CHAPTER-4
PRESS, FREE SPEECH AND CONTEMPT OF COURT
CHAPTER 4
PRESS, FREE SPEECH AND CONTEMPT OF COURT IN INDIA

4.1 Introduction

The success or failure of any democratic system depends largely on the extent to which civil liberties is enjoyed by the citizens. Maximum development of an individual is the aim of a democracy by guaranteeing significant rights and freedom to the maximum extent. In a popular democracy, people are supreme and all the three organs of the state, i.e. Legislature, Executive and Judiciary are to serve them. Consequently, service providers are accountable towards their masters and masters have the right to check and criticize if they do not act or behave properly. Master’s right to check, criticize and control may be effectively exercised through the right to freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution of India. But excess to information is very foundation of this freedom of speech and expression. Unless, access to information will be provided, it will not be practicable not to effective exercise of freedom of speech and expression; and in turn check, criticize and control of service providers.¹

Free press² is the hallmark of a democratic society. It has to play a vital role in safeguarding the rights and liberties of people. This freedom is based on thinking writing, printing and publishing with free access to information. The press has the same right as an ordinary citizen of the country. Though freedom of speech and expression include freedom of the press also,³ it has no special privileges, which are enjoyed by the legislature⁴ or the head of the state.⁵

Democracy can thrive not only under the vigilant eye of its legislature, but also the care and guidance of public opinion and the press is par excellence, the

² According to R.C.S. Sarkar, freedom of the Press has three important elements. They are, freedom of publication, freedom of circulation and freedom of access to all sources of information. R.C.S. Sarkar, 'The Press in India', 1984, p.35.
⁴ Art. 105 of the Constitution guarantees special privileges to Parliament and its members, which include freedom of speech, immunity from legal proceedings for anything said in Parliament and also for the publication made under the authority of Parliament. Corresponding provision with regard to state legislature is contained in Art. 194.
⁵ Art. 59 and Article 158 and second schedule of the Constitution of India guarantee certain privileges to the President of India and Governor of a State.
vehicle through which opinion can become articulate. So, freedom of press is essential to political liberty. The purpose of the press is to advance public interest by publishing facts and opinions without which masters will not be able to have effective control over source providers. At the same time baseless, frivolous, unwanted facts and information may cover the dignity of the institution, so, the need is to make balance between freedom of press to publish facts and dignity of the judiciary.\(^6\)

Freedom of speech and expression of the individual and the media does not, confer an absolute right to speak and disseminate without responsibility whatever one wishes, nor does it provide unrestricted or unbridle immunity for every possible use of language and prevent the punishment of those who abuse this freedom. Constitution of India in Article 19(2) attempts to strike a balance between individual liberty and state control and authorize the state to impose certain reasonable restrictions.\(^7\)

The increased role of media in today’s globalized and tech savvy world was aptly put the world of Justice in the hand that rule the press, radio screen and magazine, rules the country. Judiciary is also not left unaffected by the effect of ‘mass media’. It comes as no surprise that court, the judiciary and the legal profession has not escaped heightened scrutiny. Today the media capitalize on enduring Indian appetite for law and regularly turn to it both to provide information and captivate more and more time in the nightly news broadcast in T.V. and full space in daily newspaper are devoted to judicial matter especially criminal cases. The more the people go into details of a case the more burdens over it become for the judges to pronounce their judgment in a case. The critique may be good, but we cannot overlook the ill-effects of which it has one hand we have the right to freedom of press enshrined in the Constitution of India on the other hand right of the accused for a fair trial unbiased by pre-trial publicity. It is important to look at how the two can be reconciled.\(^8\)

4.2 Historical Development of Press Laws in India

Men do not live by bread alone. No doubt, food enriched his body but knowledge and information fulfill him, make him completely perfect and rational

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\(^6\) Supra note 1, at p. 20.


being. Therefore, quest for knowledge and thirst for information are time inherent phenomenon as old as the ‘man’ himself. In other words, there has been an inherent desire in man to know and then act on the basis of the information. This curiosity has made him knowledgeable and herald a new era of progress and prosperity of the society with ideas, information and knowledge has been not only achieved tremendous success in his life but also brought about and all around development in the society. Lack of information might pose a serious threat even to his survival and degrade his personality. Hence, for his own safety and prosperity he strive his best in acquiring and exchanging information with his fellow beings. Continuous and prolonged hard work in this regard resulted, among other things in the setting up of media including the newspaper.9

The history of the press in India is the history of its struggle for freedom. It is a story of how repressive measures were undertaken to control the press and how they were tightened or relaxed to meet newer exigencies through which the country passed over two centuries.10

4.2.1 Ancient Period

During ancient period news was travel orally by words of mouth. The Hindu mythology records the exploits of one man oral newspaper who supplied news to both heaven and earth. He was Narada, a Rishi by modern standards, he could be considered as reporter. At a later stage, machinery was developed to keep the ruler informed of the main currents of the life of the people. Such information was transmitted verbally by messenger who reported orally and that at a much later stage it was reduced to writing.11

The earliest reference to an organization for the collection of news in ancient India is found in the ordinance of Manu on important historical document. It shows that the intelligence organization was divided into two sections namely the external and internal intelligence administration. For external intelligence, Manu advises the ruler to appoint an ambassador learned in all treaties, who understood gestures

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10 Supra note 2 at p. 17.
expression. The internal intelligence was organized in dual fashion. The news was first expected from the administration and then from spies.\textsuperscript{12}

The idea, news and messages were disseminated by the wandering monk through oral communication speech and spoken word were beyond doubt the most important vehicle of human communication.\textsuperscript{13}

During the Rigvedic period the King’s autocracy was limited by the popular bodies called the Sabha and Smiti. In Smiti all people were supposed to be present in the assembly. In each Sabha and Smiti there was one person employed who look at matter happening surrounding. King employed spies (spasa) to watch over the conduct of the people. The foremost function of the spasa was to gather news and them inform to king.\textsuperscript{14} The great epic of the Aryans were the Ramayana and the Mahabharata. During both period the news were gathered through secrets agents, and these news and messages were communicated through oral communication. In Ramayana Hanuman was selected as an ambassador to the court of Ravana to deliver the message from Rama to return Sita.\textsuperscript{15}

According to Kautilyas Arthashashstra there were altogether 10 Kings in the Mauryan dynasty who ruled from (520-185 B.C.). According to this there were 18 department of administration and one of them was intelligence. Contact with the general public was maintained through agent and informant. They broadcast the idea of King and brought him report on public opinion. Secret agents conveyed their information by means of writing concealed in musical instrument or through sign, recitation or song or, general public was informed by beating drums.\textsuperscript{16}

One of the greatest Indian empires and the grandson of the Chandragupta Maurya devised his over means of communication. During his regime all the imperial edicts were unscribed on cooper plates, rocks and stone pillar. Daily news covering the events and happening were published in the form of small picture drawn on the walls of temple with ink or colour which could be erased easily. Policy decision

\begin{footnotesize}
\textsuperscript{13} V.S. Gupta, ‘Handbook of Journalism and Mass Communication’, 2001, p. 68.
\textsuperscript{15} Id. at p. 79.
\textsuperscript{16} Id. at p. 157.
\end{footnotesize}
taken by the rulers were also communicated to the people through announces who made this announcement in a crowded gathering by beating a tom-tom.\textsuperscript{17}

\subsection*{4.2.2 Medieval Period}

During the Mahmud Ghazni there was no special network of news gathering and informing the people. There was only one special department of intelligence. Those for intelligence gathering were collected ‘sarran’ and horse courier for urgent missives was called Khail sarran. The main work of ‘sarran’ was to collect the news happening in surrounding and to inform the King. Sarran was like the reporters or spy.\textsuperscript{18} A new feature was the news writer or (Munshi) posted at every town. He was to report every day or by every third day for which special horse courier and runners were kept ready at every Kos. Minister of state news was appointed. The fresh concept of two way news transmissions was adopted, wherein the people were also kept informed about the well being of ruler. This system of news letter and news writers becomes the hallmark of communication system of this regime.\textsuperscript{19}

In order to maintain regular and speedy communication there were two ways through which news or messages were communicated to king. The first was horse post and the second was foot post. The horsemen carried letters with the jingling bells till he reached the station.\textsuperscript{20}

During the period of Akbar the system of Dak-Chowki was established to procure and transmit secret news and messages. Secret agents were employed together the news. Provisions were made to ensure that every news was counter checked or precision. The Wagai Navis and Swami Nagar were like the present day regional news correspondents serving a news agency, reporting both the local news and district level happening. The Wagai Navis had his network of grassroots level stringed in each district and pargana, who kept him informed with all current news. The Wagai Navis usually send his reports weekly and Swami Nagar weekly. The Akbar Navis system organized by Akbar set off the nascent form of newspaper. These gradually evolved into periodical news letter. The era also saw the emergence of the official ante typographic newspapers which were indeed the confidential reporters and special

\textsuperscript{17} Supra note 9, pp. 1-2.
\textsuperscript{18} Supra note 12 at p. 4.
\textsuperscript{19} Id. at p. 5.
\textsuperscript{20} K.M. Munshi, 'The History and Culture of the Indian People', 1960, pp. 454-455.

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news letter discussed for instant perusal of the monarch. From this there emerged the akhhar or private news periodical call.\textsuperscript{21}

Aurangzeb established an efficient system of information officers. News writers were appointed to various administrative units in their territory, and were changed with the function of sending reports to the headquarters of the administration. These manuscript reports were submitted exclusively for office use.\textsuperscript{22}

Aurangzeb’s army was also a good source of information. His army not only received the news from the headquarters but also communicated the same to it. There were in addition spies who were also obliged to send report weekly about other important matters.\textsuperscript{23} These handwritten letters, mentioned visit of the emperor to mosques on other holy places, hunting expedition, detail of the representation made to him and news items of similar nature. Secret information was conveyed along with the general news whenever necessary.\textsuperscript{24}

Thus, we can conclude that in Ancient and Medieval India news were gathered or collected by secret agents. In ancient India news were conveyed to King through oral method, but in medieval India this news was conveyed to King through written newsletter and general public were informed by beating drum. That means in India there was no newspaper or newsletter which directly informed the general public.

4.2.3 Modern Period

Indian Legal History relating to the development of the concept of freedom of the press has similarly been studied under the two periods. The first period belongs to pre-independence or; and the second one states the post independence position of the concept.

4.2.3.1 Pre Independence Period

The growth and development of press in India has had a chequered history. In India Print Media has been a product of struggle against the continuing repressive measure of British ruler over long period of time.\textsuperscript{25}

\textsuperscript{21} Supra note 12 at p. 6.
\textsuperscript{22} Id. at p. 60.
\textsuperscript{23} Supra note 9, pp. 2-3.
\textsuperscript{24} Id. at p. 3.
\textsuperscript{25} Supra note 13 at p. 91.
The origin of the press in India can be traced to immigration of European in India. The Portuguese introduced the Press in India.\(^{26}\) The Christian missionaries brought the first printing press to India in 15\(^{th}\) and 16\(^{th}\) centuries. It was mainly concentrated for propagating Christianity among the Hindus and prompts them to Christianity.\(^{27}\)

Printing in India originated in Goa in 1550 and the Spanish Coadju Brother John de Bustamante, Known as the Indian Guttenberg, was the first printer. The first book published in India was the Jesuits of Goa in 1557. In 1674 a printing press was set up in Bombay.\(^{28}\) It is significant to mention that even though the first printing press set up in the third quarter of the 16\(^{th}\) century, publication of a newspaper was delayed by more than two centuries.\(^{29}\)

The establishment of the East India Company in 1600 introduced by Anglo-Saxon law in India and a series of enactments were directed against the press since the emergence of the East India Company. From 1797, regulations were issued for the pre-inspection of all news-papers under threat of deportation.\(^{30}\) Early newspapers, generally of English concerns, were published by Englishmen in India. These were usually very critical of the government and led to conflict plus the establishment of a strict censorship. Among the earliest champions of the freedom of the press in India were Englishmen, and one of them, James Silk Buckingham, editor of Calcutta Journal had been too free in his criticism of officials and their doings that he was expelled from India by the then acting Governor-General, Adam.\(^{31}\) In 1799, the Governor-General issued regulations to submit all materials for publication for pre-censorships by the secrefing to the Government of India. Those regulations were abolished during the tenure of Warren Hastings.\(^{32}\) In 1823, licensing of the press was introduced by an ordinance. This Ordinance was replaced later on by Metcalf’s Act, 1835 which was made applicable to the whole of the territory to the East India Company, require the printer and publisher of every newspaper to declare the location of the premises of its publication. Although Bentik had allowed great freedom of the

\(^{29}\) Supra note 9, at p. 5.
Press, he took the view that public safety required a control of the press. His successor Metcalf, incurred the displeasure of the Directors by removing all press restrictions by legislation in 1855. This position continued till 1857 when under the stress of ‘Mutiny’ conditions, a rigorous licensing of ‘Printing-Presses’ was established by the ‘Gagging Act’ of Canning.\(^{33}\)

In 1857, Lord Canning’s Act was applied to all kinds of publication, including books and printed papers, in any language, European or Indian. In 1867, the press and Registration of Books Act, 1867 was enacted with an object to control publication of anonymous literature. This law required essential information regarding the owner, editor and printer. The Vernacular Press Act, 1878 was directed against newspapers published in Indian languages, for publishing and suppressing seditious writings. Under the provisions of this Act, "The government was given the power to work and to confiscate the plant, deposit, etc., in the event of the publication of undesirable matter’. This ‘Gagging Act’ did not permit any appeal against the orders of a Magistrate, empowered the Government to issue search warrants and to enter premises of any press, even without orders from any court. Later on, Lord Rippon repealed the Vernacular Press Act, in 1881.\(^{34}\)

The year of 1908 was a year of discontent and unrest in India and it was also a year of constitutional reforms. The Newspapers (incitement to offences) Act was passed by the Imperial Legislative council in June, 1908 by which an undesirable newspaper may be killed by District Magistrate, its press, plant, machinery and tools and every printing or other materials, connected with it confiscated and the very name of the paper obliterated forever. It has only to be made out that the paper contained an ‘incitement to any violence’ and woe to the owner and proprietor of the press in which the paper was printed.\(^{35}\) Indian Press Act, 1910 put fetters on expression of public opinion. The Defence of India Regulations was promulgated on the outbreak of the First World War in 1914. These regulations were intended against aliens and enemies in Great Britain but, in real sense, had been put in force against devoted workers for Indian constitutional reforms.\(^{36}\)

\(^{36}\) Id., pp. 210-211.
In 1919, Government of India adopted a policy of repression in Punjab after the war and promulgated the Rowlatt Act. It was named after the British Judge who recommended the drastic measure; Rowlatt Bill was passed into law on March 19, 1919. It was an iniquitous piece of legislation and draconian provisions of the Act were directed against the patriotic people of India. The launching of the Civil Disobedience Movement, in 1931, for the attainment of Swaraj, prompted the government to promulgate an ordinance to 'control the press' which was later embodied in the Press (Emergency) Powers Act, 1931. Originally a temporary Act, it was made permanent in 1935.37

Before 1947, it is noteworthy that the role of the press was chiefly concerned with the problem of securing at the earliest possible the early transfer of power to Indian hands. 'Freedom of the Press' is part of the larger freedom of the country and until the century is free the press has necessarily to work under the limitations arising from factors and forces that are imposed on it.38 In other hands, it can be said that freedom of the press suffers in the hands of a despotic Monarch. Hence, fettered press may become one of the greatest scourges with which the hands of a despotic power can be armed and one of the most dreadful engines of tortured with which it can track the mind.39 This was the Pre-constitutional History of Indian Press.

4.2.3.2 Post Independence Period

Soon after gaining Independence, the Government of India set up a ‘Press Laws Inquiry Committee’ in 1947 under the Chairmanship of Sri Ganga Nath Jha. The committee was required to (i) examine and report to the government on the laws regulating the Press in a Principal countries of the world including India; (ii) to review the Press Laws of India with a view to examine if they were in accordance with the fundamental Rights formulated by the constituent Assembly of India; and (iii) to recommend to the government any measures of reform with press laws considered expedient upon such review.40 The committee recommended that an explanation

38 Supra note 35 at p.735.
40 Supra note 34.
should be added to section 153 A\textsuperscript{41} of the Indian Penal Code to the effect that it did
not amount to an offence under that section to advocate a change in social and
economic order provided that adequacy did not include violence. The committee
recommended the repeal of the Foreign Relations Act, 1932, the Indian States
(Protection) Act, 1934 and the Indian Press (Emergency Power) Act, 1931 which did
not find a place in the ordinary law of the country, should be incorporated into that
law at suitable places. It was further recommended that section 124 A\textsuperscript{42} of the Indian
Penal Code should be amended in such a way as to apply only to those acts which
either incited disorder or were intended or tended to incite disorder. It was further
suggested that section 144\textsuperscript{43} of the 'Code of Criminal Procedure' should not applies to
the press and separate provision should be made for dealing with the press in urgent
cases of apprehended danger. Amongst these eight recommendations made, the most
important was that before taking action against the press under emergency legislation
the provincial government should invariably consult the Press Advisory Committee or
a similar body.\textsuperscript{44}

4.3 Meaning, Concept and Scope of Freedom of Press

It was Abraham Lincoln who had stated that “Democracy is a government of
the people, by the people, for the people”. Justice HidayatuUah would however add
“Democracy is also a way of life and it must maintain human dignity, equality and the
rule of law. It requires strong public opinion, independence and fearlessness in the
press and in educated men and woman who are not complaint to authority wrongly
exercised.”\textsuperscript{45} This is indeed so, as a vigilant public opinion expressed in diverse way
including through the Medium of the press is the \textit{sina qua non} of a vibrant democratic
society. For this it is essential that the press do enjoy full freedom in a democratic
country.

\textsuperscript{41} Promoting enmity between different groups on ground of Religion, race, place of birth, residence,
language etc., and doing art prejudicial to maintenance of harmony\ldots\ldots\ldots etc.
\textsuperscript{42} Sedition-whoevers by words either written or spoken, or by sings, or by visible representation, or
otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excites
disaffection towards the government established in law in India, shall be punished with
imprisonment for life, to which fine may be added, or imprisonment which may extend to 3 years, to
which fine may be added or with fine.
\textsuperscript{43} Power to issue order in urgent cases of nuisance or apprehended danger.
\textsuperscript{44} Supra note 34 at p. 983.
4.3.1 Meaning

It is noteworthy that the expression ‘Freedom of the Press’ has been understood in various senses by different persons. It has not been defined or referred to in the Indian Constitution. Freedom of the Press, in particularly of newspapers and periodicals, is a species of which the freedom of expression is a genus. In a broad sense, freedom of the press means all activities that are connected with press-specific dissemination of news and opinions.\(^{46}\) Freedom of the press meant, traditionally, freedom of publication without any previous restraint. In other words, the freedom of the press is the right to publish with impunity truth with good motive for justifiable ends through reflecting on governmental magistracy or individual.

According to the Jowitt’s Dictionary of English Law, the concept of ‘liberty of the Press’ simply means that such a thing as an impersonator is now well known to the law, and that every man may print and publish what one pleases although, of course, one will be liable to a prosecution if one prints everything which is a criminal libel, or which is obscene, blasphemous or seditions, and to civil proceedings of one prints defamatory matter.\(^{47}\)

Professor Bounard Schwarty described that the concept of ‘Freedom of the Press’ means at least two things:

(i) A constitutional interdiction against any system of licensing, and
(ii) Freedom from prior restraints upon publication (other than that included in licensing), particularly those imposed by systems of censorship.\(^{48}\)

The learned judges, Ray, in case of Bennett Coleman, and Company Limited \(^v.\) Union of India\(^{49}\) expressed that it was indisputable that by freedom of the Press is meant the right of all citizens to speak, publish and express their views. The freedom of the Press, Ray, J. further explained, embodies the right of the people to read and it is not antithetical to the right of the people to speak and express.\(^{50}\)

\(^{49}\) AIR 1973 SC 106;(1972)2 SSC 788
\(^{50}\) Id. at p. 121.
According to Lord Denning freedom of the press is of fundamental importance in the society and covers not only the right of the press to impart information of general interest or concern but also the right of the public to receive it. Lord Denning further expressed that freedom of the press is not to be restricted on the ground of breach of confidence unless there is a 'pressing social need for such restraint.\(^{51}\)

The Supreme Court of United States of America interprets 'freedom of the press' to mean that no law shall be passed that interferes with the communication of ideas in the printed word.\(^{52}\)

Blackstone purported that the liberty of the press was essential to the nature of a free state and consisted in laying no previous restraints upon publications, and not in freedom from censure from criminal matter when published. It was further added that every freeman had an undoubted right to lay what sentiments he pleased before the public; to forbid this was to destroy the freedom of the press. However, these statements were made subject to a qualification that if a freeman published what was improper, mischievous or illegal than he must take the consequences of his own temerity.\(^{53}\)

It is thus evidently clear that freedom of the press has both negative and affirmative content. In negative sense, it means absence of external interference whether to suppress or to constrain generally; it means the freedom of expression of opinion, idea, views, information through the printed material and published for circulation, and free from interference, presence restraint or compulsion. It is affirmative on the part of the individual so far as writing or publishing what he pleases. The editor of the newspaper has the right to gather the news, right to select the news for inclusion in the newspaper, the right to print the news so selected and then right to comment or express his views on all matters of public importance.\(^{54}\)

4.3.2 Concept and Scope of Freedom of the Press

A free press is the *sine qua non* of any free country where dictatorship is absent, where there is no throttling of dissemination of news and views. A free press


\(^{53}\) Supra note 2 at p. 46.

does not necessarily connote license without any restrictions whatsoever. It merely indicates that the press is allowed to function in the country under the minimum normal restriction conceived in the interest of the health, prosperity and stability of the very society which the press wants to safeguard. The importance of the freedom extended to the press can be well understood when Thomas Jefferson’s statement on that ‘Reasoned Heritage’ is read. He says:

“The people are the only censors of their Governors ... people should be given full information of their affairs through the channel of public papers and to contrive that these papers should penetrate the whole mass of the people. The basis of our Government being the opinion of the people, the very first object should be to keep that right; and where it left to me to decide whether we should have a Government without newspapers or newspapers without a Government, I should not hesitate a moment to prefer the latter... No Government ought to be without censors; and where the press is free, no one ever will.”

It is worth while quoting have the Government of India Press Laws Enquiry Committee of 1948 says that:

“When great executive power is concentrated in the hands of the cabinet a lively instructed and critical public opinion is the only safeguard against the misuse of executive authority. Democracy can only survive in the atmosphere of constant controversy; it is essential Authority to it that any Government, however strongly entrenched and however well intentioned, shall be aware that its actions are under constant scrutiny and that there hangs always over its head the sword of public criticism. Some continuing power of influencing the Government is necessary if democracy is not to be ineffective between elections. The press lives by disclosures; whatever passes into its keeping become a part of the knowledge and a history of our times”. 56

The law of contempt of court as applied to the press was said to be a necessity according to Lord Denning. He stated: 57

"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. Any misconduct in a trial is sure to receive notice in the press and subsequent condemnation by public opinion. The press is itself liable to make mistakes. The watchdog may sometimes break loose and have to be punished for misbehavior."

If newspapers publish scandalous news of men matters and things, society would soon become corrupt and morbid and get subjected to 'coloured glasses' tormented by what is termed 'the yellow' or the gutter press. In the sphere of court news they can descent to an attack or judge, impute dishonesty, bribery, favoritism and partisanship to them in the discharge of their duties, question their competence, indulge in siding with one of the parties to the case, deride one party, witness, or counsel, misrepresent court proceedings by screaming headlines with a view to prejudicing the court and the public, publish only one side of the case to the detriment of the opposite party, published pleadings, before the cause begun and without court permission, brings out articles on a matter pending in court and in diverse ways carry on what has been so aptly called a 'a trial by newspaper'. If such things are allowed to pollute the air of the society, it may be said that the dignity and prestige of courts stand in great Jeopardy.58

To eradicate these evils the 1948 report suggested that the press must have its own 'super body' to control its working and set the standards for its benefit. A fivefold objective was suggested:59

(1) The press must give a truthful, comprehensive and intelligent account of the day's events in a context which gives them meaning.
(2) It must provide a forum for the exchange of comment and criticism.
(3) It must be a means of projecting the opinions and attitudes of the groups in society to one another.
(4) It must have a method of presenting and clarifying the goal and values of society.
(5) It should have a way of reaching every member of society by the currents of information, though and feeling which the press supplies.

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59 Ibid.
If freedom of the press is to achieve reality, the Government must set limits upon its capacity to interfere with, regulate control or suppress the voice of the press or to manipulate the data on which public judgment is formed. The freedom of the press is not a static feature. It varies and adapts itself to the conditions of an ever changing society. It is not a fixed or isolated value, the same in every society and in all times. It is a function within a society and must vary with the social context. It must be different in times of general security and a times of crisis; it will be different under varying states of public emotion and belief. The 1948 report of the press laws enquiry committee revealed that the accusation by the All India Newspaper Editor’s conference (A.I.N.E.C) that the law of contempt of court had been used in the country to unjustly punish newspapers was without foundation. Bonafide reports of court proceedings were adequately protected.

4.3.2.1 Freedom of Speech and Expression vis-à-vis Freedom of the Press

The question of whether or not to insert in the Indian constitution a separate right for the press as distinct from that of the ordinary citizen was extensively debated by members of the Constituent Assembly. The constituent Assembly came to the conclusion that such a provision was not necessary. Dr. B.R. Ambedkar, Chairman of the Constituent Assembly’s Drafting Committee argued:

The press is another way of starting an individual or a citizen. The press has no special rights which are not to be given 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 chose to write in newspapers, they are merely exercising their right of expression and in judgment therefore no special mention is necessary of the freedom of the press at all.

It can be observed that there is no mention of the freedom of the press in the Indian Constitution. However, the Supreme Court of India has interpreted many times that there is no need to mention freedom of the press separately, because it is already

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60 Supra note 56 at p. 27, para 57.
61 Ibid., para 58.
62 Id. at p. 39, para 79.
included in the guarantee of freedom of expression.\textsuperscript{64} Although no special provisions was made to safeguard the rights of the press, the courts have time to fine confined that right of the press are implicit in the guarantee of freedom of speech and expression under Article 19(1)(a) of the Constitution.\textsuperscript{65}

In \textit{Express Newspapers (P) Ltd., v. Union of India},\textsuperscript{66} arose out of a challenge to the working Journalists and other newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, on the ground that its provisions violated Article 19(1)(a). In the facts of the case, the court held that the impact of the legislation on the freedom of speech was much too remote and no judicial interference was warranted. Moreover, the court did recognize an important principle which is as follows:

Laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its rights to choose the instrument for its exercise or to seek an alternative media, prevent newspapers from being started and ultimately drive the press to seek Government aid in order to survive, would be struck down as unconstitutional.\textsuperscript{67}

In 1973, came the famous \textit{Bennett Coleman case}.\textsuperscript{68} This was a momentous judgment having a bearing on the freedom of the speech and expression generally, and or the freedom of the press, in particular. In this case Constitutional validity of the newsprint policy of 1972-73 passed by the Central Government was challenged as being violative of freedom of speech and expression guaranteed by Article 19(1)(a). The four main violative features of the policy were:\textsuperscript{69}

(1) No newspaper or edition could be started by a common ownership unit within the authorized quota of newsprint;
(2) There was a limitation on the maximum number of pages to ten. No adjustment was permitted between the circulation and pages so as to increase the pages;

\textsuperscript{64} Ramesh Thappar v. State of Madras, AIR 1950 SC 124 at p. 134.
\textsuperscript{65} Brij Bhushan v. State of Delhi, AIR 1950 SC 129.
\textsuperscript{66} AIR 1958 SC 578.
\textsuperscript{67} Sakal Papers Pvt. Limited v. Union of India. AIR 1962 SC 305 at 617, (para 150).
\textsuperscript{68} Supra note 49.
\textsuperscript{69} Id. at p.111
(3) No interchangeability was permitted between different newspapers of common ownership met or different edition of the same paper; and

(4) Allowances of 20 percent increase in page level up to a maximum of ten had been given to newspapers with less than ten pages.

The petitioner contended that the impugned policy had infringed his freedom of speech and expression conferred by Article 19(1)(a). The Union of India contended that the newsprint policy did not directly and immediately deal with the right of freedom of speech and expression conferred by Article 19(1)(a) and the right under Article 19(1)(a) was not violated though the freedom of speech and expression was incidentally or consequently abridged.

Justice Ray speaking for the majority of the Supreme Court set aside the impugned newsprint policy as unconstitutional. Justice Beg in a separate judgment, concerned with him. In view of the law hitherto laid down, Ray J., observed that in effect the newsprint policy was 'Newspaper Control Policy'. The learned judge cited with approval the law laid down in two earlier cases and added.

Freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in content.

The principle points made in this case (majority view) regarding freedom of Press are:

(1) Freedom of speech cannot be restricted for the purpose of regulating the commercial aspects of the activities of newspapers. A restraint or the circulation of newspaper and a restraint on the space permitted for advertisements would affect the Fundamental Rights under Article 19(1)(a) in respect of propagation, publication and circulation of news and views.

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70 Id. at p. 114.
71 Id., pp. 116-117.
72 Three judgments were delivered. The majority judgment by Ray J., for himself, Sikri, C.J., and Reddy, J. held that the impugned policy violated Article 14 and 19(1)(a), in a separate judgment Beg J., concurred in the result; and in a dissenting judgment, Mathew J., held the impugned policy was valid.
73 Supra note 49, at p. 152.
74 Id. at p. 117.
75 Supra note 66 and 68.
76 Supra note 49 at p. 130.
77 Id., pp. 125-131.
Restrictions on page limit, prohibition against newspapers and new editions control the growth and circulation of newspapers, also depriving newspapers of their area of advertisement. The direct effect of such restraints is that newspapers are exposed to financial loss. The direct effect of which is that the freedom of speech and expression infringed.

The judgment given by the Supreme Court will go down as a landmark in the history of citizen civil rights in India.

It is submitted that in a free and democratic society there should be as few restrictions or the freedom of speech and expression as possible and this is the result which the Supreme Court's decision seeks to achieve.78

4.3.2.2 Limitation to the Concept of Freedom of Press

Apart from constitutional restraints under various Articles, there are laws in India relating to the Press which seek to put statutory curbs on Freedom of the Press. Here, it must be noted that a distinction is necessary between Press laws which are special laws solely directed against a printing establishment or those who are concerned with the printing and publication of printed matter and laws on the press which are general laws applicable to all citizens including the press. The term ‘General’ signifies that the law must not be aimed at the ideas in or content of the expression and regulate matters that might be pertinent to freedom of the press but pertain as well to other rights and matters.79

Under the first category of “Press Law”, there is no longer any repressive law directed against the Press. However, there are certain regulatory measures, such as the Press and Registration of Book Act, 1867 and even beneficial measures, such as the Working Journalist and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

In case of State of Madras v. V.G. Rao,80 the Supreme Court observed that there was no infringement of freedom of speech and expression when a law required that the name of the printer and publisher and the subjects of printing and publication

79 Supra note 46, at p. 398.
80 AIR 1952 SC 196.
should be printed on every book or paper. Therefore, it was held that such type of law
did not in any way restrict the freedom of speech and expression but rather prevented
it from degenerating into a license.\textsuperscript{81}

Under the second category of Law relating to the press are Indian Penal Code,
1860. The Dramatic Performances Act, 1876, The Indian Telegraph Act, 1885, The
Indian Post Office Act, 1898, Official Secrets Act, 1923, The Young Persons (Harful
Criminal Procedure code, 1973 etc., etc.

4.3.2.3 Elements of the Freedom of Press

Freedom of the press is a concept which itself is composed of certain basic
freedoms. These basic freedoms are comprised of freedom to publish and circulate
freedom against pre-censorship and freedom of information. All these freedoms are
linked together and one is totally meaningless without the other. The Andhra Pradesh
High Court in case of \textit{Ushodaya Publications Private Limited v. Government of
Andhra Pradesh,}\textsuperscript{82} observed that freedom of circulation of newspapers is necessarily
involved in freedom of speech and expression and is part of it and hence enjoys the
protection of Article 19(1) (a).\textsuperscript{83}

Further, information and communication are even more important needs of
man in his conglomeration as social units. Thus, the press has the right to dispense
information to the general public. This function is even more important from the
view that a paucity of information will predictably preclude the public from making
properly informed choices whenever it has to exercise its franchise and to select its
government.\textsuperscript{84} Therefore, freedom of information is the modern corollary to freedom
of the press.

In case of \textit{P.L. Lakhanpal v. Union of India,}\textsuperscript{85} the Delhi High Court while
dealing with the question whether the right of broadcasting included in Article
19(1)(a) observed that a closer examination of the concept of freedom of speech and
expression would reveal that it is not merely the right to speak or the right to express

\textsuperscript{81} Id., pp. 199-200.
\textsuperscript{82} \textit{AIR} 1981 \textit{AP} 109.
\textsuperscript{83} Id. at p. 111.
\textsuperscript{85} \textit{AIR} 1982 Delhi 167.
but also imposes the right of communicating that speech or expression to others by all available means which can be a broadcasting station, a newspaper, a loud speaker, a pamphlet, a book or other document. In this case right of communication was stressed which includes the right to informs, the right to receive information and the right to access to the resources required for communication.

As evident from the above discussion another important element of the freedom of press is the right to gather information. No doubt that the press has unbridled freedom in collecting news as there are certain areas of the press freedom which may not fall under any restriction under Article 19(2). The press can gate-crash into governmental offices, burst into hospital wards to interview the injured victims, or march into the police station to pry into crime secrets.\(^86\)

In case of *Dainik Sambad v. State of Tripura*,\(^87\) the Gauhati High Court expressed that the press had no privilege not to disclose the sources of its information in judicial proceedings or in statutory inquiry having the same status as a court. It was further stated that the court has discretion whether to require the information to be given and usually would not insist on an answer it was not essential to the case.\(^88\)

However, it is suggested that to make the position clear, the press should not be ordered to disclose the source of its information except in most exceptional circumstances. The underlying principle is that public has a right of access to information which is of public concern and which the public ought to know. The press being agent of public collects information, on behalf of public. If the press is compelled to disclose their sources, it will cause sources to dry up and impede the flow of information's. In other words, if the freedom of the press is to be meaningful, the source of information as well as its uninhibited dissemination must be protected subject to other legal requirements.\(^89\)

The next element of the freedom of the press is the freedom against pre-censorship. It should be noted that censorship may be formal or informal, prospective or retroactive. Formal censorship depends on rules of conduct imposed by authority while informal regulations stems, from social taboos. Prospective censorship operates

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\(^{87}\) AIR 1989 Gau. 30.

\(^{88}\) Id. at p. 36

on material before it is publically available, so that the censor's decision may not become public knowledge; while retroactive censorship suppresses matter already published. Pre-publication control is more effective and convenient for a censor because the alternative invites undeserved comment on his occasions.  

Later, in case of *Virender v. State of Punjab*, the broad approach relating to pre-censorship was questioned. In this case, the Supreme Court held that pre-censorship even in times of peace could be imposed in certain circumstances under Article 19(2), but pre-censorship being a restriction on the freedom of the press, would constitute a serious encroachment on the valuable and cherished right of freedom of expression of a newspaper is prevented from publishing its views or the views of its correspondent relating to or concerning what might a bearing topic of the day. The Supreme Court further stated that each case had to be examined in the light of the circumstances in which pre-censorship was imposed and such a restriction could be reasonable only if it was imposed in emergent circumstances.

Therefore, the freedom against pre-censorship is one of the elements of the freedom of the press. However, it is submitted that power of pre-censorship under Article 19(2) should not be invoked by the government except in cases of extreme necessity in the national interest, when the situation cannot be saved without resort to this power.

### 4.3.2.4 Freedom of Press v. Contempt

Article 3 read with Article 19 of the Universal Declaration of Human Rights grants to everyone liberty and right to freedom of opinion and expression. Article 19 of the International Covenant on civil and Political Rights, 1966 to which India is a signatory and has notified and provides that everyone shall have the right to freedom of expression, to receive and impart information and ideas. In India, unlike USA, there is no separate provision guaranteeing the freedom of press, however, the Supreme Court has held in a number of cases that there was no need to mention freedom of the press separately, because it is already included in guarantee of

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91 AIR 1957 SC 896.
92 Id., at p. 900.
'freedom of speech and expression' provided under Article 19(1) (a) of the Constitution.\(^93\)

Under Article 19(2) no specific immunity has been provided to the Press. Freedom of speech and expression is a general right which is available to every citizen. The media stands on no higher footing than any other citizen and cannot claim any special privilege other than what is available to common citizen. It has been held that freedom of the Journalist is an ordinary part of the freedom of expression subject to Constitutional limitations and apart from statute law, his privilege is no other and no higher. The basic objective of the Press is to give news, views, comments and information on matters of public interest in an accurate, fair and responsible manner. The freedom of Press under the Constitution is not higher than the freedom of a citizen and is subject to the restrictions proposed under Article 19(2) thereof.

The Constitutional freedom is nevertheless not absolute and there are limits to this freedom. Article 19(2)\(^94\) of the Constitution makes this freedom subject to the existing law relating to libel, slander, defamation, and contempt of court. The state has also been empowered to impose reasonable restriction on this right in the interest of public order, security of State and the like.

### 4.3.2.5 Media Trial

Media trial means the pre-trial and in-trial reporting of the case, whether civil or criminal, which is likely to prejudice fair trial—the Constitutional right of every accused. Media trial is a threat to the right of fair trial and a blow at the sanctity of the judicial system. Media by reporting full details of the case, confession of the accused, presenting biased view points during the pendency of the judicial proceeding is not only transgressing its limits but also making the inkberry of court proceedings. When there is trial by Media, there is always a conflict between two constitutional rights i.e. fair trial and freedom of the Press.\(^95\)

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\(^94\) Article 19(2): Nothing in sub-clause (a) of clause(1) shall effect 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 interest of the sovereignty and integrity of India, and securing 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.

\(^95\) Supra note 93 at p. 321.
'Trial by media' is a phrase popular to describe the impact of television and newspaper coverage on the reputation of a person by creating a widespread perception of guilt regardless of any verdict in a court of law. Media has a tremendous power to awaken the people. But that power has to be exercised with the precision and circumspection. Media can point out the lapses in the investigation and thus highlight is so as the plug and loopholes and set the system rights. Highlight the need to strengthening the Police Act, Evidence act, which is the dire need of the hour. That is constructive role of the media. Instead, what happens many a time is, in the garb of highlighting the system failures, more often it turns out to be trial by media.

'Trial by newspaper' is a species of which 'trial by presses' is a genetic name. The expression trial by newspaper implies pre-trial and in trial reporting of a case, whether civil or criminal with a view likely to prejudice the fair trial. A fair trial requires that the judges and jury makes their judgment solely on the basis of the evidence introduced in the court room, and of course they must be subjected to no outside pressures in reaching their decisions.

4.3.2.5.1 Position in America

In America the newspaper has been given complete freedom to report the facts of criminal investigations and prosecutions. From the time a crime is committed, newspaper undertake to publish very bit of information concerning the crime and the criminals, usually with the cooperation of the police and prosecution. They recount the evidence and the previous criminal record, if any, of the suspect. In particularly gruesome crime, the press may whip up feeling against the person charged. Trial by newspaper may be so complete and effective that the task of securing a jury, which has not pre-judged the case, become very difficult. Occasionally newspaper will go so far as to attempt to exert editorial pressure on the judge or jury while the case is still being tried. In such a situation there is a fundamental conflict between two constitutional rights- a fair trial and a free press. The basic justification for the freedom of the press is that untrammeled public discussion and expression of all conceivable views offers the best chance of achieving truth and wisdom.

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97 Id., at p. 111
99 Ibid.
4.3.2.5.2 Position in United Kingdom

In English Law no newspaper has right to assume the role of an investigator and to suggest that accused person against whom a proceeding is pending was, or was not guilty of the offence charged. It is contempt of court to discuss the merits of a pending civil case. Publication of the photograph of a person when a question of identity may arise at the trial is also a contempt of court. It also amounts to a contempt of court to publish inaccurate statement and misrepresent the proceeding of a court which might have prejudiced the mind of the public before the case if finally decided.  

4.3.2.5.3 Position in India

Publication of any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice cannot be justified in any way. It would amount to universal contempt within sub-clause (iii) of 2(c) of the contempt of courts Act, 1971.

No newspaper has a right to assume the role of an investigator and to suggest that the accused person against whom a proceeding is pending was or was not guilty of the offence. The reason why 'trial by media' is not allowed is manifold:

(1) It may influence the persons who may appear as witness in the court.
(2) It may compel the parties to discontinue the litigation.
(3) It may prejudice the public as whole, by evoking adverse reaction and thereby impair the public confidence in the administration of justice.
(4) It may inhibit other potential litigants from restarting to the law of court.  

One of the most common forms of prejudicing the due sense of justice in a pending case is the trial of the case by newspaper. Where a newspaper conduct a trial a party is deprived of the right to reply or cross-examine witness and there is no question of the rules of evidence being applied. The newspaper issued the function which properly belongs to the court and thus day the basic right of the individual to have a fair trial. 

100 Id. at p. 193.
102 Supra note 2, at p. 136.
The rationale behind raising the status of freedom of press to Fundamental Rights is that an action taken in the public gaze and scrutiny ensures the proper and fair exercise of power, and it rules out the possibility of abuse of power out of whims, fad and fancies of any individual. However, it is when the press begins to virtually conduct the trial that there is a real danger of violation of the fundamental right of fair trial of the accused. The immediate objection to media trial is the putting on risk the due administration of justice in the particular case. The long term fear, however, is that such trials could undergone confidence in the judicial system generally. In no democratic society trial by media is in vogue. Trial by televisions is not to be tolerated in a civilized society and the same holds free for any other publication through any medium newspaper or internet.

Nowadays, the sensationalism involved in the cases of certain public profile criminal cases has become very common with the spread of mass communication. Example can be taken from Abu Salem case. This invariable leads to the issue of pre-judicial publicity placing on or the other party involved in a disadvantaged position besides creating situations which tends to reduce legitimate space for dispassionate-assessment of truth by judicial officer. Moreover such media trials unnecessary draw the judiciary into the public scanner after making a mockery of justice delivery system.

Having moved from news information to news as entertainment, the media has cast aside the once inviolable time between reality and drama. Now media offer gossip, titillation, speculation and trivia as news. Forget privacy, sensitivities, social concern, liberal values and justice, forget journalistic ethics. This is the race to be the hottest bare all show. So every newspaper and television channels have been offering us a mouth watering menu of depravity, clandestine, sex and violence.

Two important core elements of investigative journalism envisaged that (a) the subject should be of public importance for the reader to know and; (b) an attempt is being made to make the truth from the people. It must nevertheless be stated that sometimes accuracy of the news is sacrificed at the cost of providing more sensational

103 Supra note 93, pp. 321-322.
106 G.N. Ray, ‘Should there be a Lakshman Rekha for the Press’, available www. Presscouncil.nic.in
news. The Indian media should be remained that while comment is free, facts are secured.\textsuperscript{107}

In view of the foregoing considerations, it becomes imperative to consider the importance of the freedom of press and the media, its possible abuse and the required safeguards. It is well established that in a democracy, the freedom of speech and of the press is indispensable. The framers of our constitution recognized the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective citizenry. In the political scenario, an informed citizenry is a precondition for meaningful governance, similarly in the societal attitudes; a culture of open dialogue must be promoted.\textsuperscript{108}

Trial by media has assumed significant proportion. It has had both positive and negative result. Some famous criminal cases that would have gone unpunished but for at the intervention of media are Priyadarshani Matto case, Jessica Lal case, Nitish Katara, get justice.

\textbf{4.3.2.5.3.1 Subconscious Effect on Judges}

Another worrying factor and one of the major allegations upon media trial is prejudicing the judges presiding over a particular case. The media create a unconscious pressure on a judge in a high profile case. Judge knows that they are being watched by the people. There is always a chance that judges get influenced by the flowing air of remarks made upon a particular controversy. The media present the case in such a manner to the public that if judges passes an order against the media verdict, he or she is deemed either corrupt or biased.

The Indian free speech law is different and has been restricted by Article 19(2). Regarding media reporting the Supreme Court\textsuperscript{109} has been reiterating view that the judges may be subconsciously affected in their judgments the fairly of the judicial system stems from the fact that judges are human beings and undue influence of irresponsible expression may taint the rational process of adjudication. This limitation has been admittedly the Supreme Court of India, wherein it ruled:


\textsuperscript{109} In re P.C. Seiv, AIR 1970 SC 1821.
Prejudice, a state of mind, cannot be proved by direct and positive evidence. Therefore, it cannot be judged on the basis of an objective standard.\(^\text{110}\)

### 4.3.2.5.3.2 Negative Effect of Media Covering Criminal Trial

When media covers a case and publicize lawyers, judges, witness’s pretrial forms a kind of presumed mental set up on the judges who sit to adjudicate the criminal trial. In India there is no jury system and the judge who is sitting there is the sole authority. What he says is the final judgment and if has a preconceived notion about a case it is against the rule of natural justice. The presses to make things spicier makes comments on cases which are in trial, the judges came across these and unconsciously have a set of argument in their mind.\(^\text{111}\)

Justice Katju and P. Sainath have attacked the media for focusing attention on ‘non issues’ and ‘trying to divert attention of the people from the real issue to non issues’\(^\text{112}\) and ‘stifling of smaller voices’.\(^\text{113}\) Who will watch the watchdog as it abdicates its role as an educator in favour of being an entertainment?\(^\text{114}\) A line between information informing and entertaining must be drawn. One to extensive media propaganda, justice and rule of law are no longer about the process but the outcome. It is submitted that public opinion may exercise an indirect influence over the criminal justice system. Justice should not only be done, it should manifestly and undoubtedly be seen to be done. Psychological pressures storming from media scrutiny could possibly print verdicts to conform to public opinion rather than the evidence offered at trial. Further the credibility of a judge is at stake when a trial by media declares a person guilty but the judge gives a differing opinion based on facts.\(^\text{115}\)

The most objectionable part and unfortunate too, incarnated role of media is that the coverage of a sensational crime and its adducing of ‘evidence’ begins very early, mostly even before the person who will eventually preside over the trial even

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\(^{111}\) Supra note 8 at p. 133.

\(^{112}\) Markenday Katju, ‘Ideal and reality: Media’s role in India’, available at www.hinduonnet.com

\(^{113}\) P. Sainath, ‘Lost the Compass? Rural India is a giant canvas that is begging the media to do a portrait’, available at www.outlookmedia.


\(^{115}\) Navajyoti Samanta, ‘Trial by Media-Jessica Lall Case’, available at www.ssm.com
take cognizence of the offence, and secondly that the media is not bound by the
traditional rules of evidence which regulate what material can and cannot be used to
convict an accused. In fact, the Right to justice of a victim can often be compromised
in other ways as well, especially in rape and sexual assault cases, in which often, the
past sexual history of a prosecutrix may find its way into newspaper. Secondly, the
media treats seasoned criminal and ordinary one, sometimes even the innocents, alike
without any reasonable discrimination. They are treated as a ‘television item’ keeping
at stake the reputation and image. Even if they are acquitted by the court on the
grounds of proof beyond reasonable doubt, they cannot resurrect apart, even victims
and witnesses suffer from excessive publicity and invasion of their private rights.
Police are presented in poor light by the media and their movable too suffers. Such
kind of exposure provided to them is likely to jeopardize all these cherished rights
accompanying liberty.\footnote{116}

4.3.2.5.3.3 Positive Effect of Media Covering Criminal Trial

The effect of media following a criminal case has definitely good effects on
the adjudication of trial. We get to judge for ourselves the truthfulness of leaders
questioned by Journalist before the cameras. The net result is that governments have
been forced to be more open and accountable. One of the positive by products spurred
by the media and addressed by the courts is that the people are more aware of their
Constitutional rights and the way the police and courts try cases to find a person
guilty or innocent.\footnote{117}

Criticism of judicial decisions in a healthy manner, if used effectively, is a
powerful weapon in the hands of the masses and can have far reaching consequences.
The best example of this is the \textit{Mathura Rape Case}.\footnote{118} The Supreme Court’s
decision in this case acquitting the accused policeman who allegedly raped a poor girl
in the police station raised hue and cry. Public criticism provided an impetus for the
law to be amended. Higher punishment for custodial rape was included in the Indian
Penal Code and provisions in favour of the victim were added to the Indian Evidence
Act.

www.unilawonline.com}
\footnote{117}{Supra note 8, at p. 132.}
\footnote{118}{(1972) 2 SCC 143.}
In *Ruchika Murder Case*,\(^ {119}\) the court got 400 hearings, 40 adjournments and the case continued for 9 long years. It was media’s intervention which brought relief to the parents of the victim. Similarly in *Jessica Lall Case*,\(^ {120}\) the accused Manu Sharma was acquitted of all charges in 2006. However, he was sentenced to life imprisonment owing to intense media and public pressure. Further, in *Priyadarshini Matto Case*,\(^ {121}\) a 25 years old law student was found raped and murdered at her home in New Delhi in 1996. The accused was Santosh Singh, son of a police inspector General and was earlier acquitted by the trial court in 1999. This decision, however, led to a massive public outcry entry and the court sentenced Santosh Singh to death in 2006.

*Praful Kumar Sinha v. State of Orissa*,\(^ {122}\) a writ against sexual exploitation of blind girl in school was filed before the Supreme Court on the basis of an Article published in a newspaper. Even though sexual assault was difficult to prove, the Apex Court, on the basis report submitted, gave directions to the institution for proper management. In *Sheela Bause v. Union of India*,\(^ {123}\) the Journalist, through a letter addressed to the Chief Justice of India, made the Apex Court take cognizance of the deplorable conditions of the mentally challenged woman looked up in the presidency jail, Calcutta. Due to this initiative, a commissioner was appointed to investigate and report on the conditions of prisons where women and children were detained.

In *D.K. Basu v. state of West Bengal*,\(^ {124}\) the Supreme Court took cognizance of the existence of custodial violence after a letter was sent to the Chief Justice of India drawing attention to newspaper reports regarding death in police lock-ups and custody.

There are though limits on the freedom of the press. In *Mother Dairy Foods and Processing Ltd. v. Zee Telefilms*,\(^ {125}\) It was recognized that while journalists and media are ‘distinctive facilitators’ and they must follow the virtues of accuracy, honesty, truth, objectivity and fairness. The court finally concluded that often the media conveys what the ‘public is interested in’ rather than what is in ‘public

\(^ {119}\) Cri. Rev. No. 1558 of 2010.
\(^ {120}\) (2001) Cri. L J 2404 (Delhi).
\(^ {122}\) AIR 1989 SC 1783.
\(^ {123}\) (1987) 4 SCC 373.
\(^ {124}\) (1997) 1 SCC 416.
\(^ {125}\) AIR 2005 Delhi 195.
interest'. The freedom of the press should not degenerate into a license to attack litigants and close the door of justice nor can it include any unrestricted liberty to damage the reputation of respectable persons.\textsuperscript{126}

4.3.2.5.3.4 Law Commission’s Report

The Law Commission in its 200\textsuperscript{th} Report ‘trial by media, free speech v. fair trial under criminal procedure code has made recommendation to enact a law to prevent the medial from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial.\textsuperscript{127} The commission has said, Today there is feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspect, accused, witness and even judges and general on the administration of justice. This is criminal contempt of court according to the commission if any publications which interfered or tend to interfere with the administration of justice under the contempt of court Act, 1971. It has suggested an amendment to Section 3(2) of the contempt of court Act under the present provision. Such publication would come within definition of contempt. Only after the charge sheet is filed in a criminal case. The Commission has suggested that starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In another controversial recommendation, it has suggested that the High Court be empowered to direct a print or electronic media to postpone publication or telecast pertaining to a criminal case.\textsuperscript{128}

To make accountable to the people, an independent autonomous public institution like the Media Council is, therefore, a constitutional need. In some countries, it is established by the various constituent of the media as a voluntary organization, while into other countries like ours it is constituted by the legislature under a statute.\textsuperscript{129}

A logical interpretation of the contempt of courts Act read with the Article 19(2) limits the scope of contempt of courts to matters relating to the court much of

\textsuperscript{126} Bijoyananda Patnaik v. BalaKrisnakar, AIR 1953 Orissa 249.
\textsuperscript{127} Sudhanshu Ranjan, ‘Media on Trial’, The Times of India, 26 Jan. 2007.
\textsuperscript{128} Ibid.
\textsuperscript{129} Supra note 104. at p. 7.
pre-trial publicity which is not covered cannot under our current constitutional regime be restricted. In the grounds include in Article (19) (2) the grounds of ‘Administration of Justice’ is a notable absentee.\footnote{Esha Goel & Ankan Ghosh, ‘Trial by Media: A Threat to the Right to a Fair Trial’, New Mexico Law Review, Vol. 2, 2011, p. 33.}

Backbone legislation with a constitutional sanction will effectively deal with the menace of media trial. Besides the long term solution in this respect lies in self-regulation by both the media and the judiciary.\footnote{Upasana Das Gupta, ‘Media and Public Opinion: Do they subconsciously affect the Judges?’, New Mexico Law Review, Vol. 2, 2011, p. 95.}

In India, the entire mechanism is entrusted to the Press Council. The norms of Journalistic conduct formed by the press council require the journalist to abide by the norms and guidelines. For instance 12 (ii) of these norms says that ‘Newspaper shall not as a matter of caution, publish or comment on evidence collected as a result of investigative journalism, when after the accused is arrested and charged. Nor should they reveal comment upon or evaluate a confession allegedly made by the accused.’\footnote{Supra note 96, pp. 109-110.}

It cannot be denied that in the present time news reporting has become a business and various industrial houses are entering into the field of electronic media in particular due to its high growth potentials. It is obvious that competition amongst news channel is also increasing, simultaneously since criminal cases or other involving high profile person attract more public attention, the press and electronic media give more publicity to such cases and sensationalism of news become inevitable. The police too become the culprit, so far as criminal cases are concerned police are presented in poor alight by the media. The day after the report of crime is published, media says, ‘police gave no clue’. The pressure on the police from media day by day build up and reaches to a stage where police feel compelled to say something or other in public to protect their reputation.\footnote{Nirmal Chopra, ‘Freedom of Press and Court Proceeding’, Cri. L.J, May 2006, p. 107.}

4.3.2.5.3.5 Constitutional and Judicial Response of Trial by Media

Like the freedom of speech, the media is also subjected to the restriction given under clause (2) of Article 19. Consequently ‘contempt of court’ as a reasonable restriction on the freedom of speech affects media also, both print and electronic, in a
like manner. In relation to the freedom of speech and expression, there are three sorts of contempt of court: (a) one kind of contempt is scandalizing the court itself; (b) there may be likewise a contempt of court in abusing parties who are concerned in cases in the court; (c) there may also be a contempt in prejudicing mankind against persons before the cause is heard. But the above classification is by no means exhaustive. Broadly speaking, it consists of any conduct that tends to bring the administration of justice into disrespect or to obstruct or interfere with the due course of justice. However, there is another important proposition which has to be reconciled with the strict interpretation of contempt of court, which provides that 'Justice' and not judge should be the keynote and creative journalism and activist's statesmanship for judicial reform cannot be jeopardized by an undefined apprehension of contempt action. Moreover, the positive aspect of reporting of judicial proceedings by the media cannot be overlooked completely. Therefore, in this regard, it is important that the motions of contempt of court, fair trial and media trial are well postulated.

In liability of the media for criminal contempt rests on the premise that where any communication is likely to interfere with the administration of justice, anybody who is responsible for publishing such matter will be liable for contempt of court unless it can come under any of the defences provided for in the Act.

In *Saibal Kumar Gupta and others v. B.K. Sen and Others*, it was held by the Supreme Court that it would be mischievous for a newspaper to systematically conduct an independent investigation into crime for which a man has been arrested and to publish the result of the investigation. This is because trial by newspaper when a trial by one of the regular tribunals of the country is going on must be prevented. The basis for this view is that such action on the part of the newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between trial and newspaper and what has happened in this case.

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135 The proposition is codified in Section 2(b) (iii) of Contempt of Courts Act, 1971.
137 AIR 1961 SC 633; 1961 SCR (3) 460.
In *Shaji v. State of Kerala*, the court held that curse day when a judicial functioning will have to render decisions with one eye on the headline in the media next morning. The day when such opinion makers can even indirectly influence the decision making process and the decision maker must be bound only to the law and his own conscience.

*Dr. M.P. Lohia v. State of West Bengal*, the brief facts of the case were that a case was registered against the petitioner under Sections 304-B, 406 and 198 of Indian Penal Code. The death of Chandni took place on 23-10-2003 and complaint in this regard was registered and the investigation was in progress. Even then an article appeared in magazine called ‘Saga’ titled ‘Doomed by Dowry’ written by Kakoli Podar based on her interview of the family of the deceased and giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The court held that these types of Articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and journalist who were responsible for the said article against indulging in such trial by media when the issue is subjudice. The Apex Court observed in M.P, Lohia case that the press should refrain from publish any material which is the subject matter of a pending in permissible of any comment or opinion on the merit of a pending case. Though expressing any opinion on the merit of a pending case may not from the judicial mind, but one cannot forget that judges are also human beings and the possibility of their being affected by the emotional reporting done by the press cannot be completely ruled out. What all is requires is the self restrain by the press and such self restrain is the best restrain then any legislative control which may tend to interfere unnecessary with the freedom of press.

4.4 Freedom of Speech and Expression under Indian Constitution

Freedom of speech and expression is the foundation of any democracy besides being a valuable freedom in itself. The freedom of thought and expression is not only valuable freedom in itself, but is basic to a democratic form of government which proceeds on the theory that problems of government can be solved by the free exchange of thoughts and by public discussion. Almost all the constitutions whether


democratic or socialist ensure this freedom to their citizens. However, as per our constitutional scheme, this freedom, like any other freedom, is not absolute and is subject to reasonable restrictions enshrined in the constitution. However, in a democratic society there are other values also to be attained as well, apart from the cherished freedom of speech and expression. At times these values may come in conflict, with the free speech. One such value is fair and impartial administration of justice. This social interest is sought to be protected by the inclusion of, what is called contempt of court, which, is one of the restrictions contained in Article 19(2) on the freedom of speech. It is the major problem of balancing these two competing social values that has enraged the attention of the courts while exercising this jurisdiction.

Freedom of speech as granted by Article 19(1) (a) of the constitution is not absolute but is subject to the restriction of contempt as per Article 19(2) if, and only if, it is 'reasonable'. The Constitution thus suggested that freedom of speech takes precedence over contempt of court which is in the nature of an exception to the former. The task of balancing the freedom of speech with the right of an accused to a fair is a delicate one, dealing with the question as to side which side of the line the case would fall.

"Contempt of Court" was suggested as a possible limitation of freedom of speech by T.T. Krishnamachari on 17 October, 1949 just a few months before the constitution was adopted. Krishnamachari argued that in actual fact "Contempt of Court" was introduced to cover lacuna in that it was cognate to "libels, slander, defamation or any matter which offends against decency or morality or which undermines the security of, or tends to over throw the state" which were already included as restriction on freedom of speech. It was considered a very necessary protection as far as the courts was concerned. T.D. Bhargava was willing to accept the amendment of provided that the law connoted with the restriction on the

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141 Article 19(2) of the Constitution states, 'Nothing in sub-clause (a) of clause(1) shall affect the operation of any existing law, or prevent the state from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause .... in relation to contempt of Court'.
145 Id. at 395.
fundamental rights was not just any law simplicities but as “reasonable law”. At that
time freedom of speech and expression was not limited in the language of “reasonable
restriction” or it now. Indeed Bhargava’s amendment was negative even though
he (Bhargava), using the classic and graphic example that any law could means “law
that all blue eyed persons should be killed”, warned the Constituent Assembly that the
Constitution as it then stood could not, and did not, provide adequate protection to
freedom of speech. He went on to argue that contempt of court was not really
germene to the subject of the freedom of speech and expression as it constituted “a
wrong motion or wrong conduct or attitude”, and the courts were already empowered
to deal with contempt.

This approach contrasted sharply with that of R.K. Sidhva, who argued that
the amendment raised “a fundamental proposition that is being brought before this
House.” He continued:

We know, Sir, about the contempt of court, how the judges have been
exercising their powers in the past, as if they are infallible, as if they do not commit
any mistakes. Even third class Magistrates, first’s class Magistrates and sub-judges
have been passing such structures which even High Court Judges have condoned
many a time. I would also like to state that the High Court Judges themselves sit as
prosecutors. They themselves want the judiciary and executive functions to be
separated. In cases of contempt of court, the High Court Judge is the prosecutor and
he himself sits and decides cases in which he himself has felt that contempt of court
has been committed. There are many cases before us. There are illustrations of two
cases, Mr. B.G. Hormiman, the editor of “Sentinel” and Mr. Devadas Gandhi, Editor
of the “Hindustan Times”. The Allahabad High Court passed strictures against the
very reasonable comments made by these two persons. They preferred to go to jail
and went to jail rather than they submit to the ex-parte decision of the High Court. I
cannot understand why my lawyer friends here are very lenient to the Judges. After
all, Judges have not got two horns; they are also human beings. They are liable to
commit mistakes, why should we show so which leniency to them? We must
safeguard the interests of the public. If a citizen by way of making a speech condemns

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146 Id. at p. 397.
147 Id. at p. 403.
148 Id. at p. 395.
149 Id. at p. 398.
the action of a third class magistrate or a fourth class magistrate who has passed strictures upon the public, is he not entitled to make a speech and comment upon it. It is unfair that in the matter of contempt of court, this clause is to be added. I strongly resent it. It is very unfair that the citizen after having been given some rights, and having been restricted by so many clauses, you want to further restrict it by inserting “Contempt of Court”. In contempt of court, we know when certain extraordinary things happen; High Court Judges have some sort of power. Here, you give the power right down from the magistrate up to the High Court Judges. Even there, I say the High Court Judges are not infallible; they have also committed so many mistakes. They do not want any comment to be made against a High Court Judge when comment was necessary in the interests of the public life.

Sidhva obviously felt that the judges should not be overprotected and asked: “why do you want to put the judge above everybody? You want to make him a Super God?”

He also hinted that on the basis of his “past experience about contempt of court, from the lowest to the highest judges have not been impartial.” While Naziruddin Ahmad argued that contempt laws ought to intrude on free speech because a “trial in a case must be conducted in an atmosphere of calm without prejudice”. B. Das wondered why B.R. Ambedkar, who was described as Manu of this century, had not thought of this before. In a floweriest of language he said that the judges used their powers to control the people and added:

I am not one who thinks very high of the judges particularly as they are trained under the British tradition and they have misapplied justice and kept us down. I have not read in any place of public utterances that the High Court judges or other court judges or Magistrate in India have changed since August 1947 and have a better realization of their functions and duties. If Dr. Ambedkar, ten years hence on his retirement, writes a book on the vagaries of courts, about contempt of court, he will see his particular partiality overnight to give certain more powers to these magistrates and judges were not called for. It will be a very wonderful book where many penniless lawyers became judges and

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150 Id. at p. 399.
151 Id. at p. 401.
regulated and controlled the affairs and rule of the alien Raj by the word 'contempt of court' and the chicken-hearted lawyers got frightened at then. 152

"Contempt of Court" was seen as a judicial extension of British Imperialism. This provoked a stern rebuke from the President who said that "individual judge... May he err, but we should not cost aspersion on the judiciary as a whole".153 This it demonstrated that no discussion was permitted on the frailties of the judicial system as a whole. In the end, the words "contempt of court" was accepted as a restriction on "freedom of speech".

4.4.1 Free Speech, Judiciary and the Law of Contempt of Court

Judiciary which is the sentinel on the *qui vive* of the fundamental rights may at times have to restrict the same in order to maintain rule of law. Rule of law, being the fountain of democracy, dependents upon the free and fair administration of justice and any undue interference whether verbal or non verbal is treated as contempt. Constitutional guarantee of freedom of speech and expression does not permit any one to commit contempt of court. Free and fair criticism of the judicial act motivated by bonafied reasons has to be permitted, but scurrilous attack on the judiciary motivated by malafides has to be viewed seriously and should be restricted.154

It is indeed a trite statement that free speech and independent judiciary are institutions that are sine qua non for the maintenance of the Rule of Law. Nay there is the very foundation of a democratic society. Both of these, therefore, need to be jealously preserved and protected. The Judiciary, undoubtedly, is the arbiter of the Rule of Law, because it is the courts that are constitutionally entrusted to decide disputes between opposing parties, and thereby maintain the Supremacy of law. Although the operational area of both are quite distinct and apart to a large extent, and yet at times, these run into each other on the issue of contempt giving rise to a situation of conflict and confusion. The requisite stimulus for this exercise has been provided by a recently delivered judgement of the Supreme Court in *Rajendra Sail v. Mahya Pradesh High Court Bar Association and others*.155

152 Id. at p. 400.
153 Id. at p. 401.
155 AIR 2005 SC 2473.
In Rajendra Sail, the editor, printer and publisher, and a reporter of a newspaper, along with the petitioner who was a labour union activist, were summarily punished and sent to suffer a six months imprisonment by the High Court. Their fault that on the basis of a report filed by a trainee correspondent, they published dramatically remarks against the Judges of a High Court made by a union activist at a rally of workers. The remarks to the effect, that the decision given by the High Court was rubbish and fit to be thrown into a dustbin’. Although the publication of a news item was a factually correct version of the speech delivered by the union activist, nevertheless the editor, printer and publisher, and the reporter were held liable for contempt of the High Court. Accordingly, all of them were convicted and sentenced to six months imprisonment. On appeal, the Supreme Court upheld the contempt against them, but dramatically modified and reduced the sentence. The Apex Court accepted the unconditional apology tendered by the editor, printer and publisher, and the reporter, and thereby discharged them of contempt of court; whereas the sentence of imprisonment awarded to the union activist was reduced to one week.

The interesting feature of the case is that though the Supreme Court rendered the decision in the light of the already ‘well settled’ principles relating to the law of contempt the principles that were already in the knowledge of the High Court, nevertheless, the eventual decision of the Supreme Court in terms of the punishment given is drastically different from the one given by the High Court. Does it mean that the well settled principles governing contempt of courts are not yet so settled? Or, is this an arena of absolute discretion, implying that the variation in eventual decision-making is the inherent weakness of the common law tradition where the living law emanates as a result of court decision? In an analysis of quite a few related judicial decisions it has been found that the various principles expounding the contempt law are found scattered in numerous judicial decisions with varying emphasis. And, a coherent text-book approach, giving a rounded view of the subject of contempt law with a thematic unity, is conspicuous by its absence.¹⁵⁶

It is both legal and logical to state that the freedom of speech and expression is as wide as the freedom of individual citizens. However, in a civil society no right to freedom, howsoever invaluable it might be, can be always considered absolute,

unlimited, or unqualified in all circumstances. The sweep of all rights or freedoms is, therefore, always controlled and regulated so that the like rights or freedoms of others are not jeopardized. Realizing the truth of this fact of social life—the constitution of India envisages the regulation of fundamental Rights to freedom of speech and expression of all citizens, including the press, under Article 19(1)(a) by imposing reasonable restrictions under clause (2) of the same Article vis-à-vis judiciary, the restrictive clause specifically states that such freedom is subject to the law made by the state “in relation to contempt of Court.” A similar provision is found in Article 19 of the International covenant on Civil and Political Rights, 1966, to which India is a signatory and had ratified the same. It provides that every one shall have the right to freedom of expression, to receive and impart information and ideas of all kinds. However, clause (3) of the same article makes these rights subject to certain restrictions, which shall only be such as are provided by law and are necessary for the respect of life and reputation of others for the protection of national security or public order or of public health or morality.

A mere glance at this statutory exposition shows that the contempt law is a very powerful instrument in the hands of judiciary. Its singular purpose is to protect and preserve the majesty of law and the dignity and independence of judiciary, which is otherwise so expressly guaranteed by the Constitution itself. The founding fathers of the constitution engrafted Article 121 and 211 and thereby prohibited the Parliament and the legislature to discuss on the floor of the house the conduct of any judge of the Supreme Court or the High Court in the discharge of his duties. Any discussion on the aberration of conduct of a judge can be held only upon a motion for presenting an address to the President praying for remove of the Judge under Article 124(4) of the constitution in accordance with the procedure prescribed under the judges (inquiry) Act, 1968 and the rules made there under. By implication, No one else has the power to accuse a judge of his misbehavior, partiality or incapacity. The purpose of such a protection is to ensure independence of judiciary so that the Judges could decide cases without fear or favour. If any person dares to discuss the conduct of a judge in a manner that brings the administration of justice into disrepute, he would be liable for contempt of court under the law.

157 Id. at p. 449.
158 Supra note 136.
159 Dr. D.C. Saxena v. Hon'ble the Chief Justice of India, AIR 1996 SC 2481 at 2501.
The Parliament, while enacting the Contempt of Courts Act, 1971, has clearly carved out contain exceptions to the exercise of the power of contempt. Section 3 of the Act takes a person out of the purview of contempt law if he has published any matter which interferes or tends to interfere the course of justice in connection with any civil or criminal proceedings provided at the time of publication he had no reasonable grounds for believing that proceedings are pending. In other words, want of knowledge of criminal whether pending or imminent would be complete defense to a person accused of contempt on the ground that he has published any matter calculated to interfere with the course of justice in connection with such proceedings. Under Section 4, fair and accurate reporting of judicial proceedings is not contempt. Similarly, by virtue of section 5, even fair criticism of judicial act is not to be considered contempt.\footnote{Supra note 156, pp. 454-455.}

Carrying out exceptions to contempt law shows the clear legislature intent: the prime purpose of enactment is to limit the scope and sweep of the contempt law rather than enlarging it. In fact, the principal objective of the parliament in enacting the Act of 1971 is to “define and limit the power of certain courts, in punishing contempt of courts and to regulate their procedure in relation thereto.”\footnote{The Act of 1971 replaces and repeals the Contempt of Courts Act, 1952.} The Apex Court has captured this objective spirit of the enactment, when Sabharwal J. (as he then was) issued a call to the judges.\footnote{Supra note 155 at 2480 (para 25).}

“A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. The court has to act therefore with a great circumspection. It is only when a clear case of contemptuous conducts not explainable otherwise arises then the contemnor must be punished.”

The analysis of the decision of the Apex Court reveals that the rigor of contempt law has been remarkably reduced by developing certain juristic principles and practices. In this respect, there are at least three sets of principles and practices that are in consonance with the legislature intent.

\footnote{Supra note 156, pp. 454-455.}
\footnote{The Act of 1971 replaces and repeals the Contempt of Courts Act, 1952.}
\footnote{Supra note 155 at 2480 (para 25).}
The first set of juristic principles and practices revolves around the holding of the apex court to the effect that the jurisdiction of the court for initiating contempt proceedings in terms of the procession of the contempt of courts Act is quasi-criminal. As such the standard of proof required is that of a criminal proceedings and the breach shall have to be established 'beyond reasonable doubt'. In this respect, the Supreme Court in *Mrityunjay Das*\(^{163}\) cited the observation of Lord Denning:

"While expand reasonable doubt': It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence ... where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt".

The first judicial strategy is to distinguish 'contempt' from 'libel'. Contempt is a public wrong, having 'an adverse effect on the due administration of justice by 'undermining the confidence of the public in judiciary',\(^{164}\) whereas, 'liberal', which is an illegal act of writings things about someone that are not true, is a personal injury. The test, if an act of criticism is simply 'libel' or constitutes 'contempt' is, "whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his court".\(^{165}\) "It is only the latter case that will be punishable as contempt". In other words, that is 'alternatively', the test will be whether the wrong is done to the judge personally or it is done to the public. In case of 'libel', one has to bring a suit and prove the charge, whereas in the case of contempt, it is the public institution, namely the court, that initiates proceedings and the contemnor is punished summarily even without proof of the actual injury, if the disparaging remarks are likely to interfere with the due administration of law.

The second judicial strategy for restricting court form holding people for its contempt is by differentiating the judge from his judgment. The judgments, and not

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\(^{164}\) Supra note 155 at 2448 (para 16) citing Shri C.K. Daphtary and Others v. Shri O.P. Gupta and Others, AIR 1971 SC 1132.

\(^{165}\) Id., at p. 2478 (para 9) citing perspective Publications Pvt. Ltd. and another v. The State of Maharashtra, AIR 1971 SC 2211.
the judges, are subject to public criticism. It is always open to public scrutiny and
criticism, Sabharwal J. (as he then was) unequivocally states:166

Undoubtedly, the judgments are open to criticism. No criticism of a judgment,
however rigorous, can amount to contempt of court, provided it is kept within
the limits of reasonable courtesy and good faith. Fair and reasonable criticism
of a judgment which is a public document or which is a public act of a judge
concerned with administration of justice would not constitute contempt. Such
a criticism may fairly assent that the judgment is incorrect or an error has been
committed both with regard to law or established facts.

The third judicial strategy to reduce the rigor of the contempt proceedings is
by holding that the criticism made in 'good faith' and 'public good', that is without
malice or ill-will does not amount to contempt of court. For this proposition,
Sabharwal J. (as he then was) cites the authority of a three judge bench of the
Supreme Court in re. Roshan Lal Ahuja,167 which holds that fair comments, even if
outspoken, but made without any malice or attempting to impair the administration of
justice and made in good faith in proper language do not attract any punishment for
contempt of court. The ambit of the contempt law further limited by the observation
of the apex court in the Arundhati Roy168 to the effect that the criticism of the conduct
of a judge, the institution of judiciary, and its functioning may not amount to
contempt of it is made in 'good faith' and in 'public interest'. However, for
deciphering the presence of these two doctrines, the apex court has suggested that the
courts dealing with the issue of contempt should consider "all the surrounding
circumstances", including (a) the person responsible for comments; (b) his knowledge
in the field regarding which the comments are made; and (c) the intended purpose
sought to be achieved. This implies that all the persons cannot be permitted to
comment upon the conduct of the courts in the name of fair criticism..." holds the
Supreme Court assertively.169 The reason for this assertion is: "if criticism is
permitted to everybody I the name of fair criticism, it would destroy the institution of
courts itself". This reality is instanced by the Supreme Court: Litigants losing in the
court would be the first to impute motives to the judges and the institution in the name

166 Id. at p. 2484 (para 43).
167 Re, Roshan Lal Ahuja, 1993 Supp. (4) SCC 446.
168 Supra note 142.
169 Ibid.
of fair criticism, which cannot be allowing for preserving the public faith in an important pillar of democratic set up, that is judiciary.

The second set of juristic principles and practices that has the effect of cutting down the contempt proceedings relates, not to the construction of ‘contempt’ but, to the consequences of contempt in terms of punishment. On this court Section 12 of the Act of 1971 specifically provides that “a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both”. To this procession is engrafted a proviso, which entitles the contempt court either to discharge the accused by cancelling the court’s order for initiating contempt proceedings, or “the punishment awarded may be remitted on apology being made to the satisfaction of the court”. On the basis of simple construction of this provision, it is evident that the court’s decision is holding a person guilty of contempt may be reviewed in the light of the justification offered by the accused. If the court is satisfied, it may instantly cancel its order, discharging the accused.\footnote{\textsuperscript{170}}

\textbf{4.4.2 Freedom of Speech and Contempt of Court}

It is, however, quite clear, that the exercise of such a power by the courts comes in conflict with the citizens fundamental right to freedom of speech and expression. This freedom is not only the basis of a democratic form of Government but is also essential for a complete and meaningful development of human mind. But the great social interest that lies in the unobstructed and un-interfered administration of justice provides justification for the restriction that this branches of the law of contempt imposes on the freedom of speech and expression, subject, of course, to meeting the express constitutional requirement of reasonableness of any such restriction. Both the values of freedom of speech and expression and fair and impartial administration of justice are, thus, held very high by our constitution and neither is permitted to be sacrificed for the other. In all cases of conflict between the two, a proper balance has, therefore, to be struck by the courts.\footnote{\textsuperscript{171}}

It is of great significance to mention that the Supreme Court, revising a High Court decision in which a magistrate had been held guilty of contempt, has held that

\footnote{\textsuperscript{170} Supra note 156 at p. 459 
in the absence of mens rea the contemnor was at the most guilty of a technical
contempt not calling for a penal action.\textsuperscript{172} The Supreme Court rule that so long as a
judicial officer, in the discharge of his official duties, acts in good faith and without
any motive to defeat, obstruct, or interfere with the due course of justice, the courts
will not as a rule punish him for contempt. In arriving at this decision Sarkaria J.,
who spoke for the bench, relied on an earlier Supreme Court Judgment\textsuperscript{173} in which
the court had refused to uphold an action for contempt for the delay in the
transmission of the order of the court of Sessions, which in a way had defeated the
order. There was no intention to so frustrate the orders of the session’s court and the
Supreme Court held that the punishment under the law of contempt was called for
when the lapse was deliberate and in disregard of one’s duty and in defiance of
authority.

To curb, in the name of the contempt of court, such publications which
legitimately discuss matters of general public interest and only incidentally and
unintentionally create a risk of prejudice to particular proceedings, does appear to be
an unwarranted and unreasonable restriction on the freedom of speech and
expression.\textsuperscript{174} There are cases in which the possibility of prejudice to a litigant may
be required to yield to other and superior considerations of freedom to discuss matters
of general public concern. One such example, it is submitted, was the case\textsuperscript{175} in which
Mr. P.C. Sen, the then Chief Minister of West Bengal, was held guilty of contempt of
court. When the petitions challenging the constitutional validity of the West Bengal
Milk Products control order were pending before the Calcutta High Court, the Chief
Minister gave a broadcast talk in which he discussed the implications of the impugned
control order and its impact on sweetshops. He extolled the virtues of that legislation
as a sort of boon to the public and as putting down adulteration and anti social
elements. The Chief Minister was held guilty of contempt of court on the ground that
his speech was calculated to interfere with the due course of justice as it was likely to
create atmosphere of prejudice against the petitioner and also deter other persons from
making similar claims before the court. It is important to note that certain persons had
started a public propaganda with the object of criticizing and ridiculing the policy of

\textsuperscript{172} Abdul Karim v. M.P. Prakash, AIR 1976, SC 859.
\textsuperscript{173} Debabrata Bandopadhay v. State, AIR 1969, SC 189.
\textsuperscript{174} Phillimore Committee Report on Contempt of Court, 1974.
\textsuperscript{175} Supra note 109.
the State Government in promulgating the control order. As a result of this, certain sections of the public were misled about the object, purpose and nature of the order and the consequences thereof. Taking advantage of the situation attempts were made by some political parties to commence a political agitation against the state government for having promulgated the order. It was contended on behalf of the Chief Minster that is his sole and only intention and purpose in making the speech was to remove the confusion and to allay the fears aroused in the minds of the people. The Chief Minister, it was argued, had no intention whatsoever of either showing any disrespect to the court or interfering in any manner with the due course of justice, nor did he anticipate that his speech could have any such effect. But all this did not find any weight with the court as it was of the view that in such cases 'the question is not so much of the intention of the contemnor as whether it (the speech) is calculated to interfere with the administration of justice. 176

A very forceful exposition of this view is found in a unanimous full bench decision of the Delhi High Court,177 where it was observed that the right to discuss being inalienable and the very essence of a free and democratic society, a matter of great national importance which agitates vast sections of the population was bound to be discussed in press and on other plate forms. The public discussion of that matter cannot necessarily be stifled because of the filing of a suit by an individual in a court of law about the matter of national importance. To hold otherwise would, according to the High Court,178 allowed full freedom to a commentator to comment on a matter of national importance, notwithstanding that a suit involving that matter is pending in a court of law.

In this context, matter important change introduced in the Indian contempt law is the provisions179 that no publisher of an alleged contumacious matter shall be guilty of contempt, if, at the time of publication of that matter he had no reasonable grounds for believing that the proceedings was pending. In a vast country like India, where people in one part of the country are not likely to be aware of the proceedings pending in another part of the country, it would completely stifle the freedom of speech if want

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176 Supra note 171, pp. 332-333.
178 Id., at p. 24.
179 Section 3(1) of the contempt of Courts Act, 1971.
of knowledge of pending proceeding were not to afford a complete defiance to a person accused of contempt of court. But once there was as of fact a pending proceeding, the burden is on the alleged contemnor to show that he had good reasons for believing that there was no pending proceeding. He must put forward such reasonable grounds as would satisfy reasonable men as to his belief.

This explanation to Section 3, however, needs to be reconsidered at least on one count. It lays down that a proceeding shall be deemed to be pending "until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard or finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired." This in the present, Indian conditions where there are enormous delays involved in the disposal of cases in the courts, at all levels, original or appellate, may amount to restraining comment for too long a time. At times when matters of general concern and interest are involved in the litigation, it may not do good to the public interest of there is no public discussion of these matters till appeals in that case are decided by the highest appellate court in the country. It could be very well argued in such cases that freedom of speech is being reasonably curtailed.  

It is no doubt essential to the preservation of the rights of every individual that administration of justice is not destroyed or prevented. Any abuse, interference or obstruction of the administration of justice has therefore, to be necessarily checked. But in the enthusiasm to strive, through the exercise of the contempt jurisdiction, for a fair and impractical administration of justice, it is not to be lost sight of the contempt law affects, sometimes very seriously, the citizens fundamental rights to freedom of speech. This freedom is a necessary pre-requisite for the democratic way of life envisaged under the Indian Constitution and should always prevail except where interference with justice is substantial and mischievous.  

4.4.3 Freedom of Expression and Contempt of Court

All citizens have the right to freedom of speech and expression with reasonable restrictions. It is, Governor, not absolute, but is subject to the power of the state to impose reasonable restrictions in the interest of the sovereignty and integrity
of India, the security of the state, friendly relation with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Thus a restriction can be imposed on this freedom in relation to contempt of court, but such restriction has to be reasonable.

The need to impose restrictions on the freedom of speech and expression in relation contempt of court arises from the following interests that have to be subserviced.\(^{182}\)

(a) The judiciary should not be designated because people will lose faith in it and ultimately this will erode its social legitimacy;

(b) Judicial decision must not be allowed to be flouted, because it will weaken the credibility of the judiciary; and

(c) Judges must be protected from blackmail, personal character assassination or ridicule which is arising out of their judicial office. If this is allowed, the judges will get demoralized.

As Against this, there are the following Interests subs served by the criticism by the judicial process.\(^{183}\)

(a) Judicial process is a decision making process and in democratic society, it is the part of the political process. The courts are entrusted with the power of making decision on matters of policy, such as what is the basic structure of the constitution or what are reasonable restrictions on freedoms guaranteed by bills of rights and, therefore, there should be free discussion about judicial policy and Judicial procedures, public faith in the judicial process will argument and not dimsh by such de-mystification of the judicial process. Judicial decisions and procedures as well as the institutional role of judiciary must be continuously under public gaze and subject to social audit;

(b) Judges cannot invoke the law of contempt for their own personal protection. The law of contempt must protect only the institution. But criticism or allegations against judges with a view to bullying them or intimidating than could prove disastrous to the independence of the judiciary. Therefore, a judge ought not to be


\(^{183}\) Ibid.
criticized for his judicial decision. His decisions could be criticized, but not his motives. Such protection however remains confined strictly to his judicial work.

The power of the courts to punish for contempt is an essential judicial weapon to prevent interference with the administration of justice. However, it may at times conflict with freedom of speech which is a coveted fundamental right. This conflict has to be resolved in such a way as to protect administration of justice at minimum sacrifice of freedom of speech. But in *E.M.S Namboodiripad v. T.N. Nambiar* the Supreme Court of India has failed to strike a balance between the competing demands of freedom of speech and fair administration of justice.

Mr. Namboodiripad, while he was Chief Minister of Kerala, has said in a press conference was a mere criticism of the institution of judiciary from the standpoint of the class theory of Marx. He had described the judiciary as "an instrument of oppression" and the judges as "dominated by class hatred, class prejudices, instinctively favoring the rich against the poor". The Judiciary, in his opinion, worked against workers, peasants and other sections of the working class. The Kerala High Court held him guilty of contempt of court and sentenced a fine of Rs. 1000/- or simple imprisonment for one month in default.

The criticism by the contemnor was not of any individual judge. It was directed against the judiciary as a whole. Further the object of the petitioner was to educate the masses in the tenets of Marx and Engels and not to scandalize judges and he is doing so in pursuance of the guaranteed right of freedom of speech under Article 19 of the Constitution of India.

When Namboodiripad appealed against this decision to the Supreme Court, the Supreme Court upheld the decision against him then it reduced the sentence. The arguments in his defense were that:

(i) his observations did no more than give expression to the Marxist philosophy and what was contained in the programme of his party, i.e. the CPI(M) programme adopted in Nov., 1964;

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184 (1970) 2 SCC 325.
186 Supra note 182, at p. 18.
188 Supra note 185.
(ii) they contained a fair criticism of the system of judicial administration;
(iii) they did not contain criticism of any particular judge or his judgement or conduct;
(iv) he had always enforced the judgments of the courts, and had never shown disrespect to the judiciary, but had in fact advocated the independence of the judiciary;
(v) the laws of contempt ought to be interpreted so as to cause no encroachment upon the freedom of speech guaranteed by Article 19(1)(a) of the Constitution;
(vi) the alleged harm done to the courts by his utterances was not apparent.

This decision, in our submission, was wrong. No attempt was made in the judgment to show the reasonable of such a draconian scope of the contempt power. The judgment merely mentions that restriction could be imposed on freedom of speech and expression in relation to contempt of court. But if Article 19(2) is read carefully, it is not enough that such a restriction should be in relation to contempt of court. It is also necessary that such a restriction should be a reasonable restriction.

Later in M.R. Parashar v. Farooq Abdullah, the Supreme Court dealt with a contempt complaint against the Chief Minister of Jammu and Kashmir, Mr. Farooq Abdullah. Dr. Farooq Abdullah had made a speech containing allegations against the judiciary. He had been reported to have said that justice was being bought in courts. He further said that he would not accept any stay orders. The Chief Minister was acquitted, but on the ground that the charge was not proved.

It is submitted that of such criticism of the judicial system were to constitute the offence of contempt, many eminent judges themselves would have to be convicted. Did Chief Justice Bhagwati not say that our system of justice was on the verge of collapse? Can we suppress the expression of truth in the name of contempt of court? Is it on the interest of the judiciary to suppress such expression but allow them to simmer in the minds of the people? Will open expression and it is investigation or rebuttal not enhance the image of the judiciary? Chief Justice Chandrachud was not obvious to such considerations when he observed:  

\[\text{189} \text{ AIR 1984 SC 615.\text{190 Supra note 182, pp 18-19.}}\]
"The reluctance of courts to resort to the provisions of the contempt of courts Act springs from their regard for the rule of law.... True, that it acts in order to uphold the authority of law and not defense of this or that particular judge. But an order punishing a person for such contempt is likely to create the impression more so in the mind of lay observers that the judges have acted in defense of themselves. Courts do not like to create such an impression even unwillingly. Secondly, the right of free speech is an important right of the citizen, in the exercise of which he is entitled to bring to the notice of the public at large the infirmities from which any, institution suffers, including, institutions which administer justice. Justice, indeed, the right to offer healthy and constructive criticism which is fair in spirit must be left unimpaired in the interest of public institutions themselves.... Course does not like to assure the positive that they are above criticism and that their functioning needs no improvement."

This passage clearly makes a departure from the view held in Namboodripad. In *P.N. Duda v. P. Shiv Shankar*, the Supreme Court acquitted Mr. P. Shiv Shankar, who was minister for law and justice in the cabinet at the time of his prosecution for the offence of contempt of court. The speech for which Shiv Shankar had been prosecuted was very much similar to that for which Namboodiripad had been convicted. But in the judgement of Justice Sabyasachi Mukherji, the following points emerge:

(i) Administration of Justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society;
(ii) any criticism about the Judicial system of the Judges which hampers the administration of justice or which erodes the faith in the objective approach of judges and brings administration of justice into ridicule must be prevented;
(iii) judgments can be criticized. The motives of the judges need not be attributed; and
(iv) in the free market place of ideas, criticism about the judicial system of judges should be welcomed so long as such criticisms do not impair or hamper the administration of justice."

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191 AIR 1988 SC 1208.
192 Supra notic 182 at p. 19.
It is submitted that the Supreme Court should have clearly overruled the Namboodiripad decision. The learned Sabyasachi Mukherji J. was right in saying that:

"Such fair and reasonable criticism must be encouraged because after all no one, much less Judges, can claim infallibility. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts."

Well-known writer and activist Arundhati Roy was given a token punishment for a day for contempt of court, because she wrote against the Judgment in the Sardar Sarover Dam case by the Supreme Court. The court declared that the punishment was of one day because Roy is a woman. The sentence is reminiscent of a rap on the Knuckles of a writer for daring to speak her mind. It is though the court wanted to say, "Let all writers! The court is above any criticisms". One wonders what the punishment would have been if the writer had been a male.

Arundhati Roy was not a party to the case in question; she merely exercised her right as a citizen of a democracy to voice her opinion of the judgment. The issue is not about the Sardar Sarover Project. Discerning individuals would already have formed their own conclusion about the rightness of the project, based on mounting evidence that large dams do not automatically imply prosperity. The issue is about freedom of speech and the spirit of tolerance. Vast number of people including this writer, led in protest when the Supreme Court passed a judgment in favour of the Sardar Sarover Project. The judgment was seen to be a victory for the privileged and a future setback for the poor villagers living on bud submerged by the Sardar Sarover lake.

Arundhati appeared and defended what she said in her affidavit. She asserted that as a citizen of India she had a right to criticize the decision of the Supreme Court, this being part of her fundamental right to freedom of speech. She had absolutely no intention to commit contempt of the court and what she said did not amount to contempt. The court held her guilty of contempt and sentenced her to one day's

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193 Ibid.
195 Ibid.
imprisonment and a fine of Rs. 2,000 failing to pay which she would have to undergo three months imprisonment. Arundhati Roy was sent to Tihar Jail. She spent a day there and came out after paying Rs, 2,000.\(^6\)

Arundhati Roy’s conviction and punishment for contempt shows that despite its doctrinal activism on human rights, the Supreme Court of India is still way behind the times in balancing freedom of speech and contempt of court. Action against Arundhati must be seen in the context of the decision of the Supreme Court in *Narmada Bachao Andolan v. Union of India*,\(^7\) (Hereinafter we shall call this case the NBA contempt case) in which the court permitted the concerned state governments to raise the heights of the Sardar Sarovar Dam. That decision came in 1998 after the work on the dam had remained stayed on the court’s order since 1994. It came as a great disappointment to NBA and its sympathizers because a rise in the height of the dam meant submergence of more villages and displacement of thousands of more people from their homes, since even these displaced earlier had not been adequately rehabilitated. Medha Patekar, the leader and Arundhati Roy, a Booker award winner and sympathizer of NBA, criticized the judgment. They were served a notice for contempt. The judges were doubtless offended by Roy’s sarcastic references to them in her Article in a news magazine but decided to drop the matter after giving an admission.\(^8\)

NBA organized a ‘dharna’ in front of the Supreme Court and in a meeting held there the decision of the court was severely criticized. A complaint was made against Medha Patekar, advocate Prashant Bhushan and Arundhati Roy by some lawyers alleging contempt of court and the court issued a notice asking why they should not be punished. All these respondents denied that they had committed any contempt and asserted that they had a right to criticize the judiciary and its decision in exercise of their freedom of speech guaranteed by the constitution. When that matter was heard it was revealed that the petitions were frivolous, they suffered from various procedural flaws, and more of the charges made against any of the three respondents could be proved. The three persons were therefore an acquitted:\(^9\)


\(^7\) (2000) 10 SCC 664.

\(^8\) Supra note 196 at p. 1383.

\(^9\) Ibid.
The entire proceedings show how embarrassed the court was in dealing with this matter, particularly when the persons accused of contempt refused to admit that they had committed any contempt but visited that they had a right to criticize and show their disapproval of a decision given by the court. This was their fundamental right under Article 19(1)(a) of the Constitution. They further said that they would accept any punishment rather than apologies. It was a moral challenge to the court by a person (Medha Parkar) for whom punishment for imprisonment for a few months would have made no difference. Similarly, for the other respondent too, the punishment would have caused physical suffering but they were ready to bear it. Where fear of punishment goes and one is willing to suffer, the deterrence of the punishment vanishes. If the court had punished them, they would have gone up in public esteem and to that extent the court would have suffered so erosion of its public esteem.\(^{200}\)

Enthusiastic use of the power to punish for contempt, conflicts with two vitals principles which are universally recognized in international human rights instruments the right to fair trial and the right to freedom of speech and expression. Article 14(1) of the international covenant on Civil and Political Rights, 1966 guarantees a fair and public hearing by competent, independent and impartial tribunals and reminds that a criminal defendant has an express right to defend himself through a legal representative of choice. But there can be no fair hearing and legal representation cannot be effective unless a party’s advocate is free to advance all arguments and lead admissible evidence that can reasonably be said to support the client’s case, lawyers are often put in a situation where they feel that unless they give away their rights to free speech they would not be heard. It is recognized that lawyers must have this freedom.\(^{201}\)

The Government of India has been struggling to strike a balance between the Constitutional rights of its citizens and the enactments of laws restricting these rights. The problem faced in achieving this balance is that the Constitution has various built-in-paradoxes. On one hand the Constitution guarantees the right of freedom of speech


and on the other hand it allows the parliament to pass any law against subversion, actions prejudicial to public order etc.\(^{202}\)

4.5 Constitutional Provisions Relating to the Contempt of Court

4.5.1 Contempt is an Inherent Power of Every Court of Record

The power to punish for contempt is an inherent power of court of record. It has been described as "a necessary incident to every court of Justice". This power is recognized and has been given a fundamental status by the Constitution of India. Certain tribunals, which do not enjoy the status of courts or record, have also statutorily been conferred this jurisdiction.

In the early case of *Sukhdev Singh Sodhi*,\(^{203}\) Justice Vivian Bose had tried to trace the history of the contempt jurisprudence in India, locating the earliest statutory provision in clause 4 of the Charter of 1774 which stated that the Supreme Court of Bengal would have the same jurisdiction as the court of King's Bench in England, accompanied by a power to punish for contempt. At common law, the position was clear that a Superior Court of Record had the inherent power to punish for contempt and this was the consistent position of the policy council as well.\(^{204}\) Justice Bose observed:\(^{205}\)

"This recognizes and existing jurisdiction in all letters Patent High Courts to punish for contempt's of themselves, and the only limitation placed on those powers is the amount of punishment which they could thereafter inflict. It is to be noted that the Act draws no destruction between one Letters Patent High Court and another though it does distinguish between letters patent High Court and Chief Courts also, as the Act is intended to remove doubts about the High court's power it is evident that it would have conferred those powers had here been any doubt about the High Court's power to commit for contempt of themselves. The only doubt with which the act deals is the doubt whether a High Court could punish for contempt of a court subordinate to it. That

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\(^{202}\) Ibid.

\(^{203}\) Sukhdev Singh Sodhi v. The Chief Justice and Judges of the Pepsu High Court, (1954) SCR 454.

\(^{204}\) Justice Bose traces the genesis of the principle by relying on the principles of British Common Law as enunciated in Belchamber's practice of the civil court (1884) and the Halsbury Edition of Halbury's Law of England.

\(^{205}\) Supra note 203.
doubts the act Removed. It also limited the amount of punishment which a High Court could inflict”.

This recognizes an existing power in all Letters Patent High Courts other than the chartered High Courts other than chartered High Courts could not have derived this power from the common law, it is evident, that the power must have been inherent in them because they were court of record.206

This power that was considered intrinsic in these courts was continued by virtue of Section 106 of the Government of India Act, 1915, until the Government of India Act, 1935 which referred to the High Court’s as courts of Record in Section 220 and created the Federal Court with similar powers in Section 203. With the coming of the Constitution, Articles 129 and 215 continued the declaration of the superior Courts as courts of Record with the power to punish for contempt.207

Articles 129 and 215 of the Constitution provider that the Supreme Court and each of the High Court shall be a “Court of record and shall have all the powers of such a court including the power to punish for contempt of itself.” Additionally, Article 142((2) provides that the Supreme Court shall have the power to make orders for the investigation or punishment of any contempt of itself. While Article 142(2) is expressly made subject t the provisions of any law that may be made by parliament in this behalf, Articles 129 and 215 are not. In addition, article 19(2) allows contempt to be a ground on which the state may reasonably restrict the exercise of the freedom of speech and expression under Article 19(1) (a).208

The expression “court of record” is not defined in the Constitution or in any law. The historical meaning of a court of record is a court where acts and judicial proceedings are preserved for perpetual memorial and testimony. In Delhi Judicial Service Association,209 the Supreme Court observed:

“Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for

206 Id., pp. 459-460.
207 However, both Articles 19(2) and 142(2) recognized the fact that free speech and the powers of the Supreme Court to make orders in relation to investigation or punishment of contempt would be subject to law that was enacted.
208 Restatement of Indian Law, Contempt of Court', Supreme Court Project Committee on Restatement of Indian Law, Indian Law Institute, New Delhi, 2011, p. 6.
contempt of itself. Article 215 contains similar provisions in respect of High Court. Both the Supreme Court as well as High Court is court of record having powers to punish for contempt including the power to punish for contempt of itself. The constitution does not define "Court of Record". This expression is well recognized in judicial world. In England a superior court of record has been exercising power to indict a person for the contempt of its authority and also for the contempt of its subordinate and inferior courts in a summary manner without the aid and assistance of jury. This power was considered as a necessary attribute of a superior court of record under Anglo-Saxon system of Jurisprudence..... In India, the courts have followed the English practice in holding that a court of record has power of summarily punishing contempt of it as well as of subordinate courts. In Surendranath Banerjee v. Chief Justice and Judges of High Court, at the Fort William in Bengal, the High Court of Calcutta in 1883 convicted Surendranath Banerjee, who was editor and proprietor of weekly newspaper for contempt of court and sentence him to imprisonment for two months for publishing libel reflection upon a judge in his judicial capacity. On appeal the Privy Council upheld the order of the High Court and observed that High Courts in Indian Presidencies were superior courts of record, and the powers of the High Court as Superior Courts in India are the same as in England. The Privy Council further held that by common law every court of record was the sole and exclusive judge of what amounts to a contempt of court. In Sukhdev Singh Sodhi case this court considered the origin, history and development of the concept of inherent jurisdiction of a court of record in India. The court after considering Privy Council and High Court's decision held that the High Court being a court of record has inherent power to punish for contempt of subordinate courts. The court further held that even after the codification of the law of contempt in India the High Court's Jurisdiction as a court of record to initiate proceedings and take seisin of the matter remained in effected by the contempt of courts Act, 1926.

\[\text{Surendranath Banerjee v. Chief Justice and Judges of High Court,}\]\(^{210}\) at the Fort William in Bengal, the High Court of Calcutta in 1883 convicted Surendranath Banerjee, who was editor and proprietor of weekly newspaper for contempt of court and sentence him to imprisonment for two months for publishing libel reflection upon a judge in his judicial capacity. On appeal the Privy Council upheld the order of the High Court and observed that High Courts in Indian Presidencies were superior courts of record, and the powers of the High Court as Superior Courts in India are the same as in England. The Privy Council further held that by common law every court of record was the sole and exclusive judge of what amounts to a contempt of court. In Sukhdev Singh Sodhi case this court considered the origin, history and development of the concept of inherent jurisdiction of a court of record in India. The court after considering Privy Council and High Court's decision held that the High Court being a court of record has inherent power to punish for contempt of subordinate courts. The court further held that even after the codification of the law of contempt in India the High Court's Jurisdiction as a court of record to initiate proceedings and take seisin of the matter remained in effected by the contempt of courts Act, 1926.

\(^{210}\)\((1882-83) 10\text{ Ind. App. 171 (PC).}\)

\(^{211}\) Supra note 203.
Similarly, in *Supreme Court Bar Association*, the Supreme Court observed:

The expression court of record has not been defined in the constitution of India. Article 129 however, declares the Supreme Court to be a court of record, while Art. 215 declare a High Court also to be a court of record.

A court of record is a court, the records of which are admitted to be of evidentiary value and is not to be questioned when produced before any court. The power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to upheld the majority of law and prevent interference in the due administration of justice. Every court of record has certain inherent powers including the power to punish for contempt of itself.

Thus, even in the absence of the constitutional provisions referred to above, the High Courts and the Supreme Court would possess the power to punish for contempt. This was well known to the Constituent Assembly and the language of Article 129 and 215 is an attempt to put matters beyond doubt. During the Constituent Assembly debates, in relation to the present article 129, Dr. Ambedkar explained that the words “court of record” was used to define status of the court and as to the additional words he observed thus:

“As a matter of fact, once you make a court a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in England this power is largely derived from common law and as we have no such thing as common law in this country, we felt it better to state the whole position in the statute itself.”

4.5.2 Parliament's Legislative Competency Regarding Contempt

The following are the provisions of the constitution having a bearing on contempt of courts:

(i) Article 19 (1) (a) and 19(2);

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214 Id. at 382.
215 Articles 105(2) and 194(2) which afford complete community to members of the legislature in respect of anything said therein are not being referred to in this context.
(ii) Article 129 and entry 77 List I of the Seventh Schedule;
(iii) Article 215 and entry 14 of List III of the Seventh Schedule; and
(iv) Article 142(2).

Article 19(1)(a) guarantees to all citizens the right to freedom of speech and expression and Article 19(2) provides *inter alia* that this right is subject to any law imposing reasonable restrictions in relation to contempt of court. Article 129, 142(2) and entry 77 List I of the Seventh Schedule pertain to contempt of the Supreme Court, while article 215 pertains to contempt of High Courts. Entry 14 of List III of the Seventh Schedule covers contempt of courts other than the Supreme Court.216

Article 246(1) read with Entry 77 of List I of the Seventh Schedule to the Constitution confers on the parliament exclusive power to make laws with respect to 'constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such court). Further in terms of Article 246(2) read with Entry 14 of List of the Seventh Schedule, the Parliament as well as the legislature of the States enjoy the powers to make laws on 'contempt of court' but not including contempt of the Supreme Court'. The power conferred on the legislature, therefore, extends to enacting a law on the entire subject of 'contempt of court'. Even the Constitutional guarantee of freedom of speech and expression under Article 19(1)(a) is expressly made subject to the right of the legislature to impose 'reasonable restrictions' on the exercise of that right by making any law *inter alia* on contempt of court.217

The elaborate phraseology of articles 129 and 215 would reveal itself more as the consequence of a practical difficulty in using more concise and less misleading language to describe the powers of the courts rather than as an attempt to freeze for all times to come the substantive law of contempt. The wide and unqualified language of entry 77 of List I and entry 14 of List III of the Seventh Schedule shows that the Legislature has full powers to legislate with respect to contempt of court subject only to the qualification that the Legislature cannot take away the power of the Supreme Court or the High Court to punish for contempt or vest that power in some other court, for example, a magistrate's court. Further the provisions of Article 142(2) to the effect that the Supreme Court shall have 'all and every power' to make any order for

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217 *Supra note 208, pp. 12-13.*
the investigation or punishment of any contempt of itself, “subject to the provisions of any law made in this behalf by Parliament” clearly assume that Parliament has full powers to legislate in relation to contempt of the Supreme Court. In other hands, even if article 129 were interpreted as ‘conferring’ on the Supreme Court the power to punish for contempt of itself, another article, namely, article 142(2) expressly makes ‘all and every power’ of the court to make any order for the punishment of any such contempt subject to any law made in this behalf by Parliament. Further legislation in relation to contempt, as contemplated and saved by article 19(2), must necessarily be in relation to the substantive law of contempt and such legislation would not be possible in relation to the Supreme Court and High Court if article 129 and 215 were construed to prohibit it.\footnote{Bijoyananda Patnaik v. Balkrishna Kar, ILR 1953 Cutt. 283, (293) the Orissa High Court came to the conclusion that article 19 does not curtail the right of the High Court to deal with contempt of court. The High Court in that case was considering whether there was any existing law curtailing that power within the meaning of Art. 19(2) and it is therefore not clear whether the court would have come to the same conclusion if there was some expression of law on the subject.} It would, therefore, seem to us to be sufficiently clear that having regard to the relevant provisions, Parliament has the power to legislate in relation to the substantive law of contempt of the Supreme Court or the High Court.\footnote{Supra note 216, Ch. III, para 4(2).}

4.5.3 Parliamentary Privileges and Free Speech

4.5.3.1 Terms Privilege and Parliamentary Privilege

First it is necessary to know what is meant by the term ‘privilege’. The term privilege connotes the rights and immunities enjoyed by each house of Parliament and its committees collectively and by the members of each House individually, without which they cannot discharge their functions efficiently and effectively.\footnote{V.S. Maniam, ‘Parliament and Press’, Vidura, Vol. 25(2), 1988, p. 13.} These privileges, therefore, are certain Fundamental Rights of each House which are generally accepted as necessary for the exercise of its constitutional functions. Hence, in general terms, privilege means a right, advantage or immunity granted to or enjoyed by, a person or class of persons beyond the common advantages of others.\footnote{V.S. Pekhi, ‘Law of Privileges’, Vidura, Vol. 26(5), 1989, p. 34.}

Parliamentary privilege has been defined as, “the sum of peculiar rights enjoyed by each house collectively as a constituent part of High Court of Parliament, and the members, of each house individually, without which they could not discharge
their functions and which exceed those possessed by others bodies or individual".  

Any act or omission which obstructs or impedes any member of officer of the House in the discharge of their duties, or which has a tendency to produce such a result would constitute contempt of the legislature.

4.5.3.2 Privileges of the Parliament and State Legislature

The privileges, immunities etc of the members of Parliament and of the Parliament itself are set out in Article 105 of the Constitution of India. Clause (1) of that Article says that subject to the provisions of the constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament. These immunities are conferred on members for anything said in the House and no person can be made liable in respect of publication by or under the authority of either House of Parliament of any report, paper, votes, proceedings of the Parliament or any committee thereof. Similar provisions exist in Article 194 which is applicable to House of state legislatures. Reading clause (1) and (2) of Article 105 and 194 together, it is plain that freedom of speech in Parliament and state Legislature is absolute and unfettered. This view has been upheld in the case of Shri. M.S. M. Sharma v. M. Krishna Sinha and later confined in the case of Special Reference No. 1 of 1964 by the Supreme Court of India.

In M.S.M. Sharma v. Krishna Sinha the court made it clear that if the Parliament or State Legislature enacted a law under Article 105(3) or 194(3) respectively to define its privileges, then such a law would be subject to Article 19(1)(a) and a competent court could strike down that law under Article 13 of the Constitution if it violated, or abridged any of the fundamental rights. It is this part of the judgment which has led to the general impression that neither the House of Parliament nor the State Legislature would be interested in codifying Legislative privileges as then they would be liable to challenge under the various Articles containing fundamental rights. This case has imposed a judicial gloss on the freedom of the press.

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223 AIR 1959 SC 395.
224 AIR 1965 SC 745.
225 Supra note 223.
226 Id. at p. 410.
The provisions of the constitution dealing with Parliamentary privileges and immunities bear special marks of indebtedness to the centuries-old conventions established and maintained in this regard by the British parliament. Article 105 deals with the powers, privileges and ammunitions of the Houses of parliament, their members and committees. It guarantees to every member freedom of speech in Parliament and grants immunity from proceedings in any court of law in respect of anything said or any vote given by him in Parliament or in any of its committees. A similar immunity is granted in respect to the publication, under the authority of either house of parliament, of any reports, papers, votes or proceedings. All these privileges are equally applicable to the various state legislatures, their members and committees under Article 194.228

In 1959, the Supreme Court was called upon to deal with the subject of parliamentary privilege in a comprehensive manner when the famous search light case229 came before it. In that case the editor of Search Light, a Patna Daily Newspaper, came to the court contending that he had the absolutes right, subject of course to any law that may be protected by Article 19(2) of the Constitution (restrictions to the freedom of speech and expression), to publish a true and faithful report of the publically heard and seen proceedings of parliament or any state legislature including portions of speeches directed to be expunged. The mater arose as a result of his publishing a report of some publishing of Bihar State Assembly which the speaker had ordered to be expunged. A show-cause notice was issued against the editor by the Secretary of the assembly for breach of privilege. He challenged the notice and moved the court for an appropriate writ or order in his favour claiming that the notice sought to violate his fundamental rights to freedom of speech and expression and to personal liberty under Article 21 230 guaranteed under the Constitution.231

By a four-to-one majority headed by the Chief Justice the court held that the Legislature had the power of privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that took place in the House. They

229 Supra note 223.
230 Article 21 'No person shall be deprived of his life or personal liberty except according to procedure established by law'.
231 Supra note 228 at p. 14.
further held that the only way of reconciling the two provisions of the Constitution, namely, Article 19(1)(a) freedom of speech and expression and Article 105(3) or 194(3) legislature privileged was by allowing the former which is ‘general’ to yield to the latter which is ‘special’. However, if Parliament or the State Legislature were to make a law, as contemplated by Articles 105 or 194, defining their privilege, such law as an ordinary law would be subject to the fundamental rights.232

The dissenting Judge (Justice Subha Rao) agreed with the majority that Article 105(3) and 194(3) were not expressly made subject to the other provisions to the Constitution. But he disagreed with their reconciliation of the two by way of the doctrine of the general and the special. With clear and compelling logic he said: “There is no inherent inconsistency between the two provisions. Article 19(1)(a) gives freedom of speech and expression to a citizen while Article 194 (3) or 105 (3) deals with powers, privileges and immunities of the legislature. The legislatures and its members have certainly a wide range of powers and privileges, and the said privileges can be exercised without infringing the fundamental rights of a citizen. When there is conflict, the privilege should yield to the extent if affects the fundamental rights. Thus construction gives full effect to both Articles.”233

There was a case, perhaps unparalleled in the annals of parliamentary privileges, relates to a conflict between the Legislative Assembly and the High Court of the State of Madras which took place during 1960. The facts of the case are as follows:234

The Government of Madras had appointed one Mr. Alagirisami as government pleader after his retirement from Judicial Services in the State. The appointment was challenged through a writ petition in the High Court by an Advocate of the Court. The court however dismissed the petition saying that from a strict ‘legal point of view’ the government could make the appointment and the court could not interfere.235 But one of the Judges who heard the petition made stringent remarks by way of obiter dicta imputing motive to the minister in charge of law who has happened to be the reader of the House in the assembly. A member of the Government party (the congress party)

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233 Ibid.
234 Id. at p. 17.
during the next session of the Assembly moved a privilege motion in the House alleging that the court had in some of its observations in the division of the above case "usurped the powers and privileges at the legislature". He said that a matter was a fit case to be referred to the committee of privileges, as, in the court's order "strong observation have been made affecting the conduct, character, prestige and privilege of a member and leader of this House and powers which essentially belong to the legislature have been assumed by the high Court, thereby affecting the powers and privileges of this House". The speaker announced the views of the leaders of parties in the House would be elicited on the privilege motion two days later when the motion would be considered by the House.

The day after the motion was moved in the Assembly, the same Advocate who had moved the High Court earlier filed a petition before the court praying that action might be taken against the member who would the privilege motion for contempt of court. He pointed out that no member of the Legislature had any right to discuss the conduct of any High Court Judge and anything in regard to pronouncements made by him in the discharge of his official duties (Article 211). This provision was embodied in the constitution to ensure that judges could administer justice without fear or favour. The privilege motion, he alleged, had cast aspersions on a judge of the High Court. The two judges who heard the petition admitted it and ordered issue of notice to the member. The court also issued notice to the speaker of the Assembly to show cause why a writ of mandamus directing the speaker to forbear from allowing consideration or discussion of a certain privilege motion tabled in the assembly should not be issued against him. On the following day the speaker made a rather dramatic announcement of the notice in the Assembly and added that he did not propose to subject himself to the authority of any court in the exercise of his powers (in accordance with Article 212 of the Constitution). The court regretted the uncooperative attitude of the speaker in helping it to clear up the conflict between Article 211 and 212 but proceeded to examine the issue of privilege involved in the case. The Chief Justice, who went into this aspect in considerable detail, pointed out

\(^{216}\) Article 211. "No discussion shall take place in the Legislature of a state with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties."

\(^{217}\) Article 212: "(1) The validity of any proceedings in the Legislature of a state shall not be called in question or the ground of any alleged irregularity of procedures; (2) No officer or member of the Legislature of a state in whom powers are vested by or under this constitution for regulating procedure or the conduct of business, or for maintaining order, in the legislature shall be subject to the jurisdiction of any court in respect to the exercise of these powers."
that the criticism leveled against the minister in the court order was in relation to a member of the Executive Government and not to a member of the Legislature. The functions of the Legislature and the Executive were different. The Executive were not protected by privileges in that actions and therefore he could not understand whether there was *prima facie* any privilege involved in the orders of the court. As regards the stand of the Speaker that the court could not issue notice to him relating to his duties in the Assembly, the Chief Justice observed that notice could be issued anybody in the land except foreign dignitaries. It was a different question whether the court had any jurisdiction to pass an order of injunction. This unfortunate episode of a Constitutional clash between the High Court and the Speaker, arising out of an undue emphasis on Parliamentary Privilege, came to a happy end, however, by the adjournment of the House *sine die* without discussing the privilege motion and by the subsequent decision of the speaker not to proved with the matter.238

Houses of Parliament in India also have the power to punish a person, whether its member or outsider, for its 'contempt' or 'breach of privilege'. A House can impose the punishment of administration, reprimand, suspension from the services of the House for the session, fine or imprisonment.239

Raveendran J. in his dissenting judgement in *Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha*240 has rightly held: “The enumeration of disqualification is exhaustive and specifies all grounds for debarring a person from continuing as a member. The British parliament devised expulsion as a part of its power to control its constitution, (and may be as a part of its right of self-protection and self-preservation) to get rid of those who were unfit to continue as members, in the absence of a written constitutional or statutory provisions for disqualification. Historically, therefore, in England, ‘expulsion’ has been used in cases where there ought to be a standing statutory disqualification from being a member. Where provision is made in the constitution for disqualification and vacancy, there is 0 question of exercising any inherent or implied or unwritten power of ‘expulsion’.241 However, if a member commits a crime, for example accepts a bribe to vote or ask questions in the house, it

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238 Supra note 228, at p. 18.
is a matter wherein the guilt of the accused needs to be established. This obviously can only be done by the judiciary and not the Legislature. The right form to decide the issue of expulsion of members especially for crimes committed by them would be the judiciary which possesses the means and power to try such cases.\textsuperscript{242}

The cash-for-question scam decided by the Supreme Court\textsuperscript{243} gave rise to the question as to whether the House can expel a member for accepting bribes. The case was decided in favour of the house. It is apparent that accepting bribe is not a legislature act. Accepting bribes seriously subverts the legislature process. Such cases need to be dealt with under the ordinary criminal law since the legislature is not capable of dealing with it.\textsuperscript{244}

The most outstanding and most controversial case in the area of legislature privileges, however, was the \textit{Keshav Singh} case.\textsuperscript{245} In this case, the Supreme Court gave an advisory opinion under Article 143 on certain issues arising out of the claims for privileges by the Legislative Assembly of the State of Uttar Pradesh, Keshav Singh printed and published with others, pamphlets against a member of the House and was reprimanded at the bar of the House. During the course of the administration of the reprimand, Keshav Singh behaved in an objectionable manner in the House. Consequently, the speaker directed that Keshav Singh be imprisoned for seven days in Jail for committing contempt of the House. This decision led to a number of events which brought the judiciary and legislature into direct conflict. This was challenged by a writ of \textit{Habeas-Corpus}, upon which a rule \textit{nisi} was issued by the Allahabad High Court and Keshav Singh was admitted to bail pending final hearing of the petition on merits. The house regarded this as contempt and issued writs for the arrest and production of the judges who then moved the High Court to get the warrants quashed. At this stage, the President of India referred the matter to the Supreme Court for its advisory opinion under Article 143 of the Constitution.

The court gave its opinion by a majority to six to one. The majority opinion was delivered by the Chief Justice Gajendragadkar, who pointed out the main controversy lay in a narrow compass, viz:

\textsuperscript{242} Id., at p. 90.
\textsuperscript{243} Supra note 240.
\textsuperscript{244} Supra note 241, at p. 90.
\textsuperscript{245} Supra note 224. In re under Article 143 of the Constitution.
Is the House the sole and exclusive judge of the issue as to whether its contempt has been committed where the illegal contempt has taken place outside the four-walls of the House? Is the House sole or exclusive judge of the punishment which should be imposed on the party whom it has found to be guilty of its contempt? And, if in enforcement of its decision the House issues a general or unspeaking warrant, is the High Court entitled to entertain a *Habeas Corpus* petition challenging the validity of the detention of the person sentenced by the House.\(^\text{246}\)

The majority opinion was that legislature in India are not superior courts of Record and can exercise only those powers of the House of commons which are integral part of its privileges and which are incidental legislature function, but not those powers which are exercised by the House of commons as a superior court of Record or as a result of convention or comity. The Supreme Court was, therefore, of the opinion that the courts in India cannot only examine the existence or extent of privilege but can also examine the validity of an order of commitment made by the Legislature, whether the warrant issued is a speaking or general warrant. The Legislature cannot question the conduct of, or take action against the judges on the pleas of contempt for anything done in their official capacity. The Legislature has the power to punish anyone for its contempt but it cannot be said that the order of the Legislature will be totally non-justifiable. Coming to the question of judicial review, the majority laid down a general proposition that Article 19(1(a) did not control legislative privileges, but it is mainly under Article 21, which relates to personal liberty of an individual that the courts can review the order of committed for contempt.\(^\text{247}\)

Again by a long chalk the majority avoided the difficulty between Article 194(1)(a) by giving a reasoning that the Article 194(1) makes it clear that the freedom of speech in the Legislature of every state which is prescribe, is subject to the provision of the Constitution, and to the rules and standing orders, regulating the procedure of the Legislature while interpreting this clause, it is necessary to emphasize that the provisions of the constitution subject to which freedom of speech has been conferred on legislatures, are not the general provisions of the constitution, but only such of them as relate to the regulation of the procedure of the Legislature.

\(^\text{246}\) Id. at p. 759.
\(^\text{247}\) Id., pp. 765, 770.
The rules and standing orders may regulate the procedure of the Legislature and some of the provisions of the Constitution may also purport to regulate it; for instance, Article 208.\textsuperscript{248}

As to the applicability of all the Fundamental Rights to the cases where legislative powers and privileges could be exercised against any individual citizen of the country, the Supreme Court noticed that Article 19(1)(a) did not apply but Article 21 did.

The majority further commented that if a citizen moved the Supreme Court and complained that his fundamental rights under Article 21 had been contravened, it would plainly be the duty of the court to examine the merits of the said contention, and that inevitably raised the question as to whether the personal liberty of the citizen had been taken away according to the procedure established by law. If in a given case, the allegation made by the citizen was that he had been deprived of his liberty not in accordance with law, but for capricious or malafide reasons the Supreme Court will have to examine the validity of the said contention, and it would be no answer in such a case to say that the warrant issued against the citizen was a general warrant and a general warrant must stop all further judicial inquiry and scrutiny. Therefore, the impact of the fundamental constitutional right conferred on Indian citizens by Article 32 on the construction of the latter part of Article 194(3) was decisively against the view that a power or privilege could be claimed by the House, though it might be inconsistent with Article 21.\textsuperscript{249}

Sarkar, J. in his dissenting opinion took a view that there was no conflict between Articles 194(3) and 19(1)(a), for they dealt with different matters. The founder says that the state legislatures shall have the powers and privileges of the English House of Commons whole Article 19(1)(a) states that every citizen shall have full freedom of speech. The conflict, however, comes to the surface when the particular privileges claimed under Article 194(3) are concerned. When Article 194(3) says that the state legislature shall have certain privileges, it really incorporates those privileges in itself. Therefore, the proper reading of Article 194(3) is that it provides that the state legislatures have, amongst other privileges, the privilege to

\textsuperscript{248} Article 208(1) provides that a House of the Legislature of a state may make rules for regulating, subject to the provisions of this constitution, its procedure and the conduct of its business.

\textsuperscript{249} Supra note 224 at p. 786.
prohibit publication of any of its proceedings. It is only then that the conflict between Article 194(3) and 19(1)(a) can be seen; one restrictive a right to publish something while the other says all things may be published. It was further commented that to allow article 32 and 226 to prevail over legislative privilege under Article 105(3) of Article 194(3) did not amount to harmonization of two independent provisions, but was to destroy one of them.  

4.6 Sum up

In conclusion, it may be submitted that the law relating to contempt of courts has been designed to protect the functional independence of the courts, so that they are able to maintain the rule of law, which is the very basis of the democratic system of government. However, this does not make the judges and their course absolute, arbitrary, or completely immune from criticism. Their doings and their decisions are admittedly open to public scrutiny through the powerful medium of press. The press is the watch dog to see that every trial is conducted fairly, openly and above board. But the watch dog may sometimes break loose and has to be punished for misbehavior. The interference in the judicial process even though an indirect one by a paroled trial in the media is against the Constitutional right of fair trial of the accused. The courts have always zealously guarded the freedom of the press, it put media under the obligation to abstain itself from trespassing in the judicial sphere. Though, both the press and the judiciary are independent and have their respective function and both are required to fulfill the same constitutional objective; namely to secure to all its citizens ‘justice’ in its full comprehensive sense, including social, economic, and political.

Criticism of the conduct of judges counteracts the contribution of the courts. Such a conflict is sought to be resolved by emphasizing that so long as the criticism is constructive; directed to protect the public interest, the same criticism, should not be construed as contempt of courts, or destructive the institution of judiciary. Sometimes contempt power places unnecessary curb on the valuable right of an individual freedom of speech and expression. It must be remembered that the judiciary, like any other institution of the state, belongs to and derives its authority from the public people and should, therefore, be accountable to the people.

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