempt and disaffection in the mind of the ordinary law abiding people towards the government established by law and promoted feelings of enmity and hatred between different classes of citizen." It has been further stated that the detenu on 6.5.66 had addressed a public meeting at Sylhet town wherein he had also bitterly criticized the government.

Their Lordships declared the impugned order illegal and held that it was made without lawful authority. In delivering the judgment Salahuddin Ahmed, J. observed:

"As long as the law of the land permits oppositional activities and some amount of freedom of thinking and expression, mere expression of

[83] *Ibid.*, p. 590.
[84] 21 DLR (1969) Dhaka, p. 169.

> opinion, however much unpalatable it may be to the Government of the day, does not, in our opinion, call for any action under a special law like the Defence of Pakistan Rules unless such opinion tends to disturb peace and tranquility of any region, or creates a law and order situation or endanger the maintenance of essential supplies and services."[85]

The Defence of Pakistan Rules, 1965 had also been challenged in the case of ***Sheikh Fazlul Haque Moni*** v. ***The State,***[86] where the Petitioner put on trial on the allegations that on 13.5.66 he delivered a speech in Bangla in a public meeting which was arranged by the Awami League at Palton Maidan, Dhaka. The speech was recorded in shorthand by a government reporter and on the basis of the said record the Officer-in-Charge of Ramna P.S. recorded an FIR and started a case. The said speech was said to be pre-judicial act and as such came under the mischief of Rule 47 of the Defence of Pakistan Rules, 1965. The petitioner was convicted under the said Rule and sentenced to simple imprisonment for one year by a Magistrate 1st class, Dhaka. The petitioner preferred an appeal which was dismissed by Additional Sessions Judge, Dhaka. The petitioner pleaded not guilty to the charge under the aforesaid Rule. After the dismissal order petitioner filed a second appeal to the East Pakistan High Court.

After the hearing of the petition their Lordships acquitted the petitioner and set-aside the impugned order. On delivering the judgment Abdullah Jabir J. pointed out:

> "Democracy functions best in an atmosphere of free and frank discussion and if Pakistan was claimed to be a democratic country at the time when the speech was delivered, the right of the people to express themselves freely and frankly and, if need be, strongly and even bitterly against what may have been supposed to be lapses on the part of the Government, could not be abridged so long as such expression did not degenerate into mere abuse intended or calculated to rouse the emotions of the people to a pitch wherefrom they might be tempted to take recourse to violence or to create chaos in the country or to disrupt the normal life of the people."[87]

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[85] *Ibid.*, p. 171.
[86] 22 DLR (1970) Dhaka 136.
[87] *Ibid.*, pp. 139-140.

It is evident from the above mentioned two cases that criticizing of the government is not an offence and freedom of speech and expression which is guaranteed under the Constitution of Pakistan, should not be curtailed in the name of security or defence of Pakistan and on the basis of mere statement, against government, no person should be prosecuted according to the interpretation of the Higher Courts of Pakistan.

Freedom of speech and freedom of press are fundamental personal rights and liberties which are the corner-stones of democratic institutions. Both these freedoms are the same, being distinguished only in the form of expression. The privilege of the speech carries with freedom of choice as to the mode of expression that may be employed; it includes the use of mechanical and manual instrumentation of communication, such as press, pamphlets, placards and radio, and the carrying of signs and banners as a natural and appropriate means of conveying information on matters of public concern, which may be protected under the constitutional guarantee of free speech and press.[88]

In Pakistan the right to freedom of speech and expression and of the press is not absolute and it does not give a licence to any person to say or write whatever he likes in any time and any place. In this regard Sardar Muhammad Iqbal, J. has rightly pointed out that:

> "The freedom of speech and of the press are fundamental rights which are safeguarded. The right of free speech is, however, not absolute one and it does not give a licence to any person to indulge in utterances which are calculated to defame any person muchless the President of a country who is not only to maintain the situation of laws and order in the country but is also to have an image in all the countries of the would to project his country for an honourable place in the comity of nations."[89]

From the foregoing discussion it appears that the 1956 and 1962 Constitutions of Pakistan, did not directly contain any provision regarding freedom of press but the superior Courts of Pakistan through constitutional interpretation established that the term "freedom of

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[88] M. Munir, *Constitution of the Islamic Republic of Pakistan*, (Lahore: All Pakistan Legal Decisions, 1965, pp. 139-140.

[89] *Hussain Naqi & another v. The District Magistrate, Lahore & 4 others,* PLD (1973) Lahore, 164 at p. 181.

speech and expression" should also include freedom of press. After the adaptation of 1973 new Constitution for the Islamic Republic of Pakistan freedom of press was declared for the first time. Article 19 of the said Constitution guarantees freedom of press. It has also been observed that the liberty of press means complete freedom to write and publish without censorship. Freedom of speech and liberty of the press are not absolute and unqualified rights and it is not exercisable at any time and in any places. Article 19 imposes reasonable restrictions upon freedom of speech and expression and of the press. Now we would like to examine freedom of press after discussing relevant cases disposed of by the Superior Courts under the Constitution of Pakistan, 1973.

Article 19 of the Constitution of Pakistan, 1973 has not guaranteed unrestricted freedom of speech and expression and of the press but has envisaged reasonable restrictions which cannot be construed in a manner which instead of suppressing mischief encourages or accelerates mischief. In the case of ***Ghulam Sarwar Awan*** v. ***Government of Sind,***[90] the Sind Maintenance of Public Order Ordinance, 1960 was under challenge.

In that case the petition was directed against an order dated 23.2.88 passed by the respondent under clause (d) of sub-section (1) of Section 5 of the above mentioned Ordinance, directing the petitioner not to make any speech and issue any statement or communicate in any other manner with any organ of the media having the effect of creating/ increasing hatred, animosity between different ethnic grounds and capable of being misconstrued, misunderstood or being inflammatory in character for a period of 90 days with effect from 23.2.88.

After hearing the petition the honourable Court set-aside the impugned order and held it unconstitutional. Delivering the judgment the Court perceives that any restrictions or embargo on freedom of speech which curtail its freedom are not permissible under the scope of Article 19. In this connection his Lordship observed:

> "Article 19 of the Constitution does not guarantee unrestricted freedom of speech and expression as it provides that 'every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the

[90] PLD 1988 Karachi, p. 414.

press subject to reasonable restrictions imposed by law... In other words, freedom of speech and expression guaranteed by the above Article is subject to any reasonable restrictions."[91]

An order of District Magistrate cancelling the declaration of a newspaper was examined in ***Muhammad Rafiq Meer*** v. ***Government of the Punjab,***[92] case. The fact of the case, in short, was that Mr. Rafiq Meer was the printer and publisher of the Urdu Daily ***Mussawat*** when the Martial Law was in force, on 12.12.79 martial law Administrator Zone 'A' in pursuance of the powers vested in him under paragraph 2(b) of the Marital Law Regulation No. 49, prohibited the publication of the daily and use of ***Mussawat*** printing press, with immediate effect. The petitioner did not agitate in the matter, during the currency of the Marital Law but after issuance of "proclamation of withdrawal of Marital Law" published in Gazette of Pakistan, Extraordinary, Part-I, dated 30.12.85, he sent letter dated 12th January, 1986 to the District Magistrate, Lahore, informing him that on the enforcement of the Constitution, the prohibition on the publication of the Daily and the use of the printing press under Martial Law Regulation No. 49, ceased to be operative. It was stated that during this interregnum, machinery of the press was auctioned under the orders of the Banking Court, the staff of the Daily left the job and thus, it was beyond the control of the printer and publisher to bring the paper in circulation. The petitioner further solicited the administrative orders of the District Magistrate in the matter. This letter was followed by another letter dated 12.2.1986, wherein the petitioner sought from the District Magistrate, a clarification of the declaration of the paper. It seems that after this letter the learned District Magistrate, sought advice of the Director General, Public Relations, on the petitioners application and when the communication was served on him he issued reminder to the Director General. As there was no response from the District Magistrate, the Petitioner filled writ petition No. 2833/86, in course of hearing whereof the learned Advocate General placed before the Division Bench seized this case. The District Magistrate in his order cancelled the previous declaration of the Urdu Daily ***Mussawat*** and "Mussawat Printing Press", Lahore. The petitioner thereupon withdraw the said writ petition and filed the instant one, to assail the validity of the District Magistrate's decision.

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[91] *Ibid.*, Per Ajmal Mian J., at p. 418.
[92] PLD (1989) Lahore, 12 (DB).

The above mentioned case was heard by a Division Bench of the Lahore High Court and the Court declared the impugned order to have been passed without lawful authority and of no legal effect. Delivering the judgment Muhammad Afzal Lone, J., on behalf of the Court pointed out:

> "Right to freedom of the press is guaranteed by Article 19 of the Constitution of Pakistan. All insrumentalities of State are, therefore, supposed to act in a manner which may be conductive to promotion of the object of the Constitution. Therefore, the District Magistrate passed orders to close down a newspaper under the compulsive influence of advice of the Director General, Public Relation. Though it is not possible to gauge the extent of this influence but it is certain that his mind was sufficiently swayed by the advice."[93]

In ***Mian Muhammad Nawaz Sharif*** v. ***President of Pakistan and others case***[94] his Lordship Muhammad Afzal Lone J., observed that the right to the citizenry to receive information can well be spelt out even from the "freedom of expression" guaranteed by Article 19 of the Constitution, of course, subject to inhibitions specified therein, such right must be preserved.

It appears from the above discussion that the Constitution of the Islamic Republic of Pakistan, 1973 has ensured freedom of press subject to reasonable restrictions imposed by law and where any irregularities or restrictions introduced by the executive authority, there the superior courts of Pakistan have interfered and established freedom of press.

During an Emergency the State can make laws repugnant to the fundamental rights stated in clause (1) of Article 233 and these laws shall to the extent of their repugnancy with the fundamental rights, cease to have effect six months after the end of the Emergency.[95] When Emergency is proclaimed by the President, right to freedom of press should also be suspended. Restrictions should be placed on freedom of press in times of grave emergencies such as war, civil commotion on a large scale and even then only in respect of mattes

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[93] *Ibid.*, p. 18.
[94] PLD (1993) SC, p. 473.
[95] While a proclamation of Emergency is in operation Articles 15, 16, 17, 18, 19 and 24 of the Constitution should be suspended.

involving the security of the state. Press is the mouthpiece of the public opinion. Its functioning is more important now when the country has become free than it was before. In the case of ***Habiba Jilani*** v. ***The Federation of Pakistan,***[96] the detention order of 15.2.73 under rule 32(1)(b) of the Defence of Pakistan Rules was challenged. While delivering the judgment on behalf of the Court his Lordship Nasim Hasan Shah J., held that no law can be made in derogation of the fundamental rights not mentioned in clause (1) of Article 233 even during an emergency and if such a law is made it shall be void. If any law is made or any action is taken in violation of fundamental right which are mentioned in clause (1), the same would be valid and not open to any exception even if the Emergency ceases.

From the foregoing survey and analysis it appears that the Constitution of Pakistan has not imposed any undue restriction on the freedom of speech and expression and of the press. It is also subject to the limitations as are imposed by the law of the land. It has also been seen that when the administrative authority have tried to curtail the freedom of press, the superior courts have interfered there and upheld the freedom of press. And in this way superior courts of Pakistan had also played their due roles for preserving freedom of press through the interpretation of the Constitution and relevant laws of the country.

(c) Freedom of Press and the Constitution of Bangladesh

The Constitution of Bangladesh came into force on the 16th December, 1972. Its framers spell out the freedom of press in Article 39. The Courts are no more required to extend the freedom of speech and expression to include it as in India or Pakistan. Part III of the Constitution of Bangladesh enshrined some justiciable fundamental rights among which freedom of press is one. Article 26 of the Constitution made all existing laws inconsistent with the provisions of the fundamental rights void. Any person or citizen aggrieved as a result of an infringement of any fundamental right may seek remedy before the High Court Division of the Supreme Court under Article 102(1) of the Constitution. Article 102 of the Constitution provides the means of enforcement of the fundamental rights guaranteed by the Constitution. Article 39(2) of the Constitution of the People's Republic of Bangladesh guarantees the right of every citizen to freedom of speech and expression and freedom of press. The exercise of this right as provided in the Constitution carries with it special

[96] PLD (1974) Lahore, p. 153.

responsibilities. Parliament can impose any reasonable restrictions in the interests of 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. In matters of reasonable restrictions on freedom of speech and expression and of press uniformity is observed in all the three countries of India, Pakistan and Bangladesh. Probably the long experience of India and Pakistan has inspired the framers of Bangladesh Constitution to draft Article 39 in this way.

Although as found from Indian and Pakistan experiences freedom of press is implicit in the freedom of speech and expression, considering its importance the Constitution of Bangladesh has specially mentioned it. There is another reason to mention it separately; Article 39(2) guarantees freedom of expression to "citizen" only and expression excludes legal persons as distinguished from natural persons. But in many cases the press is owned by legal persons and exclusion of the legal persons from the purview of the guarantee may seriously hamper freedom of press. Hence the guarantee is made available without any limitation as to who can claim it.[97] It may be honestly submitted that the higher courts of India and Pakistan have so far extended the meaning and application of the words used in this Article that there is little scope to limit the meaning of the word "citizen" to only natural persons as distinguished from artificial person or press in freedom of press means only printing press.

Freedom of press consists of rights to publish the views not only of newspaper but also of its correspondents and others. Subject to reasonable restrictions on specified grounds, the press has the freedom to print or not to print any matter it chooses and the government cannot interfere. Restrictions which do not relate to any of the objects mentioned in the above mentioned clause would seem unconstitutional. The Supreme Court of Bangladesh as the guardian and interpreter of the Constitution is preserving freedom of press deciding many cases brought before it. Where any illegality or irregularity has been done by any department of the government which curtail freedom of press, the Supreme Court interferes there and ensures freedom of press. The Supreme Court of Bangladesh is the sentient of the Constitution and it zealously guards the fundamental rights contained in it.

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[97] Mahmudul Islam, *Constitutional Law of Bangladesh*, (Dhaka: Bangladesh Institute of Law and International Affairs, 1995) pp. 221-222.

In the case of ***Sk. Fazlul Karim Selim*** v. ***Bangladesh and another,***[98] the petitioner has challenged Memo No. 567/Eng./X/1/80 dated 19.5.80 issued under Printing Press and Publication (Declaration and Registration) Act, 1973 from the office of the Deputy Commissioner of Dhaka expressing the inability of the Government to grant permission in respect of the ***Banglar Bani*** as a daily newspaper in Bangla.

Banglar Bani used to be printed and published from Dhaka as a daily Bangla newspaper by Late Sk. Falzul Haque Moni till 13.6.75 when the declaration and authentication in respect of said newspaper made under Printing Press and Publication (Declaration and Registration) Act, (XXIII of 1973) stood annulled upon the promulgation of Newspaper (Annulment of Declaration) Ordinance No. XXXIII of 1975 on 13th June, 1975. Since then there is no existence of ***Banglar Bani*** as a Bangla daily newspaper. Thereafter Ordinance No. L of 1976 the aforesaid Newspaper (Annulment of Declaration) Act, 1975 (Act No. XLII of 1975) was also repealed and this afforded a fresh opportunity for Printing and Publishing of the aforesaid Bangla daily newspaper ***Banglar Bani*** again.

After the assassination of Sk. Fazlul Haque Moni, on the 15th August 1975, his younger brother the petitioner of this case applied to the Deputy Commissioner, Dhaka on 23.7.79 to accord permission to print and publish a daily Bangla Newspaper under the name and style of ***Banglar Bani*** and made a declaration in respect thereof for authentication under Printing Press and Publication (Declaration and Registration) Act XXIII of 1973. The petitioner also fulfiled the other requirements. The Deputy Commissioner of Dhaka before whom the petitioner made the declaration for the purpose of printing and publishing ***Banglar Bani*** did not say anywhere at any time that the petitioner did not fulfilled the requirements of clause (a)- (h) of sub-section (2) of section 12 of Act XXIII of 1973. The Deputy Commissioner by his impugned Memo. merely informed the petitioner of the inability of the Government to grant permission to authenticate the declaration in respect of ***Banglar Bani.***

In delivering the judgment his Lordship Syed Muhammad Hussain J. has opined:

"Under clause (b) of sub-Article (2) of Article 39 of the Constitution of Bangladesh, freedom of press is guaranteed subject to any reasonable

[98] 33 DLR (1981) p. 406.

restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The aforesaid qualifying provisions to the citizens freedom of press guaranteeing in the Constitution can only arise after a particular newspaper is allowed to be printed and published upon the authentication of a declaration made under section 7 and 12 of the Printing Press and Publication (Declaration and Registration) Act XXIII of 1973. In view of the aforesaid constitutional right of the citizens of Bangladesh guaranteed freedom of press under clause (b) of sub-section (2) of Article 39 of the Constitution of Bangladesh, the opinion of the DIG of Police that the petitioner's declaration could not be authenticated in view of his political background must be held to be illegal and unconstitutional."[99]

His Lordship also observed:

"Memo of the Deputy Commissioner was made by virtue of a colourable exercise of authority vested in him under sub-sections (1) and (2) of section 12 of the Act XXIII of 1973 on that account that impugned Memo. must be held to have been made illegally without any lawful authority, with no legal effect and must be set-aside."[1]

It is apparent that provisions of Article 39 will be violated if the government cancels a declaration under the press law without giving an opportunity of being heard to the persons affected or the statutory authority refuses to authenticate a declaration of a newspaper because of the opinion of the police about the political background of the person making declaration.

Freedom of press is subject to the same restrictions as the freedom of speech and expression. It would, however, be not legitimate for the government to subject the press to laws which take away or abridge the freedom of expression or which would curtail and thereby narrow the scope of dissemination of information or fetter freedom of choice its

[99] *Ibid.*, p. 407.
[1] *Ibid.*, Per Syed Muhammad Hossain, J. at p. 410.

means of exercising the right or would undermine its independence by driving it to seek government aid.

In the case of ***Hamidul Huq Chowdhury and others*** v. ***Government of Bangladesh***[2] the petitioners challenged an order which was made under Bangladesh Press (Administration) Order, 1971. In this case the respondent, Government of Bangladesh, by an order dated the 5th January, 1972 took over the management and control of the then ***Pakistan Observer*** (renamed Bangladesh Observer) and the ***Purbodesh*** and the Weekly ***Chitrali*** owned by the petitioner company and further the respondents declared the assets and share of the petitioners company as abandoned property under P.O. 16 of 1972. The respondent further dissolved the Board of Al-Helal Printing and Publishing Co. Ltd.

The case of the respondent was that by notification dated the 5th January 1972 issued under Bangladesh Press (Administration) Order, 1971, the Government took over the management and control of the newspapers. This action was taken since Mr. and Mrs. Hamidul Huq Chowdhury left for Pakistan.

After the full hearing the Court held the impugned order illegal and was of no legal effect. In paragraph 10 of the judgment his Lordship Sultan Hussain Khan J., observed:

> "The impugned order dated 5.1.72 has been alleged to have been made under Bangladesh Press (Administration) Order, 1971 which is said to have been promulgated by the Acting President. The aforesaid Acting Presidents' Order was not published in any Gazette at any time but it was published in a private daily on 3.1.72. The tenor and purpose of the Acting Presidents' Order contemplates the failure of the Directors and Managers of Al-Helal Printing and Publishing Co. Ltd. or the persons responsible for printing and publishing the newspapers and the periodicals. Before taking over private properties and invading the rights of the company to carry on its business of publication of newspapers it was an incumbent duty of the

[2] 33 DLR (1981) p. 381.

respondent to determine whether the conditions laid down in the Acting Presidents' Order were inexistence."[3]

"It is patently clear" his Lordship again pointed out "that the editor, printer and publisher of the newspapers and the staffs of the company continued to print, publish and circulate the newspapers in question at all times without any disruption and as such the conditions laid down in the Acting Presidents' Order for taking over the management and control of the newspapers were clearly absent and not in existence. In the absence of the conditions for taking over the newspaper, the order of the Government dated 5.1.72 in taking over the management and control of ***Bangladesh Observer*** and ***Purbodesh*** for the management and publication of the said newspapers must be declared to have been made illegally and in excess of their alleged authority."[4]

Hamidul Huq Chowdhury and others by other writ petitions have challenged the constitutionality of the Government owned Newspapers (Management) Ordinance, 1975, which later on was passed by Parliament as Government owned Newspaper (Management) Act of 1975, where under the petitioners company was dissolved and the assets thereof including its printing press and establishments were sought to be vested in the Government of Bangladesh.

In the result Sultan Hussain Khan J. made the rules absolute and declared the said Act in violation of the provisions of fundamental right in Article 27 and 39(2) (b) of the Constitution of the People's Republic of Bangladesh. In this connection his Lordship opined:

> "The great objects of the Government are the welfare of the people which it governs and protection of the life, liberty and property of the individual citizens. To this end a constitutional system is evolved under which powers of the Government are limited and thereby operate as a bulwark of liberty for protection of private rights. These rights are protected by constitutional guarantees and they are called fundamental rights because these cannot be transgressed, limited or violated by any organ of the State. These provisions in the Constitution for protection of the rights have been made for individual citizens including the makers thereof for the times when they will have

[3] *Ibid.*,p. 390.
[4] *Ibid.*, p. 390.

no power to make them. The fundamental rights should be regarded as one inviolable but subject to the other Constitutional provisions."[5]

From Hamidul Huq Chowdhury's case, which is properly known as the ***Observer case*** it is clear that the arbitrary government action which violates freedom of press (with recognized limitations) and freedom of expression must be held as done without lawful authority and the government, with such types of order did not curtail freedom of press.

The right of newspaper to comment on the proceedings, is not an unlimited right and is subject to certain restrictions. Comments which are calculated to impede the course of justice are not permissible. The press must not be used in a manner which would prejudice the proper trial of cases by courts in the country. Administration of justice is of paramount concern and takes priority over freedom of press. This is not to say that courts will lightly interfere with the freedom of press. They are sparing in the use of this power and would resort to it only as an extreme measure necessary for protecting the rights of the parties before it.

In the case of ***Bangladesh*** v. ***Chief Editor, Bangladesh Sangbad Sangsthsa & Others***[6] importance was given on the responsibility of the national press. In that case, the High Court Division disposed of writ petition no. 865 of 1979 by judgment delivered on the 18th March 1982 it was brought to the notice of the Court that a news item relating to the said petition has been published under the headline *"Disposal of Review Prayer Order."* On perusal the same Court issued the *suo motu* rule.

Giving the judgment on behalf of the Court his Lordship Abdur Rahman Chowdhury, J. held:

> "We yield to none in our firm conviction that newspapers are vital to the life and well-being of the nation and the people and that the national press must both be free and responsible. Only a free press can effectively serve a free country and help to maintain her freedom. In its turn, the press must also act responsibly in exercising its freedom and in discharging its duties to inform, educate and serve the people. We are

[5] *Hamidul Huq Chowdhury and others* v. *Government of Bangladesh*, 34 DLR (1982) p. 190.
[6] 34 DLR (HCD) 1982, p. 206.

confident that the sanctity, dignity and prestige of the Court is as much clear and sacred to them as it is to all of us."[7]

Under Article 39 of the Constitution of Bangladesh freedom of speech and expression is not absolute and is subject to restrictions which may be imposed by law on specified grounds. In the case of ***Saleem Ullah*** v. ***State***[8] appeal was filed by the appellant against the judgment and order dated April 30, 1989 of the High Court Division passed in criminal contempt case no. 3 of 1988. On a report by Mr. A.K.M. Fazlul Karim the Subordinate Judge, Third Court, Dhaka, the High Court Division issued rule upon the appellant to show cause as to why he should not be committed for contempt of court for publishing and making comments in the ***Bangladesh Observer*** dated February 20, 1987, under the caption, "*Around the Court, Damage Suit dismissed after 25 years,*" in connection with a judgment delivered on January 20, 1987 by the learned Subordinate Judge, in Money Suit No. 22 of 1986. The Appellate Division of the Supreme Court of Bangladesh dismissed the appeal and confirmed that of the High Court Division. While delivering the judgment on behalf of the Court his Lordship Muhammad Habibur Rahman, J. Observed:

> "Freedom of the press being recognized in our Constitution, a Court is to suffer criticism made against it, and only in exceptional cases of bad faith or ill motive, it will resort to law of contempt."[9]

The Court, however, noting that in a country where the rate of literacy is low and the words in print are generally revered the Court is to consider the impact of written criticism of Court in the mind of the public and also that the duty of journalist who is practicing lawyer is more onerous.

It is evident from the above mentioned two cases that a newspaper can easily pass comment on a judgment in a limited way and it cannot criticize an order of the Court or in any way if it hampers the prestige of the Court that comment should be punishable in accordance with the law. Because the journalists or the newspapers are not above the law, they should honour the Court.

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[7] *Ibid.*, pp. 207-208.
[8] 44 DLR (AD) p. 309.
[9] *Ibid.*, Per M.H. Rahman J. (On behalf of Shahabuddin Ahmed C.J., A.T.M. Afzal J. and himself) at p. 313.

An order passed by the District Magistrate which put restraints upon the publication of a newspaper was held illegal and the Court struck-down that impugned order and allowed the publication of the newspaper in the case of ***Waliul Bari Chowdhury*** v. ***District Magistrate, Kushtia and others.***[10]

Appellant who was the editor, printer and publisher of the Weekly ***Ispat*** filed writ petition no. 113 of 1985 in the High Court Division challenging that the order dated 16th April, 1985 passed by the District Magistrate, Kushtia, by which he directed officer-in-charge of Police Station, Kushtia to enter upon and seize all unauthorized newspapers, documents and press and printing materials, was illegal, without lawful authority and of no legal effect. The order which was passed in exercise of authority conferred by sections 22 and 23 of the Printing Presses and Publication (Declaration and Registration) Act, 1973 alleged that the Printing and Publication of the Weekly ***Ispat*** was unauthorized inasmuch as authentication of the declaration as required under section 7 and 12 of the aforesaid Act was not obtained from the authority mentioned therein, namely, District Magistrate, Kushtia.

In the instant case, the petitioner submitted that Additional District Magistrate, Kushtia has authenticated the ***Ispat*** and it should be presumed that he had been duly authorized to perform the function of the District Magistrate under section 12 of the aforesaid Act and the impugned order was also liable to be struck-down.

In that case his Lordship Dr. F. K. M. A. Munim, C.J. observed:

> "What is apparent from reading the provisions of section 12 of the Act is that the District Magistrate is required to authenticate any declaration as required therein. This does not, however, exclude what, in addition to be obvious reference to the District Magistrate, may be done by the Additional District Magistrate i.e. authentication, particularly having reference to the definition of District Magistrate provided by law, if not in the Act, concerned but elsewhere general application, coming across such law which fills in the lack of definition of District Magistrate in the Printing Presses and Publications (Declaration and Registration) Act, 1973 we find that the provisions

[10] 38 DLR (A.D.) p. 258.

of the Code of Criminal Procedure ... provide that the Additional District Magistrate may perform the functions of the District Magistrate.[11]

His Lordship again observed:

"Be it so, even then before the passing of the order the appellant was entitled to a show cause notice against him. No such notice appears to have been served upon him. Respondents action not only interfered only with the appellants right to publish the Weekly but also interfered with his right to property for which he could legitimately raise grievance on account of violation of the principle of *audi alteram partem.*"[12]

In ***Dewan Abdul Kader and others*** v. ***Government of Bangladesh***[13] case, the Note-Books (Prohibition) Act, 1980 (Act No. XII of 1980) has been challenged as being *ultra vires* of the Constitution being in contravention of Article 39 thereof. It has been asserted by the petitioners in both the writ petitions that the above enactment whereby printing, publication, import, sale, distribution and circulation were prohibited was violative of Article 39 of the Constitution having taken away their right to freedom of speech and expression and freedom of press.

After full hearing the Court struck-down the said Act and declared the same as *ultra vires* to the Article 39 of the Constitution of Bangladesh. In this regard his Lordship Naimuddin Ahmed, J. delivering the Court's opinion on behalf of the Court further observed:

"Freedom of speech and expression occurring in clause (2) of Article 39 of the Constitution means a right to express one's own opinion absolutely freely by spoken words, writing, printing, painting or in any other manner which may be open to the eyes and ears. It thus includes expression of one's ideas on any matter by any means including even gestures, postures, banners and signs. It appears to us that this freedom is wide enough to include expression of one's own opinion in the form of comments, explanations, annotations, solutions and answers to question on the ideas expressed by others. It, therefore, means the expression of one's idea, whether the idea be an original idea, or explanation, commentaries or annotations of the original idea

[11] *Ibid.*, p. 263.
[12] *Ibid.*, p. 264.
[13] 46 DLR (1994) p. 596.

expressed by another. Similarly, freedom of press means printing, publication, circulation and distribution of all what can be expressed in exercise of the right of freedom of speech and expression ... Freedom of speech and expression and freedom of press do not exclude the right to comment, to explain, to annotate, to propagate and to publish the views of other people."[14]

During the emergency right to freedom of speech and expression and of the press may be suspended by Presidential Order. Article 141A of the Constitution of Bangladesh Proclaims that the President may with prior counter signature of the Prime Minister issue proclamation of emergency if he is satisfied that a grave emergency exists in which either the security or the economic life of Bangladesh or any part thereof is threatened by (a) war or external aggression or (b) internal disturbances. Such a proclamation may be revoked by the President by a subsequent proclamation. The issuance of the proclamation shall automatically suspend the operation of the fundamental rights guaranteed by Articles 36, 37, 38, 39, 40 and 42 and a law made during the continuance of the emergency shall not be void because of inconsistency with the provisions of the Articles for so long as the proclamation remains operative.[15] Apart from this, the President with the written advice of the Prime Minister by order suspend the enforcement of any or all of the other fundamental rights guaranteed in Part-III of the Constitution and such a suspension shall remain in force so long as the proclamation remains in force.[16]

From the above discussion it is observed that the right to free speech and expression and of the press guaranteed to every citizen by Article 39 are not absolute. It is exercisable within the scope of reasonable restrictions imposed by the law. The Constitution does not indicate what restrictions are to be considered reasonable with regard to matters mentioned in Article 39 and, it is for the Courts to decide whether or not a restriction which is impugned is reasonable or not. It is also apparent that when any law infringes freedom of press or any administrative action which curtails freedom of press, the Supreme Court of Bangladesh after examining the merits of the case in the light of the relevant provisions of the Constitution and of the law or laws, has delivered due relief to the aggrieved parties and upheld freedom of press as guaranteed by the Constitution.

[14] *Ibid.*, p. 599.
[15] Constitution of Bangladesh Article 141B.
[16] *Ibid.*, Article 141C.

Chapter-V

Freedom of Press under the Statutory Laws of India, Pakistan and Bangladesh and the Role of the Judiciary

The right to freedom of expression is being increasingly accepted as a necessary adjunct to participatory democracy the world over and for that reason modern world has declared the right to freedom of expression as a fundamental human right. This right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.[1]

The question of freedom of Press although not specifically mentioned among the fundamental rights, it is implied from the freedom of speech and expression. The freedom of press is not merely the right of publishers, editors or proprietors of the news media but equally a right of the people to be informed adequately. Free passage of information ensures accountability and transparency of government machinery to a great extent. The freedom of press is thus essential for the smooth functioning of democracy. The extent of freedom of press is closely related with a given socio-political context. The question of freedom of press has arisen only after the struggle of the common people for greater liberty of expression and more active participation in the affairs of the government. So it can be said that society deprived of other freedoms cannot enjoy the said freedom of press. The freedom of expression of a society is directly proportional to the degree of attainment of freedom in socio-political arena.

The freedom of press is not absolute in any society all over the world. It is subject to such restraints as are deemed reasonable in a given context. These restrictions are imposed by the laws of the land, some limitations of freedom of press are constitutional and some are imposed by ordinary laws of the land. In Chapter III it has been discussed what role the superior courts play in upholding freedom of press, what constitutional guarantees the press enjoys in India, Pakistan and Bangladesh and how far restrictions may be imposed upon the

[1] *Article 19 of the Universal Declaration of Human Rights, 1948.*

press. Apart from these constitutional provisions, there are some laws which touch every member of society as well as the press. The freedom of press is made particularly limited by the laws relating to defamation, sedition, indecency, enmity between classes, public tranquillity, religious feelings and contempt of Court. Different sections of the Penal Code and Code of Criminal Procedure deal with these matters. It is to be mentioned here that since the Penal Code and the Code of Criminal procedure were framed during the British rule and since in all three countries of India, Pakistan and Bangladesh these laws are followed almost with little amendments, the effects of these laws on the freedom of press in these countries are uniform. Besides these Acts there are on the statute book some other acts or provisions in different Acts which are of a permanent nature and a few others which are of a transitory nature. The Acts that are permanently on the statute book are not many nor are they in any manner harsh in that they do not place irksome fetters on the free exercise of the right of a newspaper to publish news and views. In this category fall the Official Secrets Act, the Press and Registration of Books Act, the Copy Rights Act, the Post Office Act, the Contempt of Courts Act and so on. Research reveals that an emergent situation needs a quick and an effective remedy. To fulfil the demand of that situation, the ruling party has a tendency to enact laws which contain some rather harsh provisions and which arm the executive with powers which normally they ought not to have passed. The following are some of the important statutory laws which are of general application and which seemingly affect freedom of press also:

(a) Law of Defamation

Law of defamation has an important bearing on freedom of expression. "Defamation" is a broader term applied in reference to defamatory statements made by word of mouth or by writing. The wrong of defamation may take either of two forms-Libel and Slander according as the defamatory statement is made by way of speech, or by way of writing or its equivalent. It is libel if the defamatory representation is made in some permanent and visible forms, e.g., writing, printing etc., it is slander if made in some transitory form, such as word of mouth, gestures, or inarticulate sounds.

Defamation is an injury to a man's reputation. The reputation is his asset and any injury to it is actionable. A journalist may make a defamatory statement only at his peril. He may have to face a criminal charge and also a civil action for damages. An intimate

knowledge of the law of defamation is essential to every journalist and publisher of a newspaper.

Libel is the chief terror of newspapers. It is the publication of a false and defamatory statement, expressed in writing, printing or by signs, pictures or in some form which is permanent, published without lawful justification or excuse, concerning a person and which injures his reputation. It is calculated to convey to those to whom it is published an imputation on the person or injurious to him in his trade, profession, or business or holding him up in hatred, contempt or ridicule or tending to induce evil opinion of him in the minds of right-thinking persons. Such a statement is libelous and actionable whatever the intention of the writer may have been.[2]

Defamation is a tort which is punishable both civilly and criminally. Criminal law on the subject has been laid down in Chapter XXI of the Penal Code of India, Pakistan and Bangladesh, while the civil law has not yet been codified although an unsuccessful attempt was made towards the end of the nineteenth century to codify the entire law of torts or civil wrongs.[3] The law of torts in Indo-Pak-Bangladesh sub-continent is still based on the rules of common law of England and is applied on grounds of equity, justice and good conscience. In this sub-continent though there is no codified law regarding civil liability but sections 499-502 of the Penal Code deal with the nature and punishments of defamation. In a weighty judgment delivered concurrently by a Full Bench consisting of five Judges of the Calcutta High Court, Mukherjee C.J. who delivered the judgment on behalf of the Court after considering and discussing all the relevant authorities observed:

> "In this country the question of civil liability for damages for defamation and question of liability to criminal prosecution, do not, for the purpose of adjudication, stand on the same footing. It would be unsafe to interpret the sections on the Penal Code on the erroneous assumption that the framers did not intend to depart from the rules of the Common Law. If a party to a judicial proceeding is prosecuted for defamation in respect of statement made therein on oath or otherwise, his liability must be determined by reference to the

[2] P.N. Mehta, *"The Law of Journalism"* in Roland E. Wolsely (ed.) *Journalism in Modern India*, Bombay: Asia Publishing House, 1962, p. 189.
[3] Sheikh Abdul Halim, *Law of Defamation and Malicious Prosecution*, Lahore: Law Publishing Company, (1981), p. 1.

statements that make readers believe that the person is guilty of a crime, although no specific offence, is indicated, are libellous *per se*.[6]

Under certain circumstances, a publication that is not libellous per se and seems on its face innocent of defamatory meaning, may cause injury to the reputation of an individual, when the surrounding circumstances are taken into consideration. In these cases, the circumstances that surround the incident or its publication make it libellous rather than words themselves or their meaning. This is libel by *innuendo* or *libel per quod*.[7] In these cases, the circumstances that surround the incident or its publication rather than the words themselves or their ordinary meaning make it libellous. Even the name of the person concerned (Plaintiff) may not be specifically mentioned. But if the accusing fingers are judged by other to have been pointed at him action lies.[8]

To 'drop a hint, is to stab a reputation. The innuendo or libellous matter may be hidden among cleverly beautiful words. In the famous case ***Cassidy*** v. ***Daily Mirror Newspapers Ltd.***,[9] the engagement of a gentleman and a lady was announced by a photograph. The gentleman was already married. His lawful wife brought a suit for damages, alleging that by this announcement her friends understood to mean that she was not lawfully married but had been living an immoral life with her husband. The newspaper concerned had to pay damages of £500.

It is the duty of the journalist dealing with the copy concerned to detect any such objectionable material and save himself and the newspaper he has the honour to work for from any claim of damages.[10]

Newspapers are subject to the same rules as other critics, and have no special right or privilege, and in spite of the latitude allowed to them they have no special right to make unfair comments, or to make imputations upon a persons character, or imputations upon or in respect of a person's criticism or comments is as wide as that of any other subject, and no

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[6] *Ibid.*, p. 192.
[7] *Ibid.*
[8] *Ibid.*
[9] 1929 2. KB 331.
[10] P.N. Mehta, *op. cit.*, p. 194.

wider.[11] A journalist like any other citizen has the right to comment fairly and, if necessary, severely on a matter of public interest, provided the allegations of facts he has made are accurate and truthful, however defamatory they may be otherwise.

A fair and *bona fide* comment on a matter of public interest is not libel. Comment in order to be fair must be based upon facts, and if the defendant cannot show that his comments contain no misstatements of fact he cannot prove a defence of fair comment. Facts upon which the comment is founded must be truly stated later on they may not turn out to be true at all. A journalist does not transgress the limits of fair comment if all material facts are truly stated in the article, though it may be that there are one or two small deviations from absolute accuracy on minor points which have no influence on the conclusions, and the conclusions are such as ought to be drawn from the premises by a critic bringing to his work the amount of care, reason and judgment which is required of a journalist. But if the statement of fact is itself privileged, the plea of fair comment is not excluded by the fact that statement is erroneous.[12]

In an action for defamation, the defamer, publisher, editor, proprietor and printer are jointly and severally liable and may be sued for entire publication. But it is open to the plaintiff to sue any one of them singly, but he cannot recover more than one decree for a single defamatory statement for which several persons are jointly and severally liable.

From the foregoing brief survey it has been seen that the civil law relating to defamation, which is applicable in this subcontinent, is based on case laws and a remedy which is sanctioned by the Court is equitable remedy. In the absence of codified law in this field, the offences of defamation are triable under the provisions of he Code of Civil Procedure, 1908, and the Specific Relief Act, 1877. In a suit for libellous offence, the civil courts can order the defendant to give reasonable damages.

2. Criminal Law of Defamation

In the above paragraphs the offence of libel has been dealt with as a civil offence. The laws that are frequently used against media in different countries of the world including

[11] Ratanlal and Dhirajlal, *The Law of Torts*, Nagpur: Wadhwa Sales Corporation (1982), p. 177.
[12] *Ibid.*, p. 188.

India, Pakistan and Bangladesh are laws related with defamation hurting religious feelings and contempt of courts. Let us discuss the defamation laws in more detail since it is the widely used law against media. Since the dawn of civilization, the reputation of a person, the esteem in which he is held in society, the credit attached to his intellectual capacity and moral integrity by others is considered one of his most valuable assets. For maintaining the dignity of the individual and preserving his capacity for public good, it is necessary to give it adequate legal protection. Like any other legal system. Bangladesh has made her citizens immune by giving legal protection so that they are not defamed.

Section 499 of the Penal Code defines defamation as follows:

> "Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputations concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person is said, except in the cases hereafter excepted, to defame that person."

An analysis of the definition cited above would show that defamation, to be a criminal offence, requires three essentials:

(a) Making or publishing any imputation concerning any person.

(b) Such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations.

(c) Such imputations must have been made with the intention of harming or with knowledge or having reason to believe that it will harm the reputation of the person about whom it is made.

There are four explanations and ten exceptions appended to this definition. The explanation broaden the scrutiny of defamation as these include deceased persons, company or association worthy to be defamed.[13]

[13] For details *see* Section 499 of the Penal Code.

Exceptions mainly deal with the cases of exemptions from defamation. Exceptions 1, 2, 3, 4, 5, 6 and 10 are particularly related with the domain of journalists. Exceptions 2, 3, 5 and 6 relate to journalistic defence known as 'fair comment.' A journalist is exempted from the charge of defamation if he or she expresses in good faith any opinion whatever respecting the conduct of a public character, so far his character appears in the conduct.[14] It is also not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct.[15] True accounts regarding anything,[16] and true accounts of proceedings of the courts can be published even if they contain any defamatory substance.[17] If made in good faith, criticism of any performance when it is submitted to the judgment of people is not defamatory.[18] Good faith also defends a journalist against defamation when merits of a case, conduct of the persons concerned are criticised.[19]

The media litigation culture has not developed in our society as it had developed in America.[20] But we see quite a good number of litigations brought against the journalists in our country. The offences related with defamation and hurting religious feelings are triable in both civil and criminal courts in our country. Human rights activists argue that there is great scope for the laws relating to hurting religious feelings to be misused against the press holding opinion on religion and, in fact, they have been on occasions so misused.

Laws relating to the press vary considerably from country to country in the case of defamation and that which protects journalist's confidential sources. Different societies allow different levels of public access to government documents. So laws which enable citizens including media people to check government papers also vary in different countries. In fact, every society tries to strike a balance between individual's right to know, defamation and privacy laws and laws regarding national interest and security matters. The Americans have

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[14] Second exception.
[15] Third exception.
[16] First exception.
[17] Fourth exception.
[18] Sixth exception.
[19] Fifth exception.
[20] For many people in the USA, the law is the first resort when they have a complaint. Suing has become an acceptable response to unfavourable stories in the press. The million dollar libel suit has become the newest American status symbol. See for further details-Rodney A Smolla, *Suing the Press*, Oxford University Press, New York, Oxford, 1986, pp. 3-25.

placed the freedom of press in the central position in their legal system. Their common laws, can by no means, create any obstacles in the freedom of press. But this is not so in other countries including, India, Pakistan and Bangladesh.

The defamatory matter must be published that is communicated to some person other than the person to whom it is addressed e.g. dictating letter to the writer of it is publication. But where there is a duty which forms the ground or privilege occasion the person exercising the privilege may communicate matters to third persons in the ordinary course of business.[21]

An imputation in the form of an alternative or expressed ironically or which imputation directly or in recently lowers the moral or intellectual character of the person in respect of his caste or of his calling, or lowers the credit of that person or causes out to be relieved that the body of that person is in a loathsome state, or generally considered as disgraceful, is punishable.[22]

However, it is not defamatory under the Penal Code of India, Pakistan and Bangladesh, if imputation is true, if it is an opinion expressed in good faith in respect of the conduct of a public servant, in discharge of his public functions, substantially true report of Court proceedings, or touching any public question or to publish or to punish or to express in good faith any opinion in respect of the merits of the case, which has been decided, or the merits of any performance which its author has submitted to the judgment of the public, or the accusation by a person in lawful authority, over and for the protection of the interest of the person making it, or of any other person, or for the public good, or to convey a caution to one against another for the good of the person to whom it is conveyed, or some other person in whom he may be interested, or for the public good.[23]

Section 500 of the Penal Code, provides punishment for defamation which may extend to simple imprisonment of two years or with fine or both. No limit on the amount of fine to be imposed is mentioned.

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[21] Mazhar Hasan Nizami, *The Pakistan Penal Code with Commentary*, Lahore: The All Pakistan Legal Decisions, (1954), p. 509.
[22] P.N. Mehta, *op. cit.*, p. 200.
[23] *Ibid.*

Honest criticism ought to be and is, recognized in any civilized system of law as indispensable to the efficient working of any public institution or office and as statutory for private persons who make themselves of their work the object of public interest. The doctrine of fair comment is based on the hypothesis that the publication in question is one which, broadly speaking, is there in fact, and is not made to satisfy a personal vendetta, and further the facts, stated therein, are such as would serve public interest.[24] When any defamation committed by the newspaper, the position of the newspaper is not, in any way, different from that of members of the public in general. The responsibility in either case, is the same. The situation has been established by the judiciary through a number of cases in the sub-continent.

To begin with the case ***Vishan Sarup*** v. ***Nardeo Shastri and another***[25] where an appeal had been filed by Vishan Swarup complainant against an order dated 28.2.1963 of the Special Magistrate, 1st Class, Meerut, acquitting the respondents Nardeo Shastri and Devendra Kumar, Editor and Joint Editor, respectively, of a daily newspaper entitled ***Janta-Ki-Pukar*** printed and published from Mawana, District Meerut, of offences under section 501 and 502 of the India Penal Code.

The fact of the case, in short, was that the complainant was *Lekhpal* of village Mewa during the months of April and May, 1960. His house and property was situated in Mawana where his family resided. In the issue of Hindi daily ***Janta-Ki-Pukar*** dated 24.4.1960 a news item from a correspondent was published which contained imputation against *Lekhpal*, whose identity was not disclosed, to the effect that he (*the Lekhpal*) was in the habit of taking bribes from both parties in cases pending in the court of Sri Dharam Singh Rawat, S.D.M., and Sri Mathur, Tahsildar, Mawana; that the officers concerned were reputed to be honest and appeared to be unaware of the doings of the *Lekhpal*. The correspondent hinted that the officers should take notice of the matter. In another issue of the same paper dated 29.4.1960 the correspondent of the paper listed various misdoing of Vishan Swarup Lekhpal of village Mewa.

The problem that was posed before the court was whether a complainant could be allowed to join together news items appearing in two or more issues of a newspaper in order

[24] Suresh Narain Mulla (*et. al*), *The Penal Code*, Allahabad: Law Book Company (1983), p. 1898.
[25] AIR (1965) All. p. 439. Criminal Appeal No. 750 of 1963.

to fix the identity of the person defamed or whether the comments appearing in the said issues were made in good faith and in the public interest.

After full hearing of the case his Lordship D.P. Uniyal, J. on behalf of S.D. Khare, J. and himself dismissed the appeal and opined in paragraph 16 of the judgment:

> "A journalist possesses no higher right than an ordinary citizen has in respect of the freedom of speech. At the same time by virtue of the special character of his profession the journalist owes certain duties to the public, the most important of which is the dissemination of news and views fully and truly expressed on matters affecting the public good. In so far as he does that he serves a social purpose for by exposing the evils of the community or its servants to the public gaze he seeks to create a climate of opinion for their eradication. A newspaper editor, therefore, acts within his legitimate sphere when he offers criticism of what he considers and *bona fide* believes to be for the good of the community. But he is not protected if under the garb of criticism he employees language calculated to defame or degrade the character of a public servant or a private citizen. In order to pass the test of fair comment the publication must be free from malice and made *bona fide* and in public interest. Mere exaggeration or inaccuracy in matters of details does not make a comment unfair so long as what is expressed there is materially true and for public benefit."[26]

The same observation was held in the case of ***Gour Chandra Rout and another*** v. ***Public Prosecutor***.[27] In that case the accused, the editor, printer and publisher of the ***Matrubhumi,*** an Oriya Daily newspaper published from their office in Cuttack Town, a statement of a political leader to the effect that the Governor of Orissa was a mere toy in the hands of Congress and that the governor was favouring the Congress Party because a close relation of the Governor had got an appointment in the Assam British Oil Company on a fat salary through the endeavours of the Congress Government. The main points, for consideration in this case whether or not the prosecution was maintainable as in compliance with the provisions of section 198B, Code of Criminal Procedure, 1898 relating to

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[26] *Ibid.*, p. 441.
[27] AIR 1962 Orissa, p. 197, Criminal Appeal No. 108 of 1960 and Criminal Revision No. 304 of 1960.

prosecution for defamation against public servants in respect of their conduct in discharge of public functions and whether the accused Appellants can claim the benefit of any of the various exception to section 499, Indian Penal Code.

His Lordship S. Barman, J. dismissed the Appeal and Revision and held:

> "... the freedom of the journalists is an ordinary part of the freedom of the subject and to whatever lengths the subject in general may go, so also may the journalists, but apart from statute law, their privilege is no other and no higher."[28]

It was also observed in the above judgement that the offending passages were *prima facie* grossly defamatory of the Governor himself in respect of his conduct in the discharge of his public functions that none of the imputations made against the Governor were true and that the accused appellants published the statement containing the said imputations without due care and attention and without making any attempt at verification before publication and it was not published in good faith. The publication and printing of such untrue statements could never have been for the public good. The imputation exceeds the limits of fair comment, and the accused appellants were not justified in publishing and printing the said imputations without verification. Hence the conviction of the accused editor under section 500 and of the printer and publisher under section 501 was correct.[29]

K.K. Mathew, J. in ***Govind*** v. ***State of M.P.***[30] without specially saying anything observed that assuming that the fundamental rights explicitly guaranteed to a citizen to have penumbral zones and that the right to privacy is itself a fundamental right, the fundamental right must be subject to restriction on the basis of compelling public interest. In India the question of the right of privacy has arisen mostly in reference to the right to personal liberty. Before the Indian Courts, the question of freedom of speech and the right of privacy has not arisen so far. The question has come before the Courts of the United States which have, it seems, leaned in favour of freedom of speech. In India the question has come before the Court in the form of freedom of speech versus defamation. The Andhra Pradesh High Court

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[28] *Ibid.*, p. 202.
[29] *Ibid.*, pp. 197-198.
[30] AIR (1975) SC, p 1378, Writ Petition No. 72 of 1970.

in the case of ***K.V. Ramaniah*** v. ***Special Public Prosecutor***[31] held that section 499 of the Indian Penal Code, which deals with defamation was not violative of Article 19(1)(a). Nor can the freedom of press be used to infringe the law of defamation. Both the Courts held that the law of defamation imposed reasonable restrictions on the freedom of speech and expression.

Kumarayya, J. on behalf of Jaganmohan Reddy, J. and himself held:

> "Under Section 499, Penal code only such imputations as are malicious and reckless and not for public good, tranquillity or peace or public security or as are not made in good faith, have been brought within defamation which is but the abuse of freedom of speech and expression punishable under section 500, Penal Code. Therefore the provisions of section 499 can not be said to place any unreasonable restriction on the freedom of speech or expression. Hence section 499, Penal Code is not violative of Article 19. ... right guaranteed by the Constitution, it must be borne in mind, is to all the citizens alike. The right in one certainly has a corresponding duty to the other and judged in that manner also, the right guaranteed cannot but be a qualified one. Indeed the right has its own natural limitation."

The Pakistani view is that the right of free speech is not absolute and it does not give a licence to any person to indulge in utterances which are calculated to defame any person much less the President of the country who is not only to maintain law and order in the country, but must also have an image in all the countries of the world to project his country for an honourable place in the comity of nations.[32]

Freedom of expression does not give licence to damage honour and prestige of individual or of country and nation. Defamation is not permitted as a corollary to the freedom of expression under the Constitution. It has been made punishable under sections 499 and 500

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[31] AIR (1961) AP, p. 190.

[32] *Hussain Naqi* v. *District Magistrate*, Lahore: PLD (1973) Lahore 164, per Sardar Muhammad Iqbal J. at p. 181.

of the India, Pakistan and Bangladesh Penal Code. This law is not for the protection of the person attacked nor to punish the wrong-doer, it is for the protection of the public welfare.[33]

Journalist has no more, and certainly no less, freedom of opinion than what is available to any other citizen. He cannot, ordinarily, claim to belong to a privileged class entitled to special treatment.[34] They have rather responsibilities and should be more cautious in making scandalous imputations. The journalists do not enjoy any privileges other than ordinary citizen. It is to be mentioned here that in the case of ***Sewa Kram Sobhani*** v. ***R.K. Karanjiya, Chief Editor, Weekly Blitz and others***[35] an appeal, by special leave was directed against an order of the M.P. High Court dated April 15, 1978, quashing the prosecution of the respondent, R.K. Karanjiya, Chief Editor, ***Blitz***, for an offence under section 500 of the Indian Penal Code for publication of a news item in that paper which was *per se* defamatory, on the ground that he was protected under Ninth Exception to section 499 of the Code.

In that case *A.P. Sen, J. on behalf of O. Chinnappa Reddy, Baharul Islam JJ.* and himself observed:

> "... Journalists enjoyed some kind of special privilege, and have greater freedom than others to make any imputations or allegations, sufficient to ruin the reputation of a citizen. We hasten to add that journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under First Exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of fact like any other relevant fact in issue. If they make assertions of facts as opposed to comments on them, they must either justify these assertion or, in the limited cases specified in the Ninth Exception, show that the attack on the character of another was for the public good, or that it was made in good faith."[36]

The editor, printer and publisher of a newspaper must exercise due care and caution in publishing matter likely to defame others. It is undisputed that it is the duty of an editor of a

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[33] *Ibid.*, p. 182.
[34] *John Manjooran* v. *C.M. Stephen*, 1973 Ker. L.J. p 403.
[35] AIR (1981) S.C. p 1514.
[36] *Ibid.*, p. 1519.

newspaper to check up the news of the information that is supplied to him, before publishing the same in his paper, especially when the news might be of a defamatory nature, because ultimately it is the editor who would be held responsible for publishing any defamatory material in his paper. If he does not do that, he has to suffer the consequences for his neglect and remissness. In this regard the decision of the case of Mr. M. Anwar, Advocate General, *West Pakistan* v. *Saadat Khayali,* Chief Editor, Printer and Publisher of ***the Daily Halaat*** and other[37] is notable. In that case a criminal proceeding had arisen out of a complaint filed by Mr. M. Anwar, Advocate General of the West Pakistan, under section 500 of the Pakistan Penal Code against accused in the Court of the Additional District Magistrate, Lahore. The complaint was in respect of a news item which appeared in the issue of ***Daily Halaat***, a newspaper of Lahore, dated the 25th of January, 1963.

After careful consideration of all the facts and circumstances of the case the court passed the judgement on march 11, 1963, and observed:

> "...An editor should be most watchful not to publish defamatory attacks unless he first takes reasonable pains to ascertain that there are strong and cogent grounds for believing the information, which is sent to him, to be true . ...It is the duty of an editor of a newspaper to check up the news and views supplied to him before publishing the same in his paper, particularly when they might be of a defamatory nature. Unless he does it, he must suffer the consequences of his newspaper."[38]

A complaint for the offence of defamation may be made not only against the person making the imputation but also against the publisher and printer of the newspaper which publishes the defamatory statement. The word "makes or publishes" are wide enough to include both the printer and publisher. One of the important ingredients of the offence of defamation is that there must be intention, knowledge or reasonable belief that the publication would hurt the reputation of the complainant. It is presumed that the printer or publisher had such knowledge. Applying this test, the editor of a newspaper would also be liable unless it is shown that he had no control over the selection of the matter to be published. The proprietor

[37] 15 DLR (WP) (1963) p. 76.
[38] *Ibid.*, Wahiduddin J., p. 83.

of a newspaper would not be ordinarily liable, unless his responsibility for the publication of the defamatory matter is established.[39]

The editor of a local journal, controlling a media of publicity, helps in moulding the public opinion and his responsibility in the matter of publication is great. But he can claim no better privilege in the matter of publication of the libellous statements than his next door neighbour can claim.[40] In ***Bhibhuti Bhusan's case***,[41] an issue of a weekly journal, a statement regarding the complainant was made that during the last municipal election he managed to get through the security of his nomination paper by taking recourse to falsehood. It was held that due care and attention should have dictated further enquiries into the allegation and as no such enquiry was made, the editor must be deemed to have acted irresponsibly. If the impugned statement is defamatory, absence of malice will not be a valid plea even for a journalist unless he can establish that his plea comes within one of the exceptions to Section 499 of the Indian Penal Code.

It would be a sufficient answer to a charge if the editor proves that the libel was published in his absence and without his knowledge and that he had, in good faith, entrusted the temporary management of the newspaper during his absence to a competent person. When the editor is on leave and has entrusted his duties to a responsible person who has accepted the full responsibility for the publication of the libel, the editor cannot be held to be criminally liable.[42]

The criminal law of Bangladesh with regarding the defamation depends on the construction of section 499. The defamatory matter must be published, that is, communicated to some person other than the person to whom it is addressed, that is, dictating a letter to a clerk is publication. The person who publishes and the person who makes as imputation are alike guilty. The publisher of a newspaper is responsible for defamatory publishing in such paper whether he knows the contents of such paper or not. The editor of a journal is in no better position than that of an ordinary subject with regard to his liability for libel. he is bound to take due care and caution before he makes a libellous statement

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[39] R.C.S. Sarkar, *The Press in India*, 1984. p. 74.
[40] *Bhibhuti Bhusan Das Gupta* v. *Sudhir Kumar Mazumdar*, 1966 CrLJ, p. 1722.
[41] *Ibid.*
[42] *State v. D. Packiaraj*, 52 CrLJ p. 623.

In the case of ***Khondakar Abu Taleb*** v. ***The State and Mohammad Kamrul Anam Khan***,[43] the defendant by a press release made a statement which was published in some newspapers of Dhaka .The only question, on which the parties joined issue was, as to whether the contents of the publication , that Abul Kalam Shamsuddin was dismissed or removed from service or replaced from the post which he was occupying, namely, the post of "The Chief Editor" of the ***Daily Azad***, Dhaka, were untrue, and whether, it had been made with either or any of the harmful intents mentioned in Section 499 of the Pakistan Penal Code. The main question which the Supreme Court held out for decision is: Whether the press release was, in the circumstances, a deliberate and malicious distortion of fact, or as to whether the person responsible for the issuance of the Press release could have had no reasonable ground for believing it to be true and to have caused the publication to be made with any malicious intent.

Delivering the judgment on behalf of the Court his Lordship Hamoodur Rahman, J. observed that publication in newspaper of facts which can be reasonably believed to be true, or which can be inferred for circumstances, does not amount to any offence under the section.[44]

Their lordships further held that:

> "...In a criminal prosecution, for defamation under section 499 it is sufficient if the accused can show that the imputation was substantially true. The onus upon the accused of proving that his case comes within either of the exceptions may also be discharged, if he can show that he had reasonable ground for believing it to be true and was not actuated in making such an imputation by any malicious motive. The mere fact, therefore, that the imputation contained in the publication is factually incorrect, will not by itself be sufficient to warrant a conviction...."[45]

An editor should be more cautious about publishing any article in his newspaper. He will also be aware of publishing defamatory words. In the case of ***U Po Hnyin*** v. ***U Tun***

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[43] 19 DLR (SC) 1967, p. 198
[44] *Ibid.*, p. 198
[45] *Ibid.*, pp. 200-201.

Than[46] it is seen that an editor of a newspaper wrote an article in his newspaper pointing out the inconsistencies of the complainant's conduct in regard to the question of acceptance of ministerial office. Not content with writing this, the writer drew and published the inference that the complainant was altogether inconsistent and "topsy turvy". It was held by the Single Bench of Rangoon High Court that the use of such expression as "master of topsy turvy" is obviously defamatory and not justified by what the writer had previously written.[47]

Where the newspaper openly attacked the morality and reputation of the complainant and her daughter describing them as prostitutes engaging brokers and that they were in the habit of supplying their bodies to politicians, officials and police to gain their ends, the same was *per se* defamatory.[48]

It is seen from the above discussion that law relating to defamation does not create any barrier on people's right to freedom of speech and expression. In this regard Mack, J. ***In re* v. *Vengan and others case***[49] observed that:

> "... The right to freedom of speech and expression would not affect the operation of any existing law so far as it relates to libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security or tends to overthrow the State."[50]

Section 501 of the Penal Code punishes the person who prints or engraves any defamatory matter. Section 502 of the Code provides punishment for the person who sales any printed or engraved substance containing defamatory matter.

From the foregoing discussion of statutes and case laws it is evident that the criminal law of defamation is not inconsistent with the right to freedom of speech and expression and of the press. Though in a strict sense it is said that the criminal law of defamation puts an embargo upon freedom of press but after scrutinizing the relevant sections of the Penal Code of Indo-Pak-Bangladesh subcontinent and the case laws pressed before the superior courts of

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[46] AIR (1940) Rangoon, p. 21.
[47] *Ibid.*, Mackney J., pp. 21-22.
[48] *Konath Madhar Amma v. S.M. Sherief*, 1985 Cr LJ, p. 1496.
[49] AIR (1952) Madras, p.95, Criminal Revision Case No. 442 and Criminal Revision Petition No. 437 of 1952.
[50] *Ibid.*, p. 96.

these countries it appears that those remarks are not fully correct. It only puts a reasonable restrictions upon the freedom of press which is guaranteed by the constitutions of these countries and which is necessary for the benefit of the society and of the country. In the absence of these restrictions the press will write everything whatever it likes. But such liberty of the press is not acceptable because it will be dangerous and it will hamper the prestige and honour of individuals, through publishing defamatory articles. It is further evident that when a newspaper publishes any defamatory article, the writer, printer, publisher and editors are jointly liable for that defamatory statement if they could not show any exception. The superior courts of India, Pakistan and Bangladesh have also played a good role through interpreting the relevant laws on libel and upholding the real position of the press and the press personnels.

3. Other Statutes Governing the Press

(a) Sedition

Section 124A of the Penal Code of India, Pakistan and Bangladesh prescribes punishments for the offence of seditious writing. Section 124A of the Penal Code reads, "Words either written or spoken, signs or visible representations or anything would be treated as seditious if it brings or attempts to bring hatred, contempt or excites or attempt to excite dissatisfaction towards government established by law."

In ***Kedarnath Singh*** v. ***State of Bihar***[51] it was held that the provisions of section 124A are not unconstitutional as being violative of the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. The explanations criticism of public measure or comment on Government action, however strongly worded, within reasonable limits and consistent with the fundamental right of freedom of speech and expression is not affected. It is only when the words have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in.

The first and most fundamental duty of every Government is the preservation of order, since order is a condition precedent to all civilization and the advance of human

[51] AIR (1962) SC p. 865.

happiness. The security of the State and organized Government are the very foundation of freedom speech and expression which maintains the opportunity for free political discussion to the will of the people and it is, therefore, essential that the end should not be lost sight of man overemphasis of the means. The protection of freedom of speech and expression should not be carried to an extent where it may be permitted to disturb law and order or create public disorder with a view to subverting Government established by law. It is, therefore, necessary to strike a proper balance between the competing claims of freedom of speech and security of the State. This balance has been found by the Legislature in the enactment of section 124A which defines the offence of sedition for India, Pakistan and Bangladesh.

The law relating to sedition is couched in absolute terms. It leaves no scope for *mens rea*. The case of ***Queen Empress*** v. ***Jogendra Chander Bose and others***[52] was the first case which dealt with the offence of sedition in India and its implications in the Indian context. The main legal discussion started with this case. In that case Jogendra Bose and others were committed for trial at the Calcutta Sessions by the officiating Chief Presidency Magistrate. They were the Proprietor, Editor, Manager and Printer of the ***Bangobasi,*** a weekly Vernacular Newspaper, having a large mofussil circulation. They were charged under sections 124A and 500 of the Penal Code with attempting to excite feelings of disaffection to the Government established by law in British India through their weekly publications on some Particular dates. They had written five articles – *"Our Conditions," "The Revealed form of the English Rulers," "For the unicivilized undisguised policy is good" "The most important and the first idea of the uncivilized Hindu and "What is the end to be?"* In these articles futility of educational and other policies of the British Government were criticized. It was also stated that the Hindu Religion was being destroyed. Were they liable for sedition under section 124A of the Indian Penal Code?

His Lordship Petheram C.J. observed that:

> "It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill will against the Government and to hold it

[52] (1892) ILR XIX Calcutta p. 35.

up to the hatred and contempt of the people, and they were used with the intention to create such feelings."[53]

Bose, J. and his partners were, accordingly, held liable for sedition under section 124A, Indian Penal Code.

Sedition is of grave concern to any government. It is a step towards treason. It is destructive of public order and breeder of chaos. Yet when the country became independent the question as to how far the provisions of sedition in the Indian Penal Code are constitutional in view of the right to "Freedom of Speech and expression" guaranteed under Article 19(1)(a) of the Indian Constitution was examined in ***Kedarnath Singh*** v. ***State of Bihar.***[54]

On May 26, 1953, Kedarnath made a speech at village Baruni, P.S. Teghra in which he alleged that the Congress government was useless and was entangling the people in a mesh of bribery, black marketing and corruption, it was a stooge of the capitalists, consisted of goonda elements, and in its tyrannical ways were ruining the people.

The speech, it was alleged, was made with intent to cause or was likely to cause fear or alarm to the public. Kedarnath was convicted by the trial Magistrate under section 124A of the Indian Penal Code. His appeal to the High Court was dismissed. The Court stated that the speech was mere vilification of the government, that it did not criticize any particular policy or measure of the government, and that the speech was wholly seditious. In the appeal to the Supreme Court the main question in controversy was whether sections 124A and 505 of the Indian Penal Code had become void in view of the provisions of Article 19(1)(a) of the Indian Constitution.

After stating that the law of sedition in India was first introduced by Sir James Stephen in 1870 and discussing its history, Sinha, C.J., held that the security of the state depends upon the maintenance of law and order which is the very basic consideration upon which legislation, with a view to punishing offences against the state is undertaken. At the same time, such legislation has to protect and guarantee the freedom of speech and

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[53] *Ibid.*
[54] AIR (1962) S.C. p. 955, Criminal Appeal No. 169 of 1957.

expression which is the *sine qua non* of every democratic form of Government. Therefore, although the provisions of section 124A impose restrictions upon the fundamental freedom of speech and expression, yet these restrictions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that fundamental right and, therefore, they are not void.[55] Section 124A of the Indian Penal Code strikes the correct balance between individual fundamental rights and the interest of the public order. The Supreme Court in this case also upheld the constitutional validity of Sections 124A and 505 of the Indian Penal Code.

The man who is the proprietor and owner of the press and the publishing house connected with a seditious publication cannot be allowed to contend that he can shut his eyes to everything going on upon his premises and then pretended that he has no knowledge of the contents of the publication printed and issued by him. Where there is a *prima facie* evidence against him, he could have evidenced to show that, in spite of this circumstantial evidence against him, in fact he was away from the premises during the whole time the book was being printed and published and that he had not been informed either of the printing and publication or of the contents of the book. But if he does not call such evidence, he can be rightly convicted.[56]

In the case of ***Chellam Pillai*** v. ***Emperor***[57] it was held by the Rangoon High Court that:

> "In a case under section 124A, the mere authorship of a seditious leaflet which has been published by others would be sufficient to constitute the offence. So, where a person is proved to have caused the leaflet to be printed, he is liable to be dealt with under section 124A, whether he was responsible for its publication or not."[58]

In this regard a Division Bench of Karachi High Court Observed:

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[55] *Ibid.*, p. 969. Para, 28.
[56] Ejaz Ahmed, *Law of Crimes*, Allahabad: Rajasthan Law House (1987), vol. I, p. 289.
[57] AIR (1928) Rangoon, p. 276.
[58] *Ibid.*, Darwood, J., at p. 277.

> "The concept of freedom of expression would imply that every citizen is free to say or publish what he want, provided that he does not trample upon the rights of others and this freedom could become a mockery and delusory if while every man was at liberty to publish what he pleased, this was made impossible by a statutory authority merely by refusing permission to bring out a newspaper, through which means alone he could print and publish his thoughts."[59]

In ***Majibur Rahman*** v. ***The State***[60] case, it was observed by his Lordship Mustafa Kamal, J. on behalf of Muhammed Habibur Rahman J. and himself that with regard to the conviction of the accused under section 124A of the Penal Code read with paragraph (a) of Part I of the schedule to the Presidents' order, in order to sustain a conviction on this charge it necessary for the prosecution to adduce evidence that the accused brought into hatred or contempt or excited or attempted to excite disaffection towards the Government established by law in Bangladesh. In the present case the prosecution did not adduce any evidence to show that the accused in his speeches excited disaffection towards the Government of the People's Republic of Bangladesh established by law.[61]

From the above discussion it is clear that though the provisions of section 124A of the Penal Code impose restrictions upon the fundamental right to freedom of speech and expression and of the press but these restrictions are not fully curtailing the freedom of press and those restrictions are impossible under the constitutional provisions of India, Pakistan and Bangladesh.

(b) Obscene Publications

Section 292 of the Penal Code has prescribed punishments for publishing and sale of obscene publications. Obscenity is not defined in the laws of India, Pakistan and Bangladesh. But it is obvious that the word "obscenity" is taken from British laws. So we can explain obscenity as the Courts of England explained it. According to British Judges what distorts and contaminates human mind are obscene objects. The publication of obscene advertisement

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[59] *Ghulam Sarwar Awan* v. *Government of Sind*, PLD (1988) Karachi 414, Per Ajmal Mian, J., at p. 418.
[60] 35 DLR (HCD) p. 35.
[61] *Ibid.*, p. 38, para, 6.

is punishable. Offence under section 292 is punishable with imprisonment of either description for a term which may extend to three months or with fine or with both.

It is evident that the freedom of speech and expression is subject to reasonable restrictions in the interest of decency or morality. Under section 292 of the Penal Code it is an offence to possess obscene literature for purpose of sale or to sell such literature. The question came for consideration before the Court in ***Ranjit D. Udeshi*** v. ***The State of Maharashtra***,[62] (which is popularly known as Lady Chatterly's Lover's case) where section 292 of the Indian Penal Code was challenged as violative of Article 19(1)(a) of the Constitution of India.

In that case Ranjit D. Udeshi was one of four partners of a firm which owned a bookstall in Bombay. On or about 12.12.59 an obscene book called *Lady Chatterly's Lover* (Unexpurgated edition) was found in his possession for the purpose of sale. He was prosecuted under section 292 of the Indian Penal Code and sentenced to a week's simple imprisonment and a fine of Rs. 20.00. He appealed to the High Court and lost. He appealed to the Supreme Court raising the issue of freedom of speech and expression guaranteed by Article 19 of the Constitution.

The Supreme Court observed that restriction on obscenity was directly covered by "public decency and morality." Hidayatullah, J. observed, "treating with sex in a manner offensive to public decency and morality ... judged by our national standards and considered likely to pander to lascivious, prurient or sexually precocious minds, must determine the result ... A balance should be maintained between freedom of speech and expression and public decency and morality, but when the later is substantially transgressed the former must give way."[63] In the result the Court found the book obscene and held that section 292 Indian Penal Code manifestly embodies such a restriction because the law against obscenity, of course, correctly understood and applied, seeks no more than to promote public decency and morality.

So from the above discussion and analysis it is perceived that no man could publish or possess for sale any obscene book or paper which obstruct public decency or morality. It is

[62] AIR (1965) SC p. 881, Criminal Appeal No. 178 of 1962.
[63] *Ibid.*, p. 885.

further observed that freedom of press does not give anyone a licence to write or to publish anything which disturbs the public life or morality and in that case, Penal Code of this sub-continent is playing its due role to protect obscenity and morality.

(c) Outraging Religious Feelings

Section 295A of the Penal Code of India, Pakistan and Bangladesh is particularly concerned about the religious feeling of the citizens. Section 295A of the Penal Code reads, "Whoever, with deliberate and malicious intention of outraging the religious feeling of any class of the citizens of Bangladesh by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

In ***Ramjilal Modi*** v. ***State of U.P.***,[64] the editor, printer and publisher of a newspaper was convicted for publishing an article with the deliberate and malicious intention of outraging the religious feelings of Muslims. There the Court had to consider whether section 295A of the Indian Penal Code could be supported as a law imposing reasonable restrictions on the exercise of the right conferred by Article 19(1)(a) and is saved by clause (2) of Article 19. The contention raised on the appellants belief was that the law in question had no bearing on the maintenance of public order or tranquillity and consequently such a law could not claim protection of clause (2) of Article 19 on the ground that it merely places reasonable restrictions on the right to freedom of speech and expression. The Court held that the right to freedom of religion assured by Articles 25 and 26 is expressly subject to public order, morality and health. It could not, therefore, be predicated that freedom of religion should have some or no bearing whatsoever on the maintenance of public order or that a law creating an offence relating to religion could not, under any circumstances, be said to have been enacted in the interest of public order. These two articles in terms contemplate that in the interest of public order restrictions may be imposed on the rights guaranteed. On an examination of the provisions, the Court found that clause (2) of Article 19 permitted making of a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of public order, which is much wider than the expression "for

[64] 1957, SCR 860.

the maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, the law penalizing such activities as an offence could not but be held to be a law imposing reasonable restrictions "in the interests of public order", although in some cases these activities may not actually lead to a breach of public order. Secondly, section 295A does not penalize any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens, but it penalizes only those acts which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of a class of people. The law penalizes only aggravated forms of insults to religion which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class, when such insults have a tendency to disturb public order. Therefore, a section which penalizes such activities is well within the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Indian Constitution.

In the case of the ***Working Muslim Mission and Literary Trust, Lahore and another*** v. ***The Crown***,[65] an application was brought before the Court under section 99B of the Code of Criminal Procedure in respect of a book entitled *"Jesus in Heaven or Earth"*, written by Khawaja Nazir Ahmed, an Advocate and connected with the Lahore branch of the Ahmadiya Sect, and published in 1952 by the Working Muslim Mission and Literary Trust. The book in question was forfeited to the Government of Pakistan by an order of the Punjab Government in April 1953, on the ground "that it contains matter the publication of which is punishable under section 295A of the Pakistan Penal Code, as it tends to insult the religious beliefs of the classes of subjects in Pakistan."

After full hearing his Lordship M.R. Kayani, C.J. on behalf of Shabir Ahmed and M.A. Soofi JJ. and himself at para 25 of the judgment held that section 295A was introduced to punish an insult to religion or religious beliefs, provided there exists "a deliberate and malicious intention of outraging the religious feelings of any class. Agreeing with Kayani, C.J. his Lordship Shabir Ahmed, J. added:

> "... Section 295A of the P.P.C. which on its language is applicable to those insults to religion or religious beliefs which in addition to being deliberate and

[65] 7 DLR (1955) WP (F.B) p. 17, Criminal Original Petition No. 6 of 1963.

malicious are intended to outrage the religious feelings of the followers of that religion ... The plain meaning of the above part of section 99D is that the order of the Provincial Government passed under section 99A can be set-aside only if it could not have been passed on any of the grounds mentioned in section 99A and not merely on the ground that the writing etc. which have been forfeited contains matter which though it falls under section 99A of the Code of Criminal Procedure does not offend against that section of the Penal Code which the Provincial Government was of the view that it offended."[66]

Section 295A is not inconsistent with Article 19(2) or Article 25 or 26 of the Constitution of India. In ***Samit Das Maheshawari*** v. ***Babu Ram Jodoun and others***[67] case it was argued before the Allahabad High Court that whether section 295A of the Indian Penal Code come in conflict with either Article 25 or Article 26 of the Constitution and be said to be violative of those two provisions.

His Lordship S.D. Singh, J. on behalf of W. Broome, J. and himself held:

"... Section 295A of the Indian Penal Code does not at all, therefore, come in conflict with either Article 25 or Article 26 of the Constitution and cannot, by any stretch of imagination, be said to be violative of those provisions. If it does impose any restriction, it is within the four corners of the expression "subject to public order, morality and health."

(d) Promoting enmity between different groups

Sections 153A and 153B of the Penal Code are particularly related with the press. Section 153A reads, "Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of citizens ... shall be punished with imprisonment which may extend to two years or with fine, or with both"; and section 153B reads, "Whoever by words, either spoken, or written or by signs, or by visible representations, or otherwise, induces or

[66] *Ibid.*, p. 33.
[67] AIR (1969) All. p. 436, Special Appeal No. 321 of 1966.

attempts to induce any student or any class of students, or any institution interested in or connected with students, to take part in any political activity which disturbs or undermines, or is likely to disturb or undermine the public order shall be punished with imprisonment which may extend to two years or with fine or with both.

(e) False statement in connection with an election

Section 171G of the Penal Code Prohibits anybody to make any false statements about the election with a view to influencing the results of the elections. Section 171G reads: "Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine."

So it is seen that this law directly touches the press.

(f) Forfeiture Under Code of Criminal Procedure

Section 99A to 99G of the Code of Criminal Procedure, 1898 (Act V of 1898) provide for the forfeiture of such publications which are intended to promote feelings of enmity or hatred between different classes and which publications are punishable under sections 123A, 124B or 153A or 295A of the Penal Code. The aggrieved party, however, has been granted right to apply to the High Court to set-aside such order on the ground that the issue of the newspaper did not contain such matter. On the receipt of such application, the High Court will constitute a special Bench and may, if so satisfied, set-aside the order of forfeiture. This provision has been proved to be of great help to the press and many executive wrongs have in the past years been righted by judicial decisions. It is to be noted here that the above provisions are only applicable in Pakistan and Bangladesh. The Indian authority has changed the provisions of Sections 99A to 99G by an order of amendment of the Code of Criminal Procedure in 1973.

(g) Section 108 of the Code of Criminal Procedure

Section 108 empowers the Government to demand security both from private individuals and from those responsible for running, printing and publishing a newspaper if it is found that their intention is to disseminate or about the dissemination of any matter which is punishable under section 124A or section 153A or any matter concerning a judge which amounts to intimidation or defamation. Upon failure to give security demand by the Government the delinquent would be liable under section 123 of the Code of Criminal Procedure to be sentenced to undergo imprisonment.

No proceedings shall be taken under this section against the editor, printer, publisher or proprietor of any publication registered under and edited, printed and published in conformity with the provisions of the Press and Registration of Books Act, 1867, the West Pakistan Press and Publication Ordinance, 1963 and the Printing Presses and Publications (Declaration and Registration) Act, 1973, in the case of India, Pakistan and Bangladesh, respectively, with reference to any matters contained in such publication except by the order or under the authority of the Government or some officer empowered by the Government in this behalf.

(h) Section 144 of the Code of Criminal Procedure

This section at times been resorted to enforce pre-censorship. This is a section which arms the Magistrate with a power for temporary orders being passed in urgent cases of apprehended danger. Under section 144 of the Code of Criminal Procedure, 1898 a Magistrate can direct a person to abstain from doing any of the acts the right to do which is guaranteed under Article 19. Therefore, section 144 through an order passed under it by a Magistrate, imposes restrictions cannot seriously be doubted. If the acts are likely to cause obstruction, annoyance, etc., they must be prevented. The Magistrate is required to state material facts to justify his passing the order.

In the case of *Sri Raj Narain Sing and others* v. *District Magistrate, Gorakhpur and another*[68] it was held by their Lordships that:

> "The restrictions that can validly be imposed on the freedom of speech and expression are those in the interests of public order, decency or morality or in relation to incitement to an offence, but section 144 permits restrictions also in the interests of preventing obstruction, annoyance or injury, risk to obstruction, annoyance or injury and danger to human life, health or safety. Similar is the case with other acts mentioned in Article 19(1). It cannot be doubted that at least to the extent that section 144 permits restrictions in excess of those permitted by Article 19(2) (3) it is void under Article 13."[69]

(i) Section 505 of the Penal Code

This section makes publication or circulation of any statement, rumour or report punishable if it is made with intent to cause or which is likely to cause any officer of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or with instant to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit to offence against the State or against public tranquillity or with intent to incite, or which is likely to incite, any class of community of persons to commit any offence against any other class or community.

(j) The Press and Registration of Books Act, 1867

This Act is the oldest surviving press law. It is merely a procedural law and a regulatory measure and it is not intended to put any restrictions on freedom of press or to establish governmental control over newspapers. As the long title would show, it is an Act for the regulation of printing presses and newspapers, for the preservation of copies of books and newspapers in India and for the registration of such books and newspaper. In Pakistan this Act has been repealed and re-enacted by the Press and Publications Ordinance, 1960. In India the Act as it at present stands was amended in 1956. This deals with newspapers, books and

[68] AIR (1956) All. p. 481, Criminal Misc. Writ No. 962 of 1955.
[69] *Ibid.*, Per Desai J. at p. 485.

printing presses. Every newspaper must contain the name of the person who is the editor and his name must be printed clearly on each copy of the newspaper as the editor of the paper. In Bangladesh, this process is followed by the provisions of the Printing Presses and Publications (Declaration and Registration) Act, 1973.

(k) The Telegraph Act, 1885 and the Indian Post Office Act, 1898

The Telegraph Act, 1885 empowers the government to take possession of licensed telegraphs and to order interception of messages. Thus, mass media could easily come under the scrutiny of this Act. The Indian Post Office Act, 1898 is related with the press, since it provides some mailing facilities to the newspapers as well as impose some sorts of restrictions.

Section 26 of the Indian Post Office Act empowers the Government or an authorized officer to intercept or detain a postal article or dispose of the same in such manner as may be directed on the occurrence of any public emergency or in the interests of the public safety or tranquillity. Under section 27B of the Act, power is given to certain officers of the post office to detain any newspaper or other postal article in the course of transmission by post where such officers suspects that the newspaper or postal article contains any seditious matter.

(l) The Dramatic Performance Act, 1876

It is said in the preamble that the Act was passed to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene. But, in practice, the Act was aimed prohibiting any performance of dramas which was anti-East India Company or their corrupt officers and the Indigo planters. It is strange to know that though the British rule ended in 1947, yet the Act passed to perpetuate their rule has been kept alive till today.

(m) The Official Secrets Act, 1923

Certain provisions of the Official Secrets Act prohibit anybody to go to certain areas,[70] to gather information from certain persons and to publish certain classified information. Section 4 of the Act prohibits a person to gather information from any foreign agent. The Act prohibits anyone to publish any secret information or to make any wrongful communication with this information.

There have not been many cases of prosecution under this Act. The only important case seems to be the one which came before the Supreme Court of India is the case of ***State*** v. ***Captain Jagjit Singh***.[71] The accused in that case was a Captain in Indian Army. At the time of his arrest he was employed in the delegation in India of a French Company. He and two others were prosecuted, among other things, under sections 3 and 5 of the Official Secrets Act. They were charged with passing an official secrets to a foreign agency. The High Court allowed the bail petition of the accused and when the matter came before the Supreme Court, the Court took a serious view of the offence and said that this was an offence of a very serious kind affecting the safety or the interests of the State and considering the nature of the offence this was not a case where discretion, which undoubtedly vests in the High Court under Section 498, Cr.P.C., should have been exercised in favour of the accused. The highest Court thus upheld the stringent provisions of the Act. This Act is a special Act and was enacted for a special purpose. The purpose is nothing other than protecting the security of the State.

(n) The Press and Contempt of Court

The press plays a vital part in the administration of justice. It is the watchdog to see that every trial is conducted fairly, openly and above board. Freedom of speech and expression is important, but much more important is the effectiveness of the administration of justice without which the rights guaranteed by the Constitution will merely be embellishments.

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[70] A long list of prohibited places are specified in the Section 2(8) of the Official Secrets Act, 1923.
[71] AIR (1962) SC p. 253

Provisions of the contempt of courts have given power to the superior courts of India, Pakistan and Bangladesh to deal with the contempt of court if by word or by writing the offender brings down the image and dignity of any court of law in India, Pakistan and Bangladesh or impedes the course of law. Matters related with contempt of courts are codified in the Contempt of Courts Act, 1926. Besides, Articles 129 and 215 of the Constitution of India, Article 204 of the Constitution of Pakistan and Article 108 of the Constitution of Bangladesh and sections 172-190 and 228 of the Penal Code and the sections 480-487, 476 and 195 of the Code of Criminal Procedure deal with the matter related with the contempt of courts.

To begin with the case ***S.K. Sarkar*** v. ***Vinay Chandra Misra***[72] where the appellant raised a question of law as to the jurisdiction and powers of a High Court to take action *suo motu* under section 15 of the Contempt of Courts Act, 1971. In that case R.S. Sarkaria, J. observed:

"Articles 129 and 215 preserve all the powers of the Supreme Court and High Court which include the power to punish the contempt itself. There are no curbs on the power of the High Court to punish for contempt of itself except those constrained in the Contempt of Court Act."[73]

The same view was passed in the case of ***Badsha Mia and others*** v. ***Abdul Latif Majumder and others.***[74] In this case Latifur Rahman J. on behalf of Sahabuddin Ahmed C.J., M.H. Rahman J. and himself held that:

> "Power of High Court Division to institute a contempt proceeding is a special jurisdiction which is inherent in all courts of record and the High Court Division can deal with it summarily and adopt its own procedure. Normally contempt proceedings are disposed of by affidavits and counter affidavits. Question of taking evidence would have arisen of the petitioners specifically

[72] AIR (1981) SC p. 723.
[73] *Ibid.*, p. 726
[74] 43 DLR (AD) (1991) p. 10.

denied the statements made in the petition for drawing up a proceeding for contempt."[75]

To commit someone for contempt of court and punish him for it, said F.K.M.A. Munim C.J., if found guilty, is the inherent power of a Court of Record. The Supreme Court of Bangladesh is such a Court. The power is no doubt extraordinary. The judge who commits anyone for contempt of Court is both prosecutor and arbiter of the alleged offence. It is therefore, not unusual to issue a notice for contempt of Court when occasion arises.[76]

Freedom of Press does not essentially mean to write anything insulting, improper and malicious to assassinate the character of person and to lower one's prestige and honour in the society. No one can have the privilege to write and publish anything wrong or falsely to the prejudice of others. It must be remembered that judges by reason of their office cannot be made a subject of criticism in the press for administration of justice. Any such act by the press shall amount to interference with the administration of justice and act of Contempt of Court. In this connection his Lordship F.K.M.A. Munim, C.J. further remarked:

> "The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege according to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise."[77]

The Contempt of Court Act, 1926 was passed to remove the controversy as regards the power of a High Court to punish for contempt of a subordinate court. The Act of 1926 was replaced in India by the Act of 1952. The working of the 1952 Act revealed that it needed changes and a Special Committee was appointed under the Chairmanship of H.N. Sanyal, the then Additional Solicitor General, to examine the entire law on the subject and on the recommendation of that committee, the Contempt of Courts Act, 1971 was enacted.[78] Though this Act is now applicable in India in a changed form, but in Pakistan and Bangladesh the earlier law of Contempt of Court still exist. The purpose of the law of

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[75] *Ibid.*, p. 12.
[76] *Moazzem Hossain, Deputy Attorney General* v. *The State*, 35 DLR (AD) (1983), p. 295.
[77] *Ibid.*
[78] R.C.S. Sarker, *The Press in India*, pp. 128-129.

contempt is to clothe the court with necessary sanctions to protect itself and the administration of justice against scurrilous allegations. The Contempt of Courts Act 1971 fortifies the law of contempt of Court, thereby affording greater protection to the judges. We would review here some of the leading cases.

In *Bamkim Chandra Paira and another* v. *Ananda Bazar Patrika and another*[79] a Rule was issued upon the Editor, Printer and Publisher of the *Ananda Bazar Patrika* and the *Swaraj O Sangathan* to show cause why they should not be committed for contempt for publication in their respective newspapers of news items published on the 5th July, 1949 and the 8th July, 1949 respectively under the captions "Narayangarh (Midnapore)"-Trouble Created by communists" and "Paddy looted during broad day light." The *Ananda Bazar Patrika* was a very influential and popular Bengali daily published from Calcutta and enjoyed a very large circulation amongst the Bengali speaking population of Calcutta. The *Swaraj O Sangathan* was also an influential Bengali Weekly published by the District Congress Office, Midnapore.

Both the newspapers published that the Communists lotted away about 70 mounds of paddy in broad day light from a paddy granary of Laxmi Narayan Prodhan in village Kajichak within the Police Station of Narayangrah during his absence on the 17th May, 1949.

The reference was to some accused persons who were under trial prisoners, and police investigation was yet not completed for alleged offences under sections 146, 342, 307 and 380 Indian Penal Code. In the offending article they were described as communists to which the petitioners protested and further there was a further recommendation for the cancellation of their bail bonds on the ground that they had created a panic in the locality after their release on bail. After the hearing their Lordships Lahiri and Blank, JJ. noted:

> "Any publication which is calculated to poison the minds of the jurors, intimidate witnesses or parties, or to create an atmosphere in which the administration of justice would be difficult or impossible amounts to contempt... It is also clear that a person may be guilty of contempt though there was no intention to commit contempt. It is sufficient if the effect of the

[79] AIR (1950), Cal. p. 129, Criminal Misc. Case No. 132 of 1949.

article complained of is to create prejudice and to interfere with the due course of justice.[80]

In the case of ***State*** v. ***Vikar Ahmed and another***,[81] an article entitled *"Appointment of Shri Shripatrau as the Chief Justice"* was published on 22.9.1953, in the newspaper called the ***Nizam Gazette.*** Notices were issued to Syed Vikar Ahmed and Mohd. Abdur Rahman, the Editor and Joint Editor of the paper, to show cause why proceedings under the Contempt of Courts Act of 1952 should not be taken against them, as the article *prima facie* amounted to contempt of the Chief Justice and other Judges of the High Court of Hyderabad in the discharge of their duties. By their replies of 1.11.1953, both the Editor and the Joint Editor pleaded that they did not intend to commit any contempt, their newspapers fully realized the high position of the Court and they beg apology. In Vikar Ahmed's case the main object of the article was found to scandalize the Chief Justice and the Judges of the High Court by stating that the Chief Justice *"wants to leave Hyderabad after uprooting everything."* The article criticized Judge's partiality for English as Court language rather than urdu, and reference was to the Judge's various irregularities against law. It also exhorted the vakils to do their work without being disheartened, agitated or disturbed. This was on the premises that Judges were hopelessly in the wrong. The Court held that it was scandalizing the Judges, and not mere fair criticism. The contemner editors pleaded not guilty with a rider that should the Court hold that there was contempt, they apologies for the same. The court refused to accept this conditional apology, as it was not really a boarder line case and that this was merely advice to provide the only mode of escape."[82]

It was held by the Division Bench of Hyderabad High Court comprising their Lordships Mohammed Ahmed Ansari and Jaganmohan Reddy, JJ. in Paragraph 9 of the judgement that the article amounted to contempt of the High Court and observed:

> "The freedom of press under our Constitution is not higher than that of citizen, and there is no privilege attaching to the profession of the press as distinguished from the members of the public. To whatever height the subject in general may go, so also may the journalist, and if an ordinary

[80] *Ibid.*, pp 182-183.
[81] AIR (1954) Hyd. p. 175.
[82] *Ibid.*, p. 178, paragraph 8.

> citizen may not transgress the law so must not the press. That the exercise of expression is subject to the reasonable restriction of the law of contempt, is borne out by clause (2) of Article 19 of the Constitution. It should be will to remember that the Judges by reasons of their office are precluded from entering into any controversy in the columns of the public press, nor can enter the arena and do battle upon equal terms in newspapers, as can be done by ordinary citizens."

The same view was passed by the Supreme Court of Pakistan in the case of ***Sir Edward Snelson*** v. ***The Judges of the High Court of West Pakistan***.[83] The brief fact of the case is that Sir Edward Snelson was the Secretary of the Ministry of Law of the Government of Pakistan. While addressing the Section Officers of the erstwhile Pakistan he made certain observations with regard to the power of the Supreme Court and the High Courts of Pakistan to issue writ after proclamation of Martial Law by the Military Ruler General Ayub Khan of Pakistan. The offending passages contained in the talk were printed in Pamphlet entitled *"The Transitional Constitution of 1958"* copy of which was forwarded to the Registrar, High Court of West Pakistan, Lahore. The Supreme Court of Pakistan in this case dealt in a great detail and almost all aspects of law of contempt were considered as the contemner defended himself.

Their Lordships in the result dismissed the appeal and observed:

> "The words of which they complained do constitute libel upon the Court. Such as is calculated to interfere with the proper administration of justice by the High Courts and they therefore Constitute contempt of Court."[84]

In a recent case, the High Court Division of the Supreme Court of Bangladesh held that where a newspaper article attacks the Judges, it is to be seen whether the article has exceeded the limits of fair interference, legitimate comment and criticism.[85] In this case the Court issued *suo motu* rule upon reading the article *"The Parliament and the Judiciary at Loggerheads?"* published in the ***Daily Star*** on February 06, 1995 written by Mr. Ashok K.

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[83] 16 DLR (SC) (1964) p. 535.
[84] *Ibid.*, Per Cornelius C.J., at p. 564.
[85] *Judges of the High Court Division* v. *Ashok Kumar Karmaker*, 48 DLR (1996) 179 at p. 183.

Karmaker, Assistant Judge, Tangail. The author in his article remarked, *"We really do not need spineless men as Judges."* After the hearing their lordships said that the article exceeded the limits and tends to scandalise the Judges to lowdown their dignity in the estimation of the general public and is calculated to interference with the administration of justice.[86] The learned Judge clearly held:

> "Where the writing contains scandalous language to bring the Court into disrespect and castigates its dignity, its majesty and challenges its authority specially when the writer has knowledge about the contempt law and working of courts of law he commits contempt of Court."[87]

From the above it is evident that no judge is immune from criticism. But the criticism must take the form of reasonable argument. It must be made in good faith and must be free from the imputation of improper motive.

The courts are always guaranteed a right to express themselves and they are protected by the law of contempt, because if that were not done, the judiciary would soon lose the respect and esteem in which it is held, and it would be difficult for the judges to pursue their vocation fearlessly.[88] In the exercise of freedom of speech and expression, nobody can be allowed to interfere with the administration of justice. The question came for consideration in ***E.M. Sankaran Namboodiripad*** v. ***T. Narayanan Nambiar.***[89] The fact of the case was in short is that Mr. E.M.S. Namboodiripad, the former Chief Minister of Kerala had filed this appeal against his conviction and sentence of Rs. 1000.00 fine or simple imprisonment for one month by the High Court. The conviction was based on certain utterances of the appellant, when he was the Chief Minister, at a Press Conference held by him at Trivandrum, on November 9, 1969. The report of the Press Conference was published on the following day in some of the Indian newspapers.

According to the report of the ***Indian Express*** newspaper, the then Chief Minister in the press conference observed that Marx and Engels considered the judiciary as an instrument of oppression and even today when the State set-up had not undergone any change it

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[86] *Ibid.*
[87] *Ibid.*, Per A.M. Mahmudur Rahman, J. p. 182.
[88] Shaukat Mahmood, *Constitution of Pakistan, 1973,* p. 127.
[89] AIR (1970) SC p. 2015, Criminal Appeal No. 56 of 1968.

continued to be so. Judges were guided and dominated by class hatred, class interests and class prejudices and where the evidence was balanced between a well dressed pot-bellied rich man and a poor ill-dressed and illiterate person the judge instinctively favoured the former. In deciding the appeal his Lordship Hidayatullah, C.J. on behalf of the Court opined:

> "Article 19(1)(a) guarantees complete freedom of speech and expression but it also makes an exception in respect of contempt of court. The guaranteed right on which the functioning of our democracy rests, is intended to give protection to expression of free opinions to changed political and social conditions and to advance human knowledge ... We agree with observations and can only say that freedom of speech and expression will always prevail except where contempt is manifest, mischievous or substantial. The question always is on which side of the line the case falls."[90]

It is apparent that the law of contempt of court places no unreasonable restrictions on the freedom of speech and expression and it does not curtail the freedom of press. When any contemptuous articles published in a newspaper the editor, printer, publisher, and the writer is equally liable for the same but where the name of the author is disclosed hardly the Court should hasten to punish contemners.

The laws relating to press which have already been discussed in the previous pages are almost commonly used in India, Pakistan and Bangladesh. After the independence of 1947, the above countries have changed some of their Press laws. In the case of India no major changes have taken place but in Pakistan and Bangladesh radical changes have taken place.

On April 26, 1960 the President of Pakistan, Field Marshal Ayub Khan announced the repeal of two antiquated legislations, the Press and Registration of Books Act, 1867 and the controversial Press (Emergency Powers) Act, 1931. Instead, a new consolidated Press and Publications Ordinance, 1960[91] (Ordinance XV of 1960) was promulgated.

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[90] *Ibid.*, Per Hidayatullah C.J., p. 2019.
[91] *Gazette of Pakistan*, Extra Ordinary, 26th April, 1960.

One of the healthiest provisions of the new Ordinance is that the executive authority cannot demand a security deposit from a newspaper or a printing press or forfeit a deposit previously made, without the express section of the judiciary. The Government thus accept a long standing demand of the newspapers to restrict the executive powers vested in the District Magistrates to demand from any newspaper a security deposit for real or fancied violation of the provisions of the Press Act of 1931.

Thus it has been observed that Pakistan Press enjoys a lot of freedom during the 1960s. But the reality was different. Whatever freedom the Pakistani Press still had was sought to be curbed in October, 1963, by amending the Press and Publications Ordinance of 1960. Newspapers law found it highly difficult to publish any news which might be considered embarrassing for the Government. ***The Azad, the Ittefaq and the Sangbad,*** three popular newspapers of the then East Pakistan, were constantly harassed and repeatedly made to pay heavy security deposit. Sometimes, newspapers had to cancel publication for a particular day because they received some instructions from the Government at the last moment.[92]

The Defence of Pakistan Ordinance of 1965 and the Defence of Pakistan Rules were issued by the military rulers to suppress the newspapers nakedly. The publication of the ***Daily Ittefaq*** was stopped under the Defence of Pakistan Rules. The ***New Nation Press*** was also forfeited by the Governement.[93] Under the provisions of West Pakistan Press and Publications Ordinance, 1963, a publisher can be penalized for practically any printed word or sketch disliked by the Government. The publisher is usually required to deposit a very heavy security bond, which he cannot afford to lose.

Press censorship had been imposed in Pakistan in 1971, on the outbreak of the civil war in East Pakistan. In 1973 Bhutto warned newspaper editors that "Press freedom cannot [take] precedence over survival of the nation." In the same year he threatened reprisals against the endless invectives and diatribes causing subversion and chaos." In 1975 all newspapers were forced to agree to operate under *"Press Advice"* given by official over the telephone. Twice the government reimposed censorship for brief periods: in October 1975,

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[92] S.K. Chakraborti, *The Evolution of Politics in Bangladesh* (New Delhi: Associated Publishing House, 1978), p. 117.
[93] Abu Nasr Md. Gaziul Hoque, *op. cit.*, p. 24.

when the press was prohibited from publishing news of the political situation in the Punjab, and in April 1977, when it was forbidden to publish reports of the opposition's campaign against Bhutto. During these periods uniformed Policemen visited newspaper offices to enforce compliance.[94]

Formal censorship was reimposed on the Pakistani Press in October, 1979. The blanket control replaced years of self-censorship by Pakistani journalist. ***The Times*** of London characterized the censorship as *"more severe than anyone can remember in the 32 years of [Pakistani] troubled existence."* Even letters to the editors are censored and paragraphs cut out. Blank spaces are common occurrences in newspaper columns. Neither truth nor public interest may be used to justify publication of news items that the censors consider offensive.[95]

In December, 1981, censorship was withdrawn from literary and educational books and magazines and in January, 1982 pre-censorship on daily newspapers was discontinued. Prepublication censorship continued, however, on political, semipolitical and nonliterary weeklies, monthlies and other periodicals. In December 1985, freedom of press was restored in principle when Martial Law was repealed and the Constitution was restored.[96]

In 1988 an interim government annulled the Press and Publications Ordinance, which was known as the "Black Law", and promulgated in its place the Press Registration Ordinance. This solved some of the outstanding problems including the need for the issuance of a declaration, or a letter of governments permission to start a periodic publication.[97] This restore the freedom of Press in Pakistan. In 1990 the press was further liberalized and about 200 new publications appeared.[98]

From the above discussion and analysis it is apparent that until 1958, when marital law was imposed for the first time, the Pakistani Press enjoyed a fair measure of freedom. Press freedom was curtailed during the martial law regime to a greater extent. President Ayub Khan introduced the 'black law' which hampered the freedom of press for many years.

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[94] George Thomas Kurian *(ed.) World Press Encyclopedia* (London: Mansell Publishing Ltd., (1982) p. 711.
[95] *Ibid.*
[96] *The Europa World Year Book, 1993,* vol. II, Europa Publications (1993) p. 2217.
[97] Anura Goonasekeral, *Duncan Holoday, op. cit.,* at p. 140.
[98] *Supra,* p. 2217.

Bhutto, mercilessly diminished freedom of Press for his government's own interests. During the reign of General Zia-ul-Huq Press curbs were relaxed and publications were allowed to express their opinions with relative freedom. It is to be noted here that none of the Press laws or the statutory laws were cut down. But when the Constitution restored, then the Press became reasonably free in Pakistan.

After the independence of Bangladesh the Awami League government repealed the Press and Publications Ordinance, 1960 and introduced a new law called the Printing Presses and Publication (Declaration and Registration) Ordinance (Ordinance No. XVI of 1973) 1973. The purpose of passing the Ordinance was to provide for declaration for keeping of printing presses and the printing and publication of newspaper and for registration of books.[99] But once the new law was published it was found that it was in essence a duplication of the other. The whole purpose was to control the declaration and registration of media service.[1]

The Printing Press and Publication (Declaration and Registration Act of 1973 was passed to provide for the declaration for keeping of printing presses and the printing and publication of newspapers and for registration of books. Under this law, a registry number must be secured from the government. Section 20 of the Act empowers the District Magistrate to cancel the authentication of the declaration and under section 20A, the government may declare certain publications forfeited and to issue search warrant for the same. This is to be pointed out that this law is nothing new itself and, in fact, is one of the press control mechanisms inherited from the British Raj.

The Special Powers Act of 1974, stated in its preamble that it was enacted to provide for special measures for the prevention of certain prejudicial activities, for more speedy trial and effective punishment of certain grave offences and for matters connected therewith. The Special Powers Act provides for detention without trial. Sections 16, 17 and 18 of the Act, in the name of prohibition of prejudicial acts curtail the liberty of the Press. Further an offence under this Act is non-bailable.

The Indecent Advertisement Prohibition Act., 1963 prohibits the publication of indecent advertisement. The Copyright Ordinance, 1962 touches the press since the contents

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[99] See, *The Bangladesh Gazette*, Extra Ordinary, Thursday, August 28, 1973.
[1] *The Bangladesh Observer*, September 20, 1973.

of any media come under the purview of this ordinance. The Children Act, 1974 prohibits mass media to disclose the identity directly or indirectly, of any child involved in any case. The Bangladesh Sangbad Sangstha Ordinance, 1979, the Newspaper Employees (Conditions of Services) Act, 1974, and the Newspaper (Annulment of Declaration) Act, 1975 are also connected with the press.

In March 1982, Martial Law was introduced in the country and the position of the press has again declined. During the early reign of General Ershad, martial law regulations had been issued curtailing the freedom of the press. When he officially withdraw Martial Law from this country, the position of the press was as the same.

In 1991, the government amended the Special Powers Act, 1974, by omitting sections 16, 17 and 18 which fettered freedom of press and freedom of speech but simultaneously, sections 99A, 99B, 99D and schedule II of the Code of Criminal Procedure have been amended which almost incorporated the provisions of the omitted sections 16, 17 and 18 of the Special Powers Act, 1974. More so, the punishment prescribed for the offence has been made servere by enhancing the sentence of two years to seven years, by amending section 505 of, and by introducing section 505A, in the Penal Code.

Further the Government also amended the Printing Press and Publications (Declaration and Registration) Act, 1973, and established the "Press Appellate Board", by which the government has transferred some of its powers to the Press Appellate Board, whose decision shall be final in matters of authentication and cancellation of publication.

This discussion and analysis reveals the fact that since the early British rule in the Indian subcontinent restrictions have been imposed on the freedom of press by the statutes promulgated by the concerned machinery. The superior courts have been playing its due role in upholding this cherished freedom and giving scope to its protection.

It is also seen that the Supreme Court of India has held that freedom of press is implicit in the fundamental right to "freedom of speech and expression" enshrined in Article 19(a) of the Constitution of India. In most of the democratic countries, the press is free. As far as the India is concerned, the press is most free. Of course, the ambit of that right is no

higher, nor less than the freedom of speech and expression guaranteed to the citizens of the country.

In case of Pakistan, the practice of legal action against the press did not came to an end. Pakistani Press is not and was not in a true sense enjoys freedom because of the successive military rules for a long period. In spite of that the higher courts of Pakistan had played a good role in upholding freedom of press during the military regime as well as peace time.

Article 39 of the Constitution of Bangladesh guarantees freedom of press which is subject to some reasonable restrictions imposed by law in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

The Penal Code of India, Pakistan and Bangladesh lists offences as creating hatred or contempt or inciting dissatisfaction towards the government, promoting hatred and enmity between different groups of citizens and inducing any student or group of students or any educational institution to take part in any activity which contravenes public order, publishing obscene publications, outraging religious feelings with malicious intentions and defamation is therefore an offence.

The limitations imposed by statutes are based on constitutional sanctions while others are logical extensions of state policy and the individual's rights. Again some of these limitations are regulatory while others are penal. These laws in some extent are curtailing freedom of press. Though these laws put restrictions on freedom of press but the superior courts of this subcontinent unanimously held that freedom of press is not to be equated with an unbridled license to publish without responsibility anything the press may choose.

From the overall discussion and analysis we can safely be said that a free society cannot exist without a free press. So the freedom of press is now recognized as the most vital element in every free society. This freedom of press is the result of a long struggle for greater freedom in every sphere of life. Though the freedom of press is recognized, restriction of different degrees is imposed on it. Legal control is necessary. But laws enacted on this grounds should aim at a healthy growth of the free passage of ideas and information and should give it maximum legal protection. Only then, it will help build and sustain a vibrant and dynamic society.

Chapter-VI

Institutions Relating to the Press in the Sub-continent

In chapters IV & V of this dissertation the constitutional protection relating to the freedom of press, the role of the superior courts in upholding the freedom of press and the statutory provisions with regard to freedom of press and their judicial interpretations have been discussed in some length. Besides these, some quasi-judicial organs or institutions play a vital role in upholding freedom of press. Press Council is such a qasi-judicial institution which has been working in India and Bangladesh for the purpose of preserving freedom of press and maintaining and improving the standard of newspapers and news agencies. There is no Press Council in Pakistan. Except Press Council other institutions like Press Institutions are also functioning for disseminating news and arranging training and research programmes and in this way they are trying to make skilled and expert men in the field of newspaper as well as journalism. The composition, structure, aims and objects and functioning of the relevant institutions will now be discussed.

1. Indian Press Council

The First Press Commission of India recommended the setting up of a Press Council as far back as 1954. But it was not till the year 1965 that Parliament implemented that recommendation by enacting the Press Council Act, 1965. The Council was established for the purpose of preserving the freedom of Press and of maintaining and improving the standards of newspapers in India."[1] The Council was reconstructed and its terms were extended from time to time. During internal emergency, the Press Council Act, 1965 was repealed with effect from 1st January 1976 by an Ordinance which was replaced by the Press Council (Repeal) Act, 1976 (Act 24 of 1976). The objects and reasons appended to this Act runs as:

[1] *See*, Preamble to the Press Council Act, 1965.

> "On the basis of the recommendations of the Press Commission, the Press Council of India was established on 4th July, 1966 under the Press Council Act, 1965, mainly with the object of maintaining and improving the standards of newspapers and news agencies and to preserve the freedom of the Press. The functions to be performed by the Press Council under the Press Council Act, 1965 included, among other things, the building up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards, ensuring on the part of newspapers, etc., the taste, fostering a due sense of both the rights and responsibilities of citizenship and encouraging the growth of a sense of responsibility and public service among all those engaged in the procession of journalism. It was felt that the institution of the Press Council was not able to carry on its functions effectively to achieve the objects for which the Council was established. It was, therefore, decided to repeal the Press Council Act. As the term of the last Press Council was due to expire on 31st December, 1975 and since Parliament was not in session, the Press Council Act, 1965 was repealed on 1st January 1976, by the Press Council (Repeal) Ordinance , 1975."[2]

Subsequently a fresh legislation providing for the establishment of a Press Council was enacted by the Press Council Act 1978. The object of this Act was to establish a Press Council for the purpose of preserving the freedom of press and of maintaining and improving the standards of newspapers and news agencies in India.[3]

The present Press Council of India started on the road towards the fulfillment of the tasks assigned to it from March 1, 1979. The Press Council is a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued.

Composition

Under Section 5 of the Press Council Act, 1978 the Council shall consists of a Chairman and twenty eight other members. The Chairman shall be a person nominated by a

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[2] *See*, the AIR Manual 4th Edition (1979) Vol. XXIX, p. 517.
[3] *Ibid.*, p. 508.

committee consisting of the Chairman of Council of State (Rajya Sabha), the Speaker of the House of the People *(Lok Sabha)* and a person elected by the members of the Council. The Act lays down that 13 members shall be nominated from among working journalists, of whom six shall be editors. Six are to be nominated from among persons who own or manage newspapers, two representing each of the categories of big, medium and small newspaper. One person is to represent news agency managers; three having special knowledge or practical experience in respect of education and science, law and literature and culture of whom respectively one shall be nominated by the University Grants Commission, one by the Bar Council of India and one by the *Sahitya Akademi.* The remaining five shall be members of Parliament of whom shall be nominated by the Speaker from amongst the members of the *Lok Sabha* and two by the Chairman of the *Rajya Shabha* from among its members.[4] The Chairman and other members can hold office for a period of three years. They however, cannot serve more than two terms.[5]

An analysis of the composition of the Council would show that out of its 28 members, twenty are journalists, three are lay members and five are members of Parliament. The inclusion of lay members was intended to ensure that the voice of the public would be heard in the deliberations of the Council. But the journalist members dominate the Council and the lay members are too few in number to have an effective voice.

Objectives and Functions

According to section 13 of the Act the main objects of the Council are to preserve the freedom of press and to maintain and improve standards of newspapers and news agencies in India. One of the important business of the Council is to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards. Among other functions which the Council has to perform are to ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship, to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism, to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance and also to promote a proper

[4] *Ibid.*, pp. 509-510.
[5] *Ibid.*, p. 511, Section 6.

functional relationship among all classes of persons engaged in the production or publication of newspaper or in news agencies. The Press Council has also been entrusted with the task of studying the Press structure in India and to concern itself with developments, such as, concentration or other aspects of ownership of newspapers and news agencies which may affect the independence of the Press. The Council has also to keep under review cases of assistance received by any newspaper or news agency in India from any foreign source .The Press Council is also responsible for helping newspapers and news agencies to main their independence.[6]

Role of the Press Council

The Press Council has really no punitive power to enforce its rulings. It is not a court of law. It's a court of honour. Its verdicts are not judicial pronouncements. Therefore, it cannot impose any punishment on the offending newspaper or journalist. Again it can award damages to the aggrieved party. The penalty that Council imposes has no salutary effect unless it is given due publicity and the offending newspaper publishes the decision of the Council. But the Council does not have any power to compel newspaper to publish its decision or to punish a defaulting newspaper.

An important function entrusted to the Council under the Act is "to build up a code of conduct of newspaper, news agencies and journalists in accordance with high professional sandards."[7] Before the formation of the Press Council and even during its early years, there was a clamour from the journalists that the first and foremost task of the Council should be to frame a code of conduct for journalists so that they could be guided by such a code but no code of conduct for journalists has so far been framed.[8]

Among other professional bodies of journalists, only the All India Newspapers Editors Conference has a Code of Ethics and an Editors Charter, both incorporated in its constitution. The constitution makes it obligatory for the members to abide by them. Several other attempts have also been made to frame a code of ethics but without much effect. A code of ethics for journalists and editors was drafted by a committee of 17 editors and

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[6] *Ibid.*, pp. 512-513.
[7] Section 13 of the Press Council Act, 1978.
[8] R.C.S. Sarkar, *The Press in India*, pp. 200-201.

presented to *Rajya Sabha* on the 8th January, 1976. The National Union of Journalists adopted, in February, 1981, a declaration pertaining to right and duties of journalists. The All India Small and Medium Newspapers Association had drawn up a code of ethics in 1975 but it was not approved by its general body. The Editor's Guild of India is categorically against the drawing up of any code of ethics for the guidance of journalists on the ground that "responsible people cannot be governed by codes."[9] The Mathew Commission has taken the view that "it would not be desirable to draw up a code of ethics for newspapers."[10] But M. Chalapathi Rau is of the view that "no code, however carefully drawn up, can possess the precision of law."[11] It would not, however, be difficult to draw up a code which would serve not only as wrong and ready guide for journalists but also as an objective standard on which the Council could base its adjudications.

After the formation, the Council has adjudicated upon a number of complaints. According to the 13th Annual Report (April 01, 1991 – March 31, 1993) it has adjudicated 125 cases. At the same time the Council has dismissed 358 cases at the preliminary stages, cases pending before the council on 21. 03. 92 is 421. Between the period on 1. 4. 91- 31 3. 92 a number of 574 cases was filed.[12]

Surveying the objectives set out before the Council it should be kept in mind that its role is essentially that of an impartial arbitrator ensuring free flow of information in general and press freedom in particular. The Council acts as a buffer between the press and public. It has its role, as a quasi-judicial body sitting as a court to inquire into complaints against breaches of journalistic ethics that is important. In its capacity as an adjudicating body, it enquires into complaints against the conduct of the press towards the public as also in a sense the conduct of the people and the Government towards the press. It has power to warn, admonish or censure the newspaper, the news agency, the editor or the journalist, as the case may be.[13] Under section 14(2), the Council may also require any newspaper to publish therein in such manner as the Council thinks fit, any particulars relating to the inquiry and the decision of the Council is final and shall not be questioned in any court of law.

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[9] *Ibid.*, p. 201.
[10] Report of the Second Press Commission, Ch. VIII, Para 32, p. 82.
[11] M. Chalapati Rau, *The Press in India*, p. 48.
[12] For details, *See 13th Annual Report*, New Delhi: Press Council of India, 1993.
[13] *See*, Section 14(1) of the Press Council Act, 1978.

It is evident that the Press Council certainly as an institution represents a genuine effort to solve the concerned problems. Any regulatory body like the Press Council needs wide support from all quarters. It must be strengthered by resorting to it and respecting fully its decisions and adjudication.

2. The Bangladesh Press Council

The Press Council of Bangladesh has been established in August 1979 under the Press Council Act 1974, with the object of preserving the freedom of the Press and maintaining and improving the standard of newspapers and news agencies in Bangladesh. Since its inception in 1979, the Council has been accepted as a highly dignified quasi- judicial institution. The Press Council is a body corporate having perpetual sucession and a common seal and shall by the said name sue and be sued.

Composition

The Council is composed of a Chairman, who is or has been a Judge of the Supreme Court of Bangladesh and is nominated by the President of Bangladesh and 14 other members, three each representing the association of working journalists, and those of editors and owners, two representing the Bangladesh Parliament and one each representing the University Grants Commission, the Bangladesh Bar Council and Bangla Academy.[14]

The Chairman of the Council shall hold office for a period of three years and shall be eligible for the re- nomination for one further term. A member shall hold office for a period of two years and shall be eligible for re- nomination for one further term. The Chairman shall be a whole time officer and shall be paid such salary as the government may determine. A member shall receive such allowances or fees for attending the meetings of the Council as may be prescribed.[15]

[14] Section 4 of the Press Council Act, 1974 *See*, 26 DLR (1974) Bangladesh Statute, p. 180C.
[15] Section 5 of the Press Council Act, 1974, *See, Ibid.*, pp. 180C-180D.

Objectives and Functions of the Council

According to the provisions of section 11 of the Press Council Act, 1974, the object of the Council shall be to preserve the freedom of press and to maintain and improve the standard of newspapers and news agencies in Bangladesh.

The Council may, in furtherance of its object, perform the following functions, namely:

(a) to help newspapers and news agencies to maintain their freedom;

(b) to build up a code of conduct for newspapers and news agencies and journalists in accordance with high professional standard;

(c) to ensure on the part of newspapers and news agencies and journalists, the maintenance of a high standard of public taste and to foster a due sense of both the fights and responsibilities of citizenship;

(d) to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism;

(e) to keep under review any development likely to restrict the supply and dissemination of information of public interest and importance;

(f) to keep under review cases of assistance received by any newspaper or news agency in Bangladesh from any foreign source including such cases as are referred to it by the Government or are brought to its notice by any individual, association of persons of any other organization;

(g) to undertake studies and research of national and foreign newspapers, their circulation and impact;

(h) to provide facilities for proper education and training of person in the profession of journalism;

(i) to promote technical or other research;

(j) to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers or in the running of news agencies; and

(k) to do such other acts as may be incidental or conducive to the discharge of the above functions.[16]

According to the provisions of section 11(2) (b) of the Press Council Act, 1974, the Council has been empowered to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standard, the Council has already built up in 1993 a code of conduct, some of which are as follows:

1. The journalist has the responsibility of keeping the public informed of matter that affect or interest them.

2. In discharging his responsibility the journalist has to report and comment on achievements and failures and lapses of corporate bodies and individuals. The very nature of this responsibility warrants that the journalist should be exempted from adverse consequences for any publication made in good faith on the basis of evidence, reasonably believed to be true.

3. Information of undoubtable veracity emanating from reliable sources may be published with impunity even though the truth thereof cannot be conclusively established on evidences, provided the disclosure is in public interest.

4. In view of the social responsibility of preventing crime and corruption, the press could adopt such reasonable and legal practices to this and as might not be quite acceptable in other spheres. The impact of being over censorious about information that might lead to exposure of serious public ills would be perilous.

[16] Section 11 of the Press Council Act, 1974, *See, Ibid.*, pp. 180D-180E.

5. In view of the magnitude of the impact of the newspaper compared to other media, the journalist writing for newspaper should be exceptionally careful about the reliability of the sources and the veracity of the stories.

6. The journalist should be fully conscious about the bearing of his writing and must make distinction between reports relating to incidence of a common disease and a public man being down with an infection resulting from indulgence in passion.

8. The newspaper reporting a crime has the obligation of following it through all the stages of litigation and publishing the final judgment of the court, if any, so the true picture about the matter stands revealed.

9. Subject to the editor's right of scrutiny and improvement, the contradiction from aggrieved parties to and report in the press should be published promptly on a page like to draw the attention of the readers of the original story.

10. Subject to restraints concerning defamation and public interest the editor has the right to publish advertisement signed by competent persons even if it appears, on the face of it, against the interest of anyone else, but he will be obliged to publish protest, if any, free of cost.[17]

Moreover the Press Council has made provisions for the newcomers in the profession of journalism in Bangladesh to take oath also in order to enable them to abide by the code of conduct for the journalist.

According to section 12 of the Act, when the Council receipt a complaint and it has reason to believe that a newspaper or news agency has offended against the standard of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct or a breach of the code of journalistic ethics, the Council may, after giving the newspaper or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided by regulations made under

[17] For details see *Code of Conduct, 1993*, published by the Bangladesh Press Council Secretariat, Dhaka (1993) pp. 7-10.

the Press Council Act, and if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, warn, the editor or the journalist concerned as the case may be.[18] Thus the council has a lot of moral authority. Its decisions are final and cannot be questioned in any court of law. The decisions of the Council have generally been honourned and accepted by the media and the authorities alike.

In order to assess the role of the Press Council of Bangladesh in deciding cases relating to Press coming before it, it is important to discuss some leading cases as reported in the publications of the Council.

To begin with the case of ***Rayezuddin Pashari*** v. ***Dainik Bangla & Dainik Ittefaq,***[19] two reports were published on the above Papers.

In the ***Dainik Bangla*** dated the 9th August 1980 a report was published to the effect (1) that complainant Rayezuddin Pashari, according to the confession of some accomplices, was the leader of a smuggling party and was the owner of a Trawler in which 21 deer, caught in the *Sundarbans,* had been loaded for the purpose of smuggling, and (2) that the complainant had suffered imprisonment for ten or twelve times and that he had married a woman of Hasanabad, West Bengal for facilitating his smuggling business.

In the ***Daily Itteffaq*** dated 11.8.80 a news was published to the effect that a trawler with 21 deer was detained in Betbunia Char and brought to Pirojpur and handed over to police. These animals were illegally caught from the *Sundarbans* for smuggling out. The detained persons stated that Rayezuddin of Parerhat was the leader of the gang involved in the illegal deer hunting and smuggling; perhaps Rayezuddin has been doing this business for a long time.

Rayezuddin Pashari complains that these reports in ***Dainik Bangla*** and ***Ittefaq*** are false and malicious and that his image as a businessman has been tarnished by these false and malicious reports. he further submits that to the best of his knowledge no case against him is pending in any court of law. He wants justice from the Press Council.

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[18] See, 26 DLR (1974), *Bangladesh Statutes,* p. 180E.
[19] *Decisions of the Press Council, Bangladesh,* Dhaka: Press Council, 1984. p. 1 Case No. 6 & 7 of 1980.

Section 12 of the Press Council Act enable the Press Council to deal with cases relating to breach of journalistic ethics and public taste or professional misconduct.

After the hearing of the case on contest, the reporter and the editors were warned under section 12 of the Press Council Act and the learned Council held that:

> "The duty of the Press Council is to maintain a balance in respect of reports and comments between the journalists right, which is enshrined in Article 39 of the Constitution of Bangladesh relating to freedom of the press, and the individual's right of protection against false imputations injuring his reputation. In other words, the responsibility which the Council has been charged with by the Press Council Act relates to protection of the freedom of the press in the public interest and, the concomitant of that freedom, in promotion of the standard of ethics of newspaper."[20]

The Council further observed:

> "The journalists have a responsibility of keeping the public informed of matters of public interest which include reports and comments on the activities of individuals or corporate bodies including, inefficiency, corruption and mal practices. In discharge of this obligatory and imperative duty, they are immune from legal penalty from publications made in good faith and based upon evidences which might reasonably be believed to be true. What they find most difficult is that they may get hold of something which is really in the public interest to disclose, and yet they fear to disclose it because they feel that there is a difference between knowing something to be true and proving it to be so. In this situation it should be a defence to a reporter or an editor of a newspaper, even if he cannot plead literal accuracy, to say that he believed the information to be true when it was published, that he had checked and found its sources reliable, and that the publication was for public interest."[21]

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[20] *Ibid.*, p. 3.
[21] *Ibid.*

The Editor was also censured in the case of ***M. G. Tawab*** v. ***Editor, Weekly Sangbadik,***[22] where the ***Weekly Sangbadik,*** dated the 20th March, 1982 a photo of Air Vice Marshal (Retd.) M. G. Tawab was published on the front page under the banner headline "Conspiracy to seize power" and it was stated in the following page that a secret meeting was held by Major (Retd.) Dalim and the former Air Chief M. G. Tawab and Khandakar Mustaque out side Dhaka at Dashpara.

Mr. Tawab stated in his petition of complaint that the news is malicious and is totally baseless and is aimed at character assassination. He has been living private life and has no connection whatsoever with either Mr. Mustaque or Mr. Dalim or with any other political party or politician.

The editor Momtaz sultana stated in her written statement that the impugned report is aimed at providing information about a serious conspiracy centering round Khandaker Mushtaq. She further stated that Air Vice – Marshal Tawab was not present at Dashpara meeting and as an able son of the country the former Air Chief deserves respect, and that she is sorry for the mistake. Lastly, the editor ***Weekly Sangbad*** tenders unconditional apology for the unfortunate error.

In this case the press council observed:

> "The press council aims at preserving the freedom of the press, but believes that the freedom of press depends on the observance of proper ethical standards in presenting unbiased and objective news and balanced views to enable the people to make correct assessments and to imbibe true consciousness of various socio- economic problems that face the nation as a whole."[23]

In the case of ***Ziaul Hoque*** v. ***Editors, New Nation Bangladesh & Times,***[24] the complainant objected to the ***Bangladesh Times*** and the ***New Nation against*** publication of some articles on Islam alleging that Mr. Tamizul Huqe, Bar- at- law-, the writer of those

[22] *Decision of the Press Council of Bangladesh,* p. 36 Case No. 48/1982.
[23] *Ibid.,* p. 38.
[24] *Decisions of the Press Council, Bangladesh,* p. 53, Case No. 65 & 68 of 1982.

articles, does not possess any qualification whatsoever to write articles on Islam. The complainant alleged that in spite of his objection, the articles were published by the aforesaid paper whose undue favour Mr. Huq secured through advertisements given to them from Huq Group of Industries.

The editors of those papers vehemently deny that the articles of Mr. Huq were published in consideration of his advertisements in the papers. They submitted that the articles were published on account of their merit, adding the complainant tried to interfere with the freedom of the editor to select matters for publication but they resisted .

Dismissing the cases the learned council pointed out that:

> "The editors have, in the matter of selection which includes both acceptance and rejection of materials for publication, complete freedom. There is no rule against publication of advertisements and articles emanating from the same source. Further, it is not the responsibility of the editor to hold examination for judging competence of the writers, nor is it within the scope of the press council to scrutinize these matters."[25]

The press council further held that press council is deeply concerned with the freedom of press which includes immunity from explanation for bonafide publications in the newspapers.[26]

The press council maintains that "comment is free but facts are sacred." This freedom of comment has a significance and importance beyond the interests of the press itself. The press council emphasizes that a press with freedom of comment is the ultimate safe guard of human liberty and since the rights of the individual to express himself are precisely the same as those of the newspapers it follows that of the rights of the newspaper are whittled away, those of the individual will surely diminish."[27]

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[25] *Ibid.*, p. 54.
[26] *Ibid.*
[27] *Khaleda Habib* v. *Editor, The Sangbad,* Case No. 76 of 1982, *See* Decisions of the Press Council, Bangladesh at p. 60.

In ***Khaleda Habib's case***, a letter written by Mrs. Pandora Chowdhury, a teacher of Kakoli School stating that Khaleda Habib, Headmistress, asked the teachers of her school by a notice not to wear TIP on their foreheads was published in the Sangbad dated 23.10.82. On the next day a lengthy editorial was published in ***Sangbad*** on the issue. It has been stated in the editorial that Mrs. Khaleda Habib's direction on the Tip issue is in accordance with the communal ideals and that the direction of Mrs. Habib owes its origin to her two nation ideology against which the people of Bangladesh fought successfully a bloody battle.

After hearing of the case the press council dismissed that case on the view that ***Sangbad*** has not misused its liberty of fair comment. In the impugned editorial, however, there are traces of personal criticism, which could have been avoided, yet it was held by the press council that ***Sangbad*** is, by and large, within its limits of editorial freedom. The press council further observed:

> "Freedom of free comment is however freedom to be fair. The press council is concerned with the right of the individual to his reputation against the equally important right of the press to express their views honestly and ferarlesly on matters of public interest."[28]

The editor was admonished in the case of ***Jamat Ali*** v. ***Editor, Weekly Jagorani, Kushtia.***[29] In the instant case, a report was published in the Weekly Jagorani to the effect that complainant Jamat Ali; a primary school teacher, indulges in frequent violence and is corrupt.

The complainant Jamat Ali send a rejoinder against the above report to the Weekly on 5. 45. 83. The editor did not publish the rejoinder and sent instead a letter demanding apology from Mr. Jamat Ali over an incident of beating the reporter that occurred on the 25th April, 1983. The complainant submitted that the editor has no authority to write a threatening letter demanding apology over an incident in which he was never a party and further he has also no right to withhold publication of the rejoinder .

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[28] *Ibid.*, p. 61.
[29] Case No. 93/1983.

The learned council, in this case pointed out:

> "The Press Council is anxious to ensure that the editorial institution maintains its majesty and glory and in doing so it asks the editors to guard against overstepping its natural boundaries. The editors demand for apology of the complainant in this case is clearly one which is beyond his competence."[30]

The Press Council of Bangladesh cautioned the editor in the case of ***Mia Mohammad Fazlul Huq*** v. ***Editor, Weekly Reporter, Dhaka***.[31] In the present case under the "heading, sensational sex crime in the capital"-an illustrated story was published in the ***Weekly Reporter*** to the effect that a young unwed girl named ***Parboti*** was delivered of a female child who was strangulated at the instance of Ganga Charan Malakar. It was further stated in the story that correspondent of the Weekly contacted the clinic authority but while Dr. Nahar of the Clinic maintained silence and its Manager ill-treated the correspondent, the employee admitted the incident. On the next issue of the weekly, rejoinders, given by Ganga Charan Malaker, Parboti and her mother denying the incident were published. The editor expressed his regret but stated that the story was made on the basis of recorded cassette.

The complainant alleges that the publication of the rejoinders, and regret of the editor are violative of professional ethics.

On delivering the judgment, the Press Council observed that:

> "It is an established principle of journalism that affected persons have a right to give rejoinders to the newspapers and the editor has an obligation to accept them for publication in appropriate manner. The editor has honoured this established principle and has allowed all parties to make their version available to the readers. On this point, there has been no violation of professional ethics."[32]

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[30] *Decisions of the Press Council, Bangladesh,* at p. 81.
[31] Case No. 105/1983.
[32] *Supra,* p. 92.

Thus from the above discussion and analysis of the cases, it reveals that under section 12 of the Press Council Act, the Council can warn, admonish or censure the newspapers concerned. It is also apparent that the Council have, disposed of many cases and can apply its powers fearlessly and freely. According to the report of the Press Council, 6 cases are finally disposed up, when 102 cases are partly heard on 64 sittings of the judicial committee in the year of 1994.[33] The Council deals with a wide variety of complaints. The complaints related mainly to defamatory reports or stories lacking in objectivity as also of other kinds breach of journalistic ethics. The impugned reports or news items generally centered round moral turpitude, corruption in high offices and misuse of power by public functionaries.

Independence given to the newspaper is not always being followed by the responsibility desired. It is causing conflict between the press and the members of the public and the Press and Government which hamper the credibility of the Press. In this circumstances, Press Council of Bangladesh has come forward to shoulder bigger responsibility.[34]

Role of the Bangladesh Press Council

Though the Council runs as a regular court in spite of that it does not have any staff of their own for the enforcement of their decision either to investigate into the veracity of the complaint filed or to enforce their decision. The Council, however, exert moral pressure on the newspapers as well as the journalists. The Council, being a quasi-judicial body, adjudicates into matters of dispute but when it is a question of decision it can warn, reprimand and censure those found wrong. It can continuously warn the same newspapers for the same commission of offence but it cannot go for punitive measures.[35]

The role of the Press Council in Bangladesh is essentially that of an impartial arbitrator or monitor of Press of the media. Press Council is now functioning as a body exercising a moral authority over the journalists.[36] Although the Press Council of Bangladesh has no corporeal or financial punitive powers and its decisions have only moral sanctions like

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[33] *Bangladesh Press Council Annual Report, 1994*, Dhaka: Bangladesh Press Council, 1994, at p. 59.
[34] *Justice Sultan Hossain Khan*, in *"Address to the First Conference of Press Council of Asia Pacific Region"*, at Bangladesh Press Council Report, 1994, Dhaka: Bangladesh Press Council, 1994, p. 110.
[35] *Dr. Md. Tawhidul Anwar*, in *"Media Monitors in Bangladesh"* at Bangladesh Press Council Annual Report, 1994, pp. 169.
[36] Justice Sultan Hossain Khan, *op. cit.*, at p. 159.

those of a Court of Honour, its effective role is being recognized not only in the newspaper but also by the citizens and the government.[37]

Thus it is apparent that the Press Council of Bangladesh by adjudicating complaints and performing other functions is trying to preserve freedom of Press. Press Council cannot impose any sanction. It merely pronounces its decision on the complaint. The only weapon in its armoury is moral authority. The sole strength of the Council lies in its appeal to conscience.

3. Indian Institute of Mass Communication

Indian Institute of Mass Communication was founded in 1965 which is headed by a Director. In the filed of mass communication and journalism it is the only one governmental institution which is functioning in this field. Its main activities are limited in teaching, training and research in the field of mass communication. In furtherance of its objects, some of the important functions which the Institute is required to perform are:

(a) to organize training and research in the use and development of media of mass communication, with special reference to the requirements of socio-economic growth in the country;

(b) to organize refresher courses, summer schools and the like and to invite mass communication experts and research scholars from within the country and abroad to deliver lecturers;

(c) to arrange lectures, seminars and symposia on problems connected with mass communication, information and publicity.[38]

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[37] *Ibid.*

[38] *Directory of Mass Communication Training Institutions and Organization*, Singapore: Asian Mass Communication Research & Information Centre, 1993, pp. 457-458.

4. Press Institute of India

The Indian Press Institute came into existence in 1963 as a result of the combined effort of some leading newspapers. It is affiliated to the International Press Institute. It organizes seminars, workshops and courses of study for journalists and those connected with mass media at different levels. Its aim is to provide a professional institute for the training of Indian journalists, for the dissemination of knowledge about better techniques of production and of gathering and distributing news, for elevating the standards of Indian journalism and for training Indian journalists to a high awareness of their responsbility.[39] Press Institute of India is a Private Institution. Its activity is very limited and not regular.

5. Pakistan Press Institute

Pakistan Press Institute was founded in 1956 and headed by a Secretary-General. Its aims and main activities are to arrange training and research in media and sustainable development in the related fields. It further arranges training of new entrants in journalism and working journalists through work-shops, seminars, short and long duration special training courses.[40]

6. Pakistan Press Foundation

It was established in 1967 and revived in 1992. Chairman is the head of the Foundation. Its main aims are:

(a) to encourage research on issues facing the Pakistan media.

(b) to promote, through the media, greater awareness of sustainable development; and

[39] B.N. Ahuja, *History of Press, Press Laws and Communications*, p. 151.
[40] *Supra*, p. 485.

(c) to help raise the standards of journalism in Pakistan particularly of the vernacular and the rural press. It also conducts research programmes. The main fields of research are:

(a) Bibliography on mass communication,
(b) Flow of information,
(c) Freedom of the press,
(d) Development journalism and
(e) Journalism training.[41]

7. The Press Institute of Bangladesh

The Press Institute was founded by a decree of the Government in August 1976. the Institute is run by a 14 member autonomous Board of Management. The Director General is its full-time chief executive. The Board is headed by an honorary Chairman, Representatives of Ministry of Information, Ministry of Foreign Affairs, Ministry of Education, Editor's Council, Newspaper Owner's Association and Federal Union of Journalists and two from among senior journalists, educationist and public leaders sit on the Board to guide the affairs of the Institute.

The main objectives of the Press Institute are:

(a) to provide in-service training to the working journalists and other media personnel to help raise the country's standard of journalism;
(b) to undertake research on mass communication and publish collected data;
(c) to provide advisory and consultancy services to the Government and any newspaper or news agency;
(d) to establish contact with similar organizations at home and abroad; and
(e) to set-up a well-equipped reference centre for the benefit of the profession.[42]

The institute offers basic courses for journalists working in newspapers, radio and television. It also holds short courses on public relations, printing technology and newspaper

[41] *Ibid.*, pp. 483-484.
[42] *Introducing Press Institute of Bangladesh, Dhaka:* Press Institute of Bangladesh, 1989.

management. In all its courses emphasis is laid on practical aspects of the job. Press Institute of Bangladesh also organize seminaries of both national and regional levels on issues of vital importance to the society and to the journalistic community. It also selects journalists for training abroad. Till October, 1989 it organized 24 seminars, 61 training courses and 12 workshops in which about 1500 journalists, mediamen, management personnel and printing technicians took part.[43]

The Press Institute undertakes research on various problems of mass communication and their impact on society. It has carried out a number of survey on mass media of Bangladesh.

[43] *Ibid.*

Chapter VII

CONCLUSION

Press is the brain-child of the English and freedom of press is the product of world wisdom. It is now a recognised fact that a free society cannot exist without a free press; it is the most vital element in the fruition of humanity in every civilized free society. Press freedom is the result of along struggle for greater freedom in its present development. World civilization would not have attained its present maturity had there been no press freedom. Press prints the news and views of a nation; if these news and views are not freely printed and disseminated among the people, society would have been sterile. Peoples knowledge would have been retarted and bruite dominating feudalistic force would have reigned supreme. Press which was once being used by the administration to control free flow of information is now with the development of society acting as a means for telling people about their democratic rights for the preservation of democracy. It is the mouthpiece of public opinions; it is the prime means for the dissemination of news and views fully and truly expressed on matters affecting the public good. It is a means for exposing the evils of the community and its public servants to the public eye , and it tries to create a climate of opinion for their eradication. Press helps increase literacy and literacy liberates people from the scourge of hunger and poverty. It has now been amptly established that unless a nation is freed from illiteracy the boom of population cannot be controlled, agriculture cannot be improved to increase food production, technological development cannot be brought to the doors of common people and knowledge cannot be fully utilized for the development of civilization. Press is thus at the root of all branches of social development. Press is the means for printing news and views of people and social development. If this institution is properly rared up and unless freedom is allowed to the publication and circulation how one can expect to be an effective active worker for the greater works of social community. Information is a powerful tool to disseminate news and views in a society; and he who controls the free flow of information controls the people of the society; since press prints information, it is the mighty institution wielding enormous power for the protection and good of the people. Free passage of information helps create an environment for ensuring accountability and transparency of

government machinery which today has started to be precondition of good governance. Freedom of press is a necessary adjunct to parliamentary democracy all over the world. Democracy and free press are complementary to each other. In the long history of the development of freedom of press in the Indian subcontinent it has been seen that the British rulers tried to subdue it through repressive enactments, but the growth of nationalism and the consequent independence of the subcontinent prove the triumph of press and its constructive impartial printing. Indeed, realising the importance of the freedom of press, in the subcontinent laws are enacted to preserve and develop it, and institutes are established to nourish and culture it. Nobody can deny it constructive nationalistic role in the eventful struggle for independence of Indian subcontinent and later the liberation of Bangladesh.

Western idea had a great impact on the formation and development of the present concept of freedom of press in the context of this subcontinent. There were many ups and downs in the attainment of this freedom; British rulers did not accord freedom of press easily; repressive measures were imposed to gag the press, but to the growing demands of the people for the freedom of press they yielded and freedom as it is understood today is attained .

The expression freedom of press means nothing more than one's ability to freely express oneself in print. It has been seen that press is in much the same position as an ordinary citizen; it has no special privileges. It may be subjected to such restrictions as could be imposed on private individuals. Freedom or liberty of the press is not an absolute and unqualified right; it is a relative one. It is thus subjected to reasonable restrictions that may be imposed by law in the interest of the security of the state. None of the constitutions of India and Pakistan contain any express provision regarding freedom of press, but superior courts of these two countries courageously through constitutional interpretations established that the term 'freedom of speech and expression' includes freedom of press. These courts as sentinels uphold and safeguard the freedom of press in those countries and enriched jurisprudential literature with internationally acclaimed thoughtful judgments. Whenever administrative authorities of these countries have tried to control freedom of press their superior courts have judicially interfered and with ever so strong reasons upheld press freedom. This courts have however stated that in the exercise of freedom of press, press people must exercise it for the protection and good of common people and must not abuse or exercise it for anti-social purposes by exciting the passion and prejudices of one section of people against another and thereby disturb public peace and tranquility or they must not support a policy which may be

of a subversive character. The administration should not also try to impose unreasonable restriction on the freedom of press unless there is pressing social need for such restraint. Judiciary as the guardian of constitution has acted laudably in India and Pakistan, and given democracy a fair chance to grow, although at times the political history of Pakistan has been marred by repeated military rules and fundamental rights were often stiffled. In the constitution of Bangladesh freedom of press is a spelt out fundamental right and it has been subjected to reasonable restrictions. By law the executive can impose reasonable restrictions "in the interests of 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".[1] These restrictions are however nothing new in constitutional jurisprudence. In the constitutions of India and Pakistan they are allowed to be imposed in the exercise of the right to freedom of speech and expression which right encompass, freedom of press; and since freedom of press has been interpreted to be a part of the right of free speech and expression reasonable restrictions are also extended there. Since freedom of press is nothing but an aspect of freedom of speech and expression and is an integral part of free speech and expression, freedom of press must also bear this restriction. It is an established fact of constitutional jurisprudence that unbridled rights are likely to be misused. Sub-continental experience has prompted the framers of the constitution of Bangladesh to expressly include freedom of press as fundamental right along with freedom of speech and expression, and help the judiciary not to labour hard to establish its existence.

Freedom of press encourages free flow of information on national as well as international levels. As shown in Chapter II international institutes, federations, organizations, press unions and press associations are working for free access to and free transmission of news, free publication of newspapers and free exchange of news among nations and for the promotion of journalism. The way the information technology (IT) advancing today, it may leave everything bare, and developing and underdeveloped states will be unable to control anymore the free flow of information and freedom of press will attain a globalized status. Through internet, computer will down-load materials which were previously far beyond the reach of press. Already superhighway piracy has started, intellectual property rights are often being violated and the proprietors are actively thinking for new laws to be framed to tide over the situation. Whatever revolution may take place in the art of printing and circulation of information, the rule of reasonable restriction will

[1] Article 39 (2) of the Constitution of Bangladesh.

however be there and courts will not hesitate to apply it in proper cases raised before them for adjudication. Democracy will assume newer aspects of life within its fold as the science and technology will invent newer amenities for human enjoyment.

Freedom of press also includes freedom of a newspaper to publish any number of pages or to circulate it to any number of persons. A restraint placed upon either of them would be a direct infringement of the right of freedom of press. A restrained on the number of pages, restraint on circulation and a restraint on advertisements affect the fundamental rights. Advertisements whether commercial or otherwise are part of the freedom of press, and reasonable restriction may be imposed upon them if they become obscene, objectionable, unethical or otherwise injurious to public and morals. Press, however, cannot be subjected to any special restrictions which could not be imposed on private individuals.

In the course of investigation it has been seen that among the three countries India enjoys and maintains the highest level of freedom of press. Although the Indian constitution is silent about the freedom of press, its judiciary has found it in the freedom of speech and expression, and given it the highest dignity as one of the precious fundamental right. Indeed, Indian judiciary has played a vital role in nourishing the freedom of press. The Press Council and Indian Press Institute have also contributed to the development of it. In Chapter VI it has been seen that a balance has been maintained between the press and the public in India in the protection and promotion of freedom of press. It is an undeniable fact that freedom of press flourishes under democracy. Since India has a continuous history of democratic government, freedom of press has flourished unhindered there. Congenial atmosphere should be created for the development of free press. The Indian judiciary has ably pointed out that the imposition of direct restrictions on the publication of information is not the only way of curtailing the press freedom; it can also be curtailed indirectly by denying press materials and press facilities. The freedom of press can be denied by controlling the allocation of newspaper quota or by licensing the number of newspaper to be published by a particular press was forcefully pointed out by the Indian judiciary. Any sort of direct or indirect control on the publication of news and views on the printing of them will now be deemed to be against freedom of press.

Among the three countries of this subcontinent Pakistan is maintaining the worst standard of freedom of press. This is due to be successive military governments and their ruthless suppression of democracy by freezing fundamental rights and gaging the press

media. The standard of democracy of a country is nowadays determined by the amount of freedom allowed to its press. Media coup is a new concept in the arena of politics. Seemingly democratic governments in developing countries are using it mostly to oppress their political opponents. Thus a country whose government is not democratic and whose media press is not free can hardly keep pace with the development of a globalized world and it is generally ostracised by the world community of states whereby its development is mostly shattered and arrested. Democracy and press freedom are concomitant, freedom of press becomes an Alice in a wonderland in any other forms of government; it cannot grow there howevermuch that government speaks about its natural existence there. Although the judiciary of all the three countries of this subcontinent have constituted much to the development of freedom of press in India and Bangladesh some institutuons like Press Councils, Press Institutes have been established to nourish press freedom through motivation and training of the people engaged in reporting, journalism publishing, editing and also in the administration of printing press. In Pakistan again and again the military has been playing a role inimical to the growth of free press. Although Article 19 of the Constitution Pakistan has guaranteed the right of freedom of press, the military did not allow the press and the people to enjoy it. Press censorship has been imposed time and again in Pakistan under the pseudo reasoning that "Press freedom cannot take precedence over survival of the nation" has been working against the free growth of press freedom in Pakistan even during the short spell of civil administration. It is a common trait of military rule all over the world that it does not bear that others would say anything against what it has done or intends to do. Pakistan military appears to have been avowedly following this principle and does not allow any institution to grow which may work for the furtherance of free press. The superior courts of Pakistan, however, deserve some praise; like their counterparts in India and Bangladesh they are constantly trying to uphold the freedom of press. In the absence of independence of judiciary from the executive the amount of courage which the superior courts can show in a democratic government through interpretation cannot be expected of them while the country is under military rule. In a few rare cases some independent judges staking their services even have pronounced judgments upholding the press freedom during military rule, and that, too, when the country's constitution is suspended. Whenever the Pakistan judiciary gets an opportunity to decide cases involving matters relating to freedom of press unhesitatingly it holds that the freedom of press is a man's fundamental right and it cannot be abridged so long as it does not degenerate into mere abuse intended or calculated to rouse the emotions of people to a pitch

wherefrom they might be tempted to take recourse to violence or to create chaos in the country or to disrupt the normal life of the people .

In the maintenance and preservation of freedom of press Bangladesh is in the second position. As stated above, Bangladesh having been before its birth a part of Pakistan has inherited the taste of military rule and the habit of suspension of democratic norms, so the freedom of press in Bangladesh has been hampered at different times due to political unrest and military rule. Fundamental rights were suspended and repressive rules were introduced to control the free flow of information. Military rule cannot bring any good to common people nor can bureaucratic autocracy give any positive impetus to people's development in any society; they only increase the woes of people and decrease the equidistribution of national wealth; and they for the time being successfully gag the voice of people by controlling the press. However, to the people's gradual demands and international pressure they are to yield ultimately. Though the military governments control the press to an utmost extent, the honest publication of the news of happennings under their administration ultimately help form public opinion against military administration and that virtually force the military to surrender power to democratic governments or in some cases converts itself into a democratic government through forming a political party of its own. The press council and press institute of Bangladesh constitute to the development and preservation of the freedom of press even during emergency period by building of a code of conduct for newspapers, news agents and journalists and organizing training and research. The Supreme Court of Bangladesh has been trying to increase the freedom of press through newer interpretations of its constitutional provisions regarding the freedom of press in the light of international conventions and rules. The reasonable restriction clause added to the fundamental right to freedom of press is always being interpreted to the advantage of the press. The code of conduct framed by Press Council of Bangladesh is to be followed by institutions and person concerned with press. Indeed, the constitution of Bangladesh provides a guarded freedom of press which the judiciary of India and Pakistan search out through interpretation from the freedom of speech and expression. However, in all the three countries everything relating to freedom of press depends how much and to what extent democracy is practised by the government; and it has found from specially Indian experience that the more a country's government is democratic and practices democratic norms and nourishes democratic institutions and culture, the more freedom of press is ensured in that country. In a democratic set up judiciary encouragingly defends press freedom, while in military or autocratic rule it hesitates to speak in favour of freedom of press

unless the judge is daring enough to put up reasons in favour of press freedom. Free press and constructive free discussion of government policies, tolerance to other's opinion, rule of law, transparency and accountability are some of the attributes of democracy. They can ensure good governance in a country. But unless they are allowed to grow, how will democracy and the consequent good governance come? In today's globalized politics it is realised that democracy is a must for the development of a country and the freedom of press is a much more must for the working of that democracy. It is seen from the discussion of constitutional provisions, statutory laws and decisions of superior courts and the working quasi-judicial organs that though the press is said to have freedom in printing and disseminating information, it is facing innumerable barriers ever from democratic government. Most of the governments of this subcontinent have failed to rise above party politics and give democracy a complete shape by providing respect and tolerance to opposition's views. The culture of respect to other's views has not yet developed in any of three countries and as long as it is not so developed freedom of press cannot be said to have been completely achieved. If democracy is a government of the people, for the people and by the people, it must have freedom of press. So long press censorship which is nowadays called media coup is not banished from this subcontinent, judiciary is not separated from the executive and old taste of administrative power of military generals is be ruled out, obstacles to freedom of press will persist. If poverty and illiteracy are to be removed from society to ensure health and habitation for everybody, press should be allowed to enjoy freedom, and until it is done all governmental efforts for social and academic development will fail to give desired results.

In order to ensure a meaningful freedom of press this study reveals that the following conditions *inter alia*, are to be fulfilled:

(i) There must have political stability and liberty of the press in the country and the government must rise above everything to ensure freedom of press. Constant change of government through unconstitutional means often leads to negation of freedom of press. It has been seen that press flourishes in free atmosphere and withers in strangulated one. It has also been seen that only a constitutional government can ensure freedom of press and unconstitutional government kills it by suspending the constitution under which it is provided. So political climate of the country should not be allowed to be so cloudy as to allow the military to take over the civil administration. Since democracy is a people's government and since freedom of press is

people's fundamental right, democratic government must be established and it must be made accountable for its activities to the people and there must be transparency in all its activities. As the press is the only media through which the people can know the nature of government activities, the press should be allowed to publish them and make constructive criticism of its policies and activities. The press must also realise that it has a duty to expose to the public the undemocratic activities of those who try to do unsocial activities and bring political unstability in the country. Press has a great role in balancing the political atmosphere of the country. It can point out the follies of the government as well as the excesses of those who are not in the government. The amount of freedom which is necessary for the press to perform this duty must be allowed to it. Press must also play as impartial role; it must also be subject to accountability and transparency which are demanded of governmental activities. A democratic government should be allowed to control the press only to that extent at which it does not overstep its duty to focus the just views of those who are not in the government. Indeed if the press acts or is allowed to act within this perimeter, government will be stable, democracy will flourish and people will be able to enjoy a meaningful life in the society and press will be truly able to work independently.

(ii) Rule of law should be ensured in the society in the truest sense of the term. Unless it is followed as it is understood universally today there will be no fair justice in the society; and the whole fabric of administration will be polluted, democracy will die and freedom of press will become a far cry in the society, a deep frustration will haunt the minds of people. Since democracy and freedom of press are co-relative to each other, in a society without rule of law freedom of press cannot grow. It is seen that in a feudalistic or autocratic society where rule of law is absent press prints only what the feudal lord or autocrat desires; it has no independence whatsoever. Rule of law is therefore a pre-condition for the press freedom. Unless rule of law is there in a society, injustice will reign supreme in the society; there will be deep frustration in that society. Democracy without rule of law is something which is unthinkable and undesirable to people; and it is freedom of press which points out whether

justice is being meted out to common people. Freedom of press will not develop unless there is rule of law in the society.

(iii) Judiciary should be made independent from the executive for the fair growth of press freedom. If the judiciary becomes independent, it will be able to exercise its interpretive faculty to find the existence of freedom of press even where it is not expressly started. The Indian judiciary as well as that of Pakistan did it when their constitutions are silent about the freedom of press, although in so doing they were to bear the brunt of the executive at time. Things would have been easier, had the judiciary been separated from the executive. Judicial review can be successfully exercised where the judiciary is independent. In a democratic state independence of judiciary is of vital importance in the preservation of freedom of press along with other human rights and fundamental freedom. Only an independent and impartial judiciary can help establish freedom of press. A controlled judiciary cannot deliver the goods required for the growth of freedom of press. Whenever any threat comes to the press freedom from the executive, the judiciary may come to its rescue. Thus the excessiveness of the executive may fearlessly be brought by the press to the public. Nowadays it is often found in all the three countries that the judiciary is influenced mostly by the executive and the decisions are becoming vitiated by such influence. Independence of judiciary however does not mean judicial arbitrariness. The judiciary should be accountable to the ultimate authority of the country for its activities; it must deliver impartial justice. Judicial immunity should not be allowed to trample justice and deliver arbitrary judgements.

(iv) Press Councils and Press Institutes and similar other institutions as quasi-judicial organs may be strengthened by increasing their powers and functions and providing them required logistics in order to maintain and develop the freedom of press. So that press people may be trained, so that they must know their professional code of conduct, so that their behaviour may not be such as would jeopardise the freedom of press, these councils and institutions may be allowed to work vigorously. Government should involve them in nation building and policy framing works. Since government institutions take a long time for its procedural dilatoriness in taking action for

press people's wrongs in their professional works, the press council may be able to take prompt action against them as the council is meant to take direct actions against people involved in press activities. Again, the press institute will help in educating press people in their professional manners, techniques, relevant laws and the like which are highly essential for the development of press people's professional conduct; this being a training institute, it will help them to be educated in international aspect of press position, and in internalizing national issues; thereby press reporting and press standard will have a better chance to attain international standard.

(v) Social awarness about press and the necessity of its freedom should be created among the common people and the rate of literacy should be increased so that everybody may read newspapers and may know the events happening every day around them. The rate of literacy of the people of this subcontinent is far behind that of the people of the western developed countries. As a result of the poor rate of literacy only a small section of total population is able to read newspapers and can understand the utility and role of the press, what press is doing and how much freedom it is enjoying. Mass education is a must and social awarness about the utility, role and importance of the press for a balanced development of society.

(vi) Press is the prime educator of people. The urge to read newspapers and know about the recent national happenings will act as a stimulus towards educating common people. To remove poverty and illiteracy from society and to provide health and habitation to all citizen freedom of press will be ensured; it has no other alternative. Dissemination of news and information about national and international social, political, economic and cultural events happening at every nook and corner of the country and people's ability to know them through newspaper reading will convert the teeming population of the country into a huge exportable manpower people will be encouraged to go around and train themselves in subjects which have high demands in international job markets. Newspapers is the living literature, it is the daily diary of national and international events and it is the critique of the good and the bad. It is the mirror of the past and present, and the future of a nation may be planned accordingly. The rate of education should therefore be increased

through mass education and the like. Government as well as non-governmental organizations should come forward for the spread of education. Through education the need and utility of the freedom of press may be highlighted in the course curriculum broadly to the school level and in some way extensively in higher secondary as well as at more higher levels. Government should provide extra fund for the collection and preservation of newspapers, weeklies, periodicals etc. to every educational institutions. Government should therefore extend its cooperation to make available printing papers, machineries and other materials required for printing newspapers, weeklies and monthlies, etc. Any government control of printing materials will seriously affect freedom of press.

(vii) Attempts should be made to develop the habit of reading newspapers, weeklies, monthlies etc. among urban as well as rural people and for this, if necessary, government should take up new projects or assigned its duty to some NGO's. Once the habit of reading is formed the desire to read and know more will further enkindled the desire to read more.

(viii) Government control of advertisement affects the financial position of newspapers unless it is equitably distributed among different papers; so also quota allocation of newsprint affect the printing and circulation of it. Thus the freedom of press may be indirectly affected. So any sort of discrimination in the distribution of advertisements and any sort of control on the allocation of newsprint amount should be discouraged and stopped for the sake of freedom of press; all newspapers should be equally treated and benefits should be equally distributed among them without taking into consideration of their party affiliation.

(ix) Since everything is moving towards globalization, news media is also following suit. Therefore, international rules and regulations adopted in international conferences and conventions and contained in international instruments are to be included in all national enactments relating to press and its freedom. Laws relating to press freedom and press printing should therefore be updated in the light of these international rules and principles. Our judiciary should also extent its interpretative efforts to widen the ambit of press freedom in the light of recent world scenario. Press Council and Press Institutes and

similar other institutions should also be reformed, redesigned and remodeled and draw up new internationally accepted code of conduct for reporters and journalists and start imparting training in the light of modern changed law and situations.

(x) Most important of all governments as well as public must take effective measures to stop beating, harassing, molesting and even murdering the reporters or journalists while they are performing their noble duty of reporting. Mad selfishness of political parties and their paid and frustrated terrorists have recently either caused death or permanently maimed a number of journalists. This heinous activities seriously affect the freedom of press. Governments assurance that criminals have no party, whoever he may be he will be arrested and punished after proper trial. But the woe is this that the superior courts are releasing them for the faulty procedure in their arrest and evidence, even though the police people mostly fail to nab them. Again at times they dine together. The whole society must now rise together to check criminality, and arrest and identify the criminals whoever he may be and wherever he may be found. Only people's participation and people's awarness in checking social ills may ultimately produce an effective role in social development.

(xi) In fine a social movements must be started for the freedom of press, free circulation of newspapers, periodicals and others and effective means must be adopted so that reporters and journalists are strictly adhered to their the code of conduct. The press, the people and the government must work in unison for press freedom; neither should over step on other for some personal benefit.

If the above recommendations are implemented freedom of press will be ensured in all the three sub-continental countries, no matter whether they be developed or developing. In conclusion it may be said that the freedom of press is guaranteed in all the three countries of India, Pakistan and Bangladesh and everywhere the higher courts are acting as its sentinel, although the constitutions of the former two have not specifically mentioned it as the latter has done it in Article 39(2) (b) of its constitution. Due to political, cultural and geographical differences there may be variations in the degree of its enjoyment; but it is certain that press

feels free in printing news and disseminating information in democracy and not in autocratic military regime. Where democracy is the form of government in which human rights of individually are protected and their enjoyment is ensured this form of government should be nourished and freedom of press should be give a chance to grow fully. So that freedom of press is not lost in any way the above recommendation are suggested to be materialized. In the course of discussion it is seen that much depends on the political stability, individual or collective accountability of the people in administration and transparency in government's policy and actions. International law, international instruments and international code of conduct in matters of press freedom are to be followed in reforming and designing new national laws. The differences that persist in all other matters between developed and developing countries may also lie there in the matter of freedom of press but that in no way stood on the way of unification of press law on a global perspective. The governments of India, Pakistan and Bangladesh are therefore advised to update and reform their press laws in the light of the laws of developed countries fully taking into consideration their people's socio-cultural and socio-political situation.

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