CHAPTER - II

HISTORY OF PRESS AND IT'S FREEDOM

1.1 RETROSPECT:

People had to collect news from rumours and hearsay when printing was not known. Invention of printing offered a powerful means of spreading news. Further technical developments in printing and communications changed the outlook which gave raise to a new idea that the public was in the fundamental sense entitled to know, not merely from official sources but from a free and voluntary source with an ethic of its own, responsible to the public itself, both for the standards of truth and for completeness of information to know not merely to satisfy curiosity but as a means of participating in the public affairs. Any modern state depends upon its press and so the freedom and quality of its press have become sure indications of the freedom and quality of a State. The history of a newspaper is almost by definition, the history of the country in which it is published. Nor has this situation been changed since the advent of radio and television.

This has its origins in small Athenian democracy which could rely on word of mouth to create public aware-
ness. The earliest methods of spreading the news are found in the ancient Rome. It was "Acta Diurna" a form of Gazette, published daily from Rome since from 59 B.C. and its origin is attributed to Julius Ceasar. The Gazette was written in manuscript and its copies were hung in the prominent places in Rome. The Gazette recorded important social and political events, Plebiscites, Public appointment, edicts, treaties, trials and deaths, anything of special interest such as sport news etc. The gazette were the official notifications from various authorities and not the news gathered independently and freely.  

Another early approach to newspaper seems to have existed in China. This too was an authorised gazette, a kind of court circular, "Pao" or "Report" which began to be issued among official in the T'ang dynasty (AD 668-907). It appeared in the various forms and various names more or less continued down to the end of the Ch'ing dynasty in 1911. Initially, it was hand written. Further it was printed in blocks upto the 17th Century when it began to be printed from wooden type. It was also means of communication among officials.  

The earliest newspaper was the Nieuwe Tijdinghen, published from 1605 onwards in antwerp by Abraham Verhoeven. It was a commercial bulletin which circulated
among the merchants of Antwerp and Venice. Four other early papers were German and were started in 1609.

The Dutch people, the great traders, were not behind in publishing. They published "Corantos" as they were called "Currents of news", in 1619. The first 'Coranto' in English was a translation from the Dutch published in Amsterdam in 1620 by Pieter Van den keere. 'Corantos' in French also appeared in Amsterdam in 1620 though not in France until 1631.

Thus it may be stated that England which has eventually advanced beyond all other countries journalistically, has no special claim as home of the modern press. It may be safely and significantly mentioned that the newspaper first flourished in areas where authority was weak, as in Germany which was at that time divided into patchwork of small principalities or where rulers were more tolerant. Perhaps this may be the reason for lagging the development of Press in England in early days.

1.2 HISTORY IN ENGLAND:

The first press was set up in England in 1476 by William Caxton. But true newspaper was born in 1621, after about two centuries. The primitive news sheets which appeared on streets of London were the Corantos.
Further these Corantos began to be identified by name called "The Continuation of our weekly news" from the Office of Bourne and Butter. And out of these further developed the 'diurnals' which flourished during the struggle between king and parliament when it was safe to comment on local news because neither side was strong enough to take punitive measures and when both factions were seeking public support after 1640 diurnals appeared by the score. Oldest known paper of this type is John Thomas's 'Diurnall Occurances' which first appeared in November 29, 1641\(^5\).

During this development power of pen started becoming mighty than sword. There was a firm hand of Church for free expression and opinion\(^6\). This resulted into inclination of sovereign towards controlling the press. It was in the regime of Henry Tudor's (1485 to 1534) that the press became matter of kingly concern. Tudors noted strong dynasty of attempts of press to grasp power. He was Henry VIII, who started control of the press with a list of prohibited books in 1529. The first licensing system under Government Control was established by Henry VIII in exercise of Ecclesiastical authority assumed control of printing and by letters patents granted the privilege of printing and sale of books. By a proclamation on Christmas day 1534 Henry VIII required printers to have royal permission before setting
up shop. Thus the concept of prior restraint became law. During this period the powers of privy council were also increased to control press. As early in 1542 the Council made arrests for printing of Street ballads about political matter. Here can be traced back the dormant seeds of origin of Concept of freedom of Press. It was in its negative sense of assertion that freedom lies in rescue from the prior restraints. Therefore, though England had no special claim as the home of the modern press, it is equally true that historically the origin of concept of freedom of press took place in England.

Another effort to control press industry was adopted in 1557 when the Company of stationers was established through a Royal Charter. This company was given the exclusive privilege of printing and of keeping presses and thus exclusive monopoly was made. The Court of Star Chamber regulated its operations and exercised censorship. Thus, any matter could be printed only subject to prior approval. The Privy Council and the Star Chamber developed pattern of restrictions and prescribed severe penalties for printers. This is evident from the incident that William Carter, a Printer of pamphlets favourable to the Catholic cause.

During Elizabethan period the Star Chamber limited the number of printers to twenty and printing was to be carried on only in London, Oxford and Cambridge. The
powers of the search and destruction of unliened matters were with the company of stationers. The offenders were tried before the Court of High Commission which was an instrument exercising arbitrary powers over the subjects. The Star Chamber required every book to be submitted for licence and registration before publication. Any breach of this rule resulted in the forfeiture of the printing privilege itself.

Until 1640 the crown through the instrumentality of Star Chamer, exercised the restrictive jurisdiction (over printing and presses) without limit, enforcing its decrees by the summary powers of search, confiscation and imprisonment.

The Court of Star Chamber and Court of High Commission, the two instruments of arbitrary authority, were abolished in 1641.

In 1643 the Long Parliament issued an ordinance prohibiting any publication "unless the same be first approved of and licensed." The system of licensing was continued by the licensing Act of 1662 and heavier penalties were imposed under the Act. A person was prohibited from printing any book privately unless it had been entered with the company of stationers and been duly licensed by the proper authority. Unlicensed copies were to be seized by the King's messengers. Many a trial
for libel took place. Unlike the procedure in the court of Star Chamber or High Commission, the trials were in the regular courts and with the aid of jury.\textsuperscript{10}

Despite of the Governmental interference newspapers were increasing in the later part of seventeenth century and crown was acting on principle that the peace demanded, the suppression of unwarranted dissent. And the press started developing which demonstrated how powerful the press was as a medium of expression, voices began to be raised in favour of freedom of expression and in protest to such governmental interference and the freedom of press started to develop and built up in England.

On 24th November 1644 Poet John Milton published his famous Areopagitica, probably the best known of the great pleas for a free press. Milton begins his eloquent speech in favour of free press and free discussion as under:

"This is true liberty, when free-born men, having to advise the public, may speak free,

which he who can, and will deserves high praise;

who neither can, nor will, may hold his peace;
what can be juster in a state
than this?"11

Milton spoke eloquently for the right for discussion. Milton gave most perfect expression the idea of a free press.

along with logical arguments of Milton against licensing addressed to the Long Parliament, other journalistic heroes also contributed for in raising the voice for freedom of press. In 1679 the licensing Act of 1662 expired. However authority was maintained by the crown through Chief Justice Scrogg. In the trial of Henry Carr,12 printing of news books or pamphlets of news whatsoever, was held illegal. Again in Benjamin Harlies Trial13, Chief Justice Scrogg directed jury to find a verdict of guilty that too by turning out the request to see the book.

Thus in absence of licensing Act, the King retained his control through the good offices of Chief Justice. And in the regime of James II as the struggle of the people became acute, licensing Act was again renewed, Court of High Commission was established. Apart from licensing Act there were certain other devices for limiting the press, namely stamp tax on newspaper, taxation on advertising etc. There was general distrust among the people against the absolutism and tyranny
which led to the Revolution of 1688. The passage of the Act of succession declaring the right of the people to select their own sovereign, the Bill of Rights emphasized the protection of individual Rights but without any mention of freedom of expression. However, licensing Act which was renewed in 1692 was refused to be renewed by the House of Commons in 1694 which was described by Macaulay as a 'Revolution'. And it was end of censorship of press in the legal theory of England. It is pertinent to note that in the historical development of meaning of freedom of press in England Parliament was the authority which placed control on the press by statutory measures (such as Royal Proclamations, Prohibitions, Licence and Monopoly etc.) and by enactments like licensing Act 1662 and Parliament was the authority which had not renewed the Act. This is the basis of development of concept of freedom of press and not any statutory or constitutional declaration like that of United States of America. Therefore, history of freedom of press in England is a triumph of the people against the power of the licensor.

A.V. Dicey in his "Introduction to Constitutional Law of England" states that the phrases "Freedom of Discussion" or "Liberty of the Press" are rarely found in any part of the statute book nor among maxims of
common Law. At no time in England, there has been any proclamation of the right to liberty of thought or to freedom of speech. In other words any person, therefore, may say or write whatever he likes subject to the risk of punishment as per ordinary law if he publishes any statement which he is not legally entitled to make. Thus law of England recognises in general no special privilege on behalf of the "press". Thus the freedom of the press in England means freedom to write any thing provided the law is not infringed, or to write any thing which is not offence such as sedition, obscenity, contempt of Court, defamation, blasphemy etc. Thus any offence which can be committed through the press is some form of libel and in substance is governed by the ordinary law of defamation. Further in England the press offences are tried and punished by the ordinary courts of the country i.e., by a Judge and a jury. A.V. Dicey described position of writers in press as substantially to that of letter writers. He has quoted Lord Mansfield as -

"The liberty of the press consists in printing without any previous licence, subject to the consequences of law"\(^{17}\) Blackstone, the early exponent of English law in 1769 write in his commentaries as under :-

"The liberty of the press is, indeed, essential to the nature of free state; but this consists in
laying no previous restraints upon publications and not in freedom from censure from criminal matter when published. Every freedom has an undoubted right to lay what sentiments 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 consequence of his own temerity. To subject the press to the restrictive power of a licensor, as was formerly done, both before and since the revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all contraverted points in learning, religion and government. But to punish (as the law does at present) any dangerous or offensive writings, which when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the prevention of peace and good order, of government and religion, the only solid foundations of civil liberty...18

1.3 HISTORY IN UNITED STATES:

History and heritage of press in United States of America has been impressively written by Brown in his book entitled "The Reluctant Reformation". It may be summed up as follows :-
New England was the birthplace of American newspaper. In 1704 first publication meeting all the qualifications of true newspaper appeared. The first printers were the pilgrims who in 1620 (i.e., after establishment of successful colony in 1610), published religious tracts for the separatists. After pilgrims another group settled around Boston which is known as cradle of American journalism and the group was Massachusetts Bay Colony which increased rapidly in population and area of influence. Further as a part of the educational urge and process the authorities established the first press in English colonies at Cambridge in 1638. Basically its function was to produce religious texts needed in schools and colleges and afterwards other presses were set up which printed cultural material including the first history of the colony and poetry. Along with the cultural and literary interest of the society, there was a class of businessman which could visualise the media of publication and its commercial aspect by advertising. This independent class looked upon advertisement as a trade in growing communities and discovered that the goods can be moved to local customer faster if he printed notices or advertisements in a publication read by his customers. This emphasis on commercial aspect of press can be gathered from number of early newspapers with the word "Advertiser" in the name plate. The development of
commerce, then, had an important bearing on the establishment of the first newspaper and all early publications appeared in commercial centres.

In the year 1679 a London fellow Benjamin Harris after sufficiently put to troubles by King Charles and a victim of Licensing policy came to Boston and opened a bookseller shop. He published on 25th September 1690 a four page printed newspaper. This was Harris's 'public occurrences' both foreign and domestic, called by some authorities as the first American newspaper. The size of the occurrence was only 6 x 10.4 inches and formed four pages, the fourth page was blank so the reader could add his own news items before passing it on. But it was the Massachusetts licensing Act that brought Harris into troubles, his career as a publisher was ended and had to return back to England.

After about fourteen years of return of Harris, early American journalism was contributed by John Campbell. He was the postmaster appointed at Boston post-office in the year 1700. John Campbell issued information in the form of a news letter through postal service to all correspondents in other colonies. This news letter covered governmental as well as commercial matters. These efforts of John Campbell accompanied with one of the printers in Boston namely Bartholomew
Green gave birth to true American newspaper. On 24th April 1704, the first American newspaper "The Boston news letter" was on the streets for sales. It was printed on both sides of paper, little larger than the Harris's paper, and contained local as well as foreign news and was an informative paper. After John Campbell, William Brooker was another postmaster appointed at Boston. Brooker started publishing semi-official publication "Boston Gazette". There was a competition between the news letter and Boston Gazette. Meanwhile few other periodicals also appeared in New England.

The noteworthy feature of American journalism since seventeenth and in the early eighteenth century is that Campbell Brooker and their successors, as minor bureaucrats were careful not to offend officials upon whom they were dependent for privileges and subsidies. Every issue of the paper was approved by a Government Representative and thus they had to face licensing laws. Thus, the line of publication was "published by authority".

During 1721 another publisher James Franklin, after printing gazette for some times, established New England Courant and it was a fresh start of journalism in Boston. The Courant was the first American newspaper to supply readers with what they liked and needed, rather than information controlled by self-interested officials.
Thus when all other publishers had bowed to official pressures to "Print by authority" even after the end of licensing, James Franklin unshackled the American press from the licenser.

Of course this could not be tolerated by the authorities and under the charge of contempt he was thrown in jail. He was further troubled by the authorities and it was declared by the general Court "James Franklin be strictly forbidden.... to print or publish the New England Courant or any pamphlet or paper of the like nature, except it be first supervised, by the Secretary of this Province." This was reaffirmation of old licensing power.

After 1725 Newspapers sprouted all over the colonies. The colonial paper consisted of four pages, often about ten by fifteen inches in dimension. The paper was rough full-scape. There were no headlines until after 1750. The exceptional illustrations were the "Colophons" on title page and on occasional woodcut to embellish an advertisement. With this primitive equipment the printer journalist not only produced fine graphic art but he also had at hand an implement that was soon to make the press truly a Fourth Estate. In the second quarter of the Eighteenth Century the newspaper became a force to be feared by arrogant administrators. Better roads lead to better communications. Thus better trans-
portation and communication facilities, rapid increase in population, great technical advances, raising political tensions partly explain the growth of the press.

In this history of American journalism the most celebrated case involving freedom of the press was the Zenger Trial of 1735. It can be said to be creditable for the case for its effect on legal reform and its inspirational reforms was tremendous. In Philadelphia first newspaper was set up in 1725 by William Bradford, namely New York Gazette. However, as Bradford was appointed as Government Printer at New York, his gazette was in support of the administration. Therefore, for communication of colonies' affairs, particularly during the period of start of mild revolution, group of wealthy merchants and landholders insisted to Zenger, former partner of Bradford, to edit a newspaper. Accordingly in 1733 Zenger started New York Weekly journal.

On December 3rd 1733, a story appeared in the Zenger's paper attacking Governor Cosby for permitting French Warships to spy on lower bay defences. In the same issue an inrate New Jersey settler denounced the colonial bureaucracy for incompetence. Public enjoyed the show resulting Zenger to run extra copies. But the Governor could not tolerate such journalistic enterprise. Zenger was charged with "scandalous, virulent and
seditious reflections upon the Government". Governor Cosby ordered Chief Justice Delancy to obtain indictment against the Brash Editor. On 17th November 1934, Zinger was arrested on a charge of 'raising sedition'.

The famous trial went on in 1935. For Government Attorney was acting, on behalf of Zenger was famous lawyer Andrew Hemilton and Justice Delancey was to decide and give verdict. After the trial was over, Hemilton added his last note appealing to the jury to act like freemen and to follow their own consciousness without fear of official reprisals, as guaranteed under English system of law. He ends —

"Men who injure and oppress the people under their administration provoke them to cry out and complain and then make that very complaint the foundation for new oppressions and prosecutions. But to conclude the question before the court and you gentleman of the jury is not of small nor private concern. It is not the cause of the poor printer, nor of New York alone, it may in its consequence affect every freeman that lives under a British Government on the main of America. It is the best cause. It is the cause of liberty and I make no doubt but your upright conduct this day will not only entitle you to the love and esteem
of your fellow citizens but every man who prefers freedom to a life of slavery will bless and honour you as men who have baffled the attempt of tyranny and by an impartial and uncorrupt verdict, have led a noble foundation for securing to ourselves, our posterity and our neighbours that to which nature and Laws of our country have given us a right — the liberty — both of exposing and opposing arbitrary power (in these parts of world at least) by speaking and writing... Truth."

On the note Hamilton won his case. The jury returned verdict of 'non guilty', and Zinger was freed. Zinger was the hero of American journalism and Andrew Hemilton the hero who advocated freedom of press for people loving liberty and independence.

Ratio of the case and the inspirational contribution of Zenger and Hemilton is the basis of philosophy of today in the matters of free speech and press. The right to criticize officials is one of the main pillars of press freedom. Psychologically the Zinger trial advanced this goal, because no other colonial Court trial of a printer for seditious libel after 1735 has come to light. Popular opinion had proved its power. The Zenger case thus merits its place in history, as a forerunner of what was to follow. Nearabout 1750 is the
period of American revolution. It is true as history says that the American revolution was strictly a struggle by freedom loving people for independence from the tyrannical British King. Along with it the main factor in the coming revolution was a clash of debtor and creditor. Thus economics was the important factor. Refusal of British to grant home rule was another point of dispute. France and America soon to be embroiled in revolution indicating that the War of independence was a regional manifestation of World unrest. Thus war was both as much as a class struggle a domestic rebellion even as it was a struggle for political separation. The fight for freedom was both internal and external as a class struggle. In United States after 1750 the history of freedom of press was part and parcel of struggle for political independence and liberty which culminated into the incorporation of specific guarantee of freedom of press under the U.S. Constitution.

1.4 HISTORY IN INDIA:

The first newspaper in India was started by an Englishman Hicky from Calcutta in the year 1780 namely Bengal Gazette. Through this Gazette Hicky attacked the then British Government and Judges. Hicky attacked the Judges with all kinds of stories including Warrant Hastings's Chief Justice. Therefore, Hicky had to face
the crippling of his Gazette by the Government and eventually his Gazette could not survive.

In India history of legislation concerning press has roots in long past than that of history of development of content and meaning of freedom of press. The concept of freedom of press developed as a part of and along with Nationalist Movement which aimed at the independence of India. The then British Indian Government made every efforts to control and cripple the press as according to the Government it was a means or tool in the hands of the then heroes on National Front. Therefore, content and meaning of freedom of press is part and parcel of struggle for of freedom of the country. The history of laws against press started simultaneously along with the growth of newspapers which from their inception took up the criticism of the administration and of the officials responsible for it. An account of brief history of press legislation in India is impressively narrated by Durga Das Basu in his Law of the Press in India.

In the year 1773 East India Company footed on Indian Land. In the year 1774 First Governor Warran Hestings was appointed. It was in the year 1799 the Governor General issued regulations requiring newspapers, under pain of penalty to print the names of the printer,
publisher and editor of newspapers and to submit all material published therein for precensorship by the Secretary to the Government of India. This Regulation was abolished during the time of Warran Hastings.

In the year 1823, when pre-censorship was abolished, the next Governor General, issued an ordinance introducing 'licensing' of the press, under which all matters printed in a press, except commercial matters, required a previous licence from the Governor General on the submission of an application stating the names and other particulars of the press, newspapers etc. similar regulations were made in Bombay in 1825 and 1827. In the year 1835 the Licensing Regulations were replaced by Metcalf's Act, which was made applicable to the whole of the territory of the East India Company. By this Act printer and publisher of every newspaper was required to declare the location of the premises of its publication. Again in the year 1857 licensing was re-introduced by Lord Canning's Act of 1857. It was applied to all kinds of publications, including books and other printed papers, in any language European or Indian. In 1860 came into force the Indian Penal Code which along with specifying and defining all kinds of offences and punishments for same laid down offences which any writer, publisher, printer must avoid e.g., the offences of defamation, obscenity, sedition, promoting enmity between classes
etc. The earliest surviving enactment and the enactment not penalising but aimed at regulating the press was passed in 1867. It was Press and Registration of Books Act 1867. Its object was not to establish Governmental control over the freedom of Press. It was a regulation Law\textsuperscript{21}. By this enactment Government was enabled to regulate printing presses and newspapers by a system of Registration. The first enactment which was specifically directed against the newspapers published in Indian languages was the Vernacular Press Act, 1878. It was aimed at for punishing and suppressing seditious writings. For the first time it empowered the Government to issue Search Warrant and to enter the premises of any press even without orders from any court. It was in force upto 1881 and was then repealed.

In the year 1898 two legislations pertaining to the criminal law in general were passed. It was substantive criminal law, Indian Penal Code Amendment Act, 1898, in which offences are making or publishing of statements constituting to public mischief, Sec.505 promotion of enmity between two classes (Sec.153-A) and Sedition (Sec.124/A). Another legislation was amendment to Criminal Procedure Code of 1882 in the year 1898 by which as a procedure certain powers were conferred upon the Government to search for and to forfeit publications which offended the provisions of Sec.124 A, 153 A and
295 A of IPC.

In the year 1908, the Newspaper (Incitement to offences) Act, which was passed in 1908, empowered a Magistrate to seize a press on being satisfied that a newspaper printed therein contained incitement to murder or any other act of violence or an offence under the Explosive Substances Act.

In the year 1910 a more comprehensive enactment was passed directed against offences involving violence as well as sedition. The Indian Press Act 1910 empowered the Government to demand deposit as security by the keeper of any press which contained matter inciting sedition, murder or any offence under the Explosive Substances Act and also provided for forfeiture of such deposit in specified contingencies. It was on the verge of outbreak of the First World War before 1914 that by Criminal Law Amendment Act, 1913, there were made substantial but regours changes in the Criminal Law of 1910. And the defence of India Regulations which were promulgated at the same time were equally regours.

However, these rigours enactments were adopted to meet out the contingency viz., the promotion of revolutionary conspiracies through the press. And such purpose was served by other ordinary laws as mentioned earlier.
It was not surprising if the British Government was promoted to promulgate an ordinance to "Control the Press" to suppress the press during Civil disobedience Movement for 'Swaraj'. In the year 1931, ordinance to control press was later embodied in the press (Emergency) Powers Act, 1931. It was made permanent in 1935. By this Act in obligation was imposed on the press to furnish security at the call of the Executive. A provincial Government was empowered to direct a printing press to deposit a security which was liable to be forfeited if the press published any matter by which any of the mischievous acts enumerated in Sec.4 of the Act were furthered e.g., bringing the Government into hatred or contempt or inciting disaffection towards the Government, inciting feelings of hatred and enmity between different classes of subjects etc./This Indian Act was in fact a revival of the trial by Star Chamber of Press offences and the licensing system which English Democracy had fought./In the further years when the draft constitution was under consideration in the Constituent Assembly, the Government of India appointed a Press Laws Enquiry Committee to "Review the press of India with a view to examine if they are in accordance with the fundamental rights formulated by the Constituent Assembly of India." This Committee recommended a repeal of the press (Emergency Powers) Act 1931. Meanwhile other enactments
concerning the press were passed. They were official Secrets Act 1923, Contempt of Court Act 1952, which are discussed separately in detail in other Chapters.

This Act of 1931 was replaced by a measure namely the press (Objectionable matter) Act 1951 and its constitutionality was reviewed in some cases.²²

It would be interesting in this context to mention some cases during pre-independence period. In a case Queen Empress V. Bal Gangadhar Tilak²³ Bombay High Court had an occasion to define the extent of freedom enjoyed by Indians under the British Rule. While interpreting Sec.104-A of the Indian Penal Code, it is said that so long as the journalist bonafidely criticises, public measures and institution with a view to their improvement and to remedy the grievances, he has nothing to worry but when he attempts whether open or disguised, to make the people hate their rulers, then he is liable for the punishment. Though occasion was an interpretation of Penal Provision British Courts in India did not approve the idea of freedom to attack the existence of the British Government itself. There is only a very thin line between the attack on the policy of the Government and the attack on the Government pursuing that policy.²⁴

In Young India Case²⁴, was involved the question of Contempt of Court. In this case, editor and publisher of newspaper 'Young India' were Mohandas Gandhi and
Haribhai Desai. In the issue of Young India dated 6th August 1919, they published a letter written by the District Judge of Ahmedabad to the Registrar of Bombay High Court. It was concerning to the pending proceedings before the High Court in a case. Under a change for contempt of the court, it was held that it is not permissible to publish comments on or extracts from any pending proceedings in Court unless the leave of the court is first obtained. Both the accused were held guilty of contempt.

In Bombay Chronicle Cases²⁵ was involved question of contempt of court. It was held that "where the Article as a whole would leave on the mind of an ordinary reader the clear impression that injustice had been deliberately done on political grounds to some of the accused who were apparently innocent, in other words it attributes judicial dishonesty to the judges."

Therefore, article in question was held to be contumacious.

In Balkrishna Kulkarni's case²⁶ it was held that comments in a publication reflecting on the character or impartiality of the Magistrate in the course of criminal trial constitute necessarily a contempt of court.

It seems that convictions for sedition and contempt of court were frequently used as against freedom of press. It is submitted that the judgements seem to be politically motivated, as an inevitable consequence of
the nationalist movement fighting for free India.

The first step to grant right to every citizen of India to express his thoughts by words or writing, and publish them in print without liability to censor was sought to be taken in the Constitution of India Bill, 1895, along with some other rights. There is no clear evidence about the authorship of the Bill, Annie Besant, an English lady, fighting for cause of India presented the Draft. Thereafter in the year 1925, the Commonwealth of India Bill was prepared and sent to British Home Secretary Dr. D. Graham Pole, which was signed by 43 Indian Leaders. In this Bill there was the 'Declaration of rights' contained in Clause 4, as free expression of opinions. Right to freedom of expression finds place in 'The Nehru Report', 1928 and further in the Government of India Act, 1935. Thereafter the inclusion of the said right is considered by the Constituent Assembly, which is discussed in detail under respective captions.
REFERENCES


3 & 4 Ibid at page 236.


7. See Ibid Note No.5, See also May, Constitutional History of England Vol.II Ch.IX.


10. 7, Howell's State Trials, 1127 (1680).

12. 7, Howell's State Trials 926 (1680).

13. For details see Note No.19
    Chapter No. II of this thesis.


16. The Kind vs Dean of St.Asaph (1784) C.F.Ibid, p.247, 3 T.R.428 (Note


19. See also Halsbury (3rd Ed.); Art.418, Brown; 'The Reluctant Reformation'.


23. Queen Impress v. Bal Gangadhar Tilak, (1897) 22, Bombay 112, 139, 142. See also Re Narasimha Chintaman Kelkar, (1908) 33, Bombay 240.

24. Re. Mohandas Karamchand Gandhi and another, AIR 1919 Bombay 175.

25. Emperor V. Marmaduke Pickthall, editor, Printer Publisher of Bombay Cronicle, AIR 1923 Bombay 8, See also AIR 1923 Bombay 242.
