The Constitution is the organic law of the land and it is designed for an unfolding future to serve the growing needs of the people. In a modern progressive society, it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made. A modern legislature, making laws to govern a fast moving society, must be presumed to be aware of an enlarged meaning assumed by the same concept with the march of time.

Freedom of speech and expression is the foundation of a democratic society. It is essential to the rule of law and liberty of citizens. It is an issue which for various socio-political and economic reasons has not yet taken the shape it should have acquired. Nonetheless it is an issue- the more we are aware of it, the better it is for our society to pursue its democratic principles.

Through the ages, man has expressed his ideas through several media like symbols, signals, speech, script and print, and now computer language. Man’s greatest invention is language. The invention of the script has helped mankind to preserve human thought and learning. It has helped society to conquer both space and time. Since information and ideas are
so important for the growth and survival of a free and democratic society, such a goal cannot be achieved unless every citizen has a fundamental right to give expression to his ideas and opinions. This came to be known as the right to free speech and expression. With the advent of printing technology, freedom of the press was included in the freedom of expression.

Before India gained independence, there were laws in the country to restrict freedom of speech and expression. These laws were a response to the birth and growth of the Indian Press, beginning with the publication of the well-known Hickey’s Bengal Gazette. The first press law required that every newspaper should publish the names of the editor, printer and publisher. It also required that all material to be published defamation, obscenity, sedition, etc. equal to Official Secrets Act and Press and Registration of Books Act. The latter required that a copy of every book and newspaper published in the country be supplied to the government.

All these laws were intended to stifle individual and collective expression, specially in the context of our independence struggle. They were also a reaction not only to the mainstream Indian newspapers in English and Indian Languages but also to such journals whose exclusive focus was to overthrow the colonial government, as Annie Besant’s Young India, Gandhiji’s Harijan, Tilak’s Kesari and so on. The laws made by the British in India mostly aimed at protecting the State from legitimate criticism of its oppressive rule.

The Constitution of India was adopted by the Constituent Assembly on 26th November, 1949. The framers of
the 1949 Constitution considered the best features of the constitutions of other countries. They modified them to avoid the weaknesses and adopted those features which best suited India conditions and needs. However, many of the original features of the 1949 Constitution have since been modified by successive Amendments.

The Constitution has the distinction of being the most lengthy and detailed. Its extraordinary bulk is due to several reasons—the vastness of the country and the peculiar socio-economic and political problems that it faces. For a proper understanding of the Indian State and polity, one should know and appreciate the salient features of the Constitution. An attempt is made here to describe the outstanding features of the Indian Constitution.

4.1 CONSTITUTIONAL PROVISIONS

4.1.1 ARTICLE 19(1)(a)

With the gaining of independence, freedom of speech and expression were recognised as fundamental rights and were in the Indian Constitution. In the Article 19(1)(a) of our Constitution, it is stated: ‘All citizens shall have the right to freedom of speech and expression’.

4.1.2 ARTICLE 19(2)

It provides reasonable restriction on freedom of expression. Article 19(2) says that the state can impose reasonable restrictions on the exercise of the freedom of expression and speech. Such restrictions can be on the following grounds:-
(i) **Sovereignty and integrity of India:** This ground has been added as a ground of restriction on the freedom of expression by the Sixteenth Amendment of the Constitution, with effect from the 6th October, 1963. The object was to enable the State to combat cries for secession and the like from organisations such as the Dravida Kazhagam in the South and the Plebiscite Front in Kashmir, and activities in pursuance thereof which might not possibly be brought within the fold of the expression ‘security of the State.

(ii) **Security of the State:** Security of the State means ‘the absence of serious and aggravated forms of public disorder’, as distinguished from ordinary breaches of ‘public safety’ or ‘public order’ which may not involve any danger to the State itself. Thus, security of the State is endangered by crimes of violence intended to overthrow the government, levying of war and rebellion against the government, external aggression or war, etc.

(iii) **Friendly relations with foreign States:** The object of this exception to the freedom of speech and expression is to prevent libels against foreign States in the interest of maintaining friendly relations with them.

(iv) **Public order:** This ground was introduced by the Constitution (First) Amendment Act, 1951, in order to meet the situation arising from the Supreme Court decision in Romesh Thappar’s case that ordinary or local breaches of public order were no grounds for restricting the freedom of speech guaranteed by the Constitution.
(v) Decency and morality:
(a) This exception has been engrafted for the purpose of restricting speeches and publications which tend to undermine public morals. The question whether an utterance is likely to undermine decency or morality is to be determined with reference to the probable effects it may have upon the audience to which it is addressed. The age, culture, and the like of the audience thus become a material question. But the use of mere abusive language, which has no suggestion of obscenity to the persons in whose presence they are uttered, would not come under the present ground.

(b) On the other hand, a law against ‘obscenity’ would be protected under the present clause. Obscene means offensive to modesty or decency; lewd, filthy, repulsive. But even an immodest representation may not be reasonably restricted in the interests of decency or morality if it conduces to the propagation of ideas or information of public interest, e.g. in the books on medical science. In general, ideas having social importance will *prima facie* be protected unless the obscenity is so gross and decided that the interest of the public dictates the other way. The test of obscenity is thus a question of degree and varies with the moral standard of the community in question.

(vi) Contempt of Court: In the exercise of his right of freedom of speech and expression, nobody can be allowed to interfere with the due course of justice or to lower the prestige or authority of the Court. Journalists
should therefore, be careful in reporting court cases. They can publish stories based on fairly accurate account of the proceedings of a court, without casting aspersion on the judiciary, court as an institution or an individual judge. Section 228 of the Indian Penal Code also prohibits intentional insult or interruption to public servant sitting in judicial proceeding.

(vii) Defamation: Just as every person possesses the freedom of speech and expression, every person also possesses a right to his reputation which is regarded a property. Hence, nobody can so use his freedom of speech or expression as to injure another’s reputation. Laws penalising defamation do not, therefore, constitute infringement of the freedom of speech. In India, defamation is a crime under sections 499 and 500 of the Indian Penal Code. It is also a civil wrong or tort, that is, a set of statutory rules derived and deduced from British Common Law.

(viii) Incitement to an offence: This ground will permit legislation not only to punish or prevent incitement to commit serious offences like murder which lead to breach of public order, but also to commit any ‘offence’, which according to the General Clauses Act, means ‘any act or omission made punishable by any law for the time being in force’. Hence, it is not permissible to instigate another to do any act which is prohibited and penalised by any law. But mere instigation not to pay a tax may not necessarily constitute incitement to an offence.
4.2 PRESS LEGISLATIONS

The history of press legislation in India started from 1700 A.D. during British period. The most important and a very dominant factor which harbings the future of the press freedom is that in the British period all laws were passed to curb the press freedom and not to augment its growth. From the legislation of the yore it is clear that the only motive of the Britishers was to kill the ‘freedom of the Press’ and to make the Press a government spokesman.

The brief history of the Press legislation below will explain and show as how the government and its agency have come down with heavy hands on the Fourth Estate. This may be described in pre and after independence period.

4.2.1 PRE INDEPENDENCE

4.2.1.1 The Indian Penal Code, 1860

The press freedom is restricted by the I.P.C. Under its provisions, it is an offence to incite enmity between different classes of citizens, to spread any rumour or reports likely to incite members of the Armed Forces to mutiny or failure of duty, to cause alarm to any section of the public whereby there is an inducement to commit an offence against the State or against public peace and to incite one class or community against another, to utter words or to make visible representations with intent to wound religious feelings or beliefs of another person, or of any class of citizens.

4.2.1.2 Press and Registration of Books Act, 1867
The earliest surviving enactment regulating the freedom of Press was passed in the year 1867, the Press and registration of books act (25 of 1867). This Press and Registration of Books Act received the assent and came into being on 22nd March 1867, and was “for the regulation of printing-processes and newspapers, for the preservation of copies of Books and Newspapers printed in India, and for the Registration of such Books and Newspapers”. The object of this act were manifold to secure information relating to the printing establishments and their publications, to preserve copies of every books and Newspaper printed in India, to regulate printing Presses and newspapers, and to prevent publication or anonymous literature.

Thus, this Act of 1867 was regulatory law which enabled government to regulate printing Presses and newspapers by a system of registration and to preserve copies of books and other matter printed in India.

**4.2.1.3 Sea Customs Act, 1878**

Sea Customs Act, 1878: Section 18(c) of the Act prohibits the bringing into India whether by land, or by sea “any obscene book, pamphlet, paper, drawing, painting, representation figure or article”. These items can be confiscated.

**4.2.1.4 The Indian Telegraph Act 1898**

In the interest of public safety, public order, the sovereignty and integrity and security of the State, this Act empowers the government to have necessary interference with the functioning of the press and to intercept, detain or not to
transmit any message. But the message of the press, which is intended to be published by correspondents accredited to the Central Government or a State Government can be intercepted or detained only during public emergency.

4.2.1.5 The Indian Post Office Act 1898

This Act authorises the State to intercept, detain, or not to send any indecent or obscene publication, or representation.

4.2.1.6 Criminal Procedure Code 1898

Sections 99A-99 G of the Cr. P.C. do not impose any prior restraint, but provide for the forfeiture of objectionable documents after they have been printed and published, subject to a right of the judicial review against the order before a special Bench of the High Court. U/S-144 of the Code prior restraint can be imposed. Bu it is not directed to the press as such as it is of a general application. The Cr.P.C. 1973, empowers the State to forfeit copies of a publication.

4.2.1.7 ACT OF 1908 AND 1910

In 1908 Newspapers (Incitement to Offences) Act, 1908 passed, by which magistrate was empowered to seize a Press on being satisfied that a newspaper pirated therein contained incitement to murder or any other act of violence or an offence under the Explosive Substances Act.

A more comprehensive enactment, the Indian Press Act, came into existence in the year 1910. This Act was directed against the offences involving violence as well as sedition: It empowered the government to require deposit of security by the keeper of any Press which contained matter inciting
sedition, murder or any offence under the Explosive substances Act, and also provided for forfeiture of such deposit in specified contingency.

The rigours of the Act of 1910 were further enhanced by the Criminal Law Amendment Act, 1913, and by the Defence of India Regulations which were promulgated on the outbreak of First World War in 1914.

4.2.1.8 Press Law Repeal and Amendment Act, 1922

Press Law Repeal and Amendment Act, 1922, repealed the Act of 1908 and 1910. This Act of 1922 came in vogue in pursuance of the recommendation of a Committee set up in 1921, the object behind the passing of this Act of 1922 was that “the contingency in view of which these Act had been passed, namely, the promotion of revolutionary conspiracies through the Press was over and that the purpose of these Acts would be served by the ordinary law and by incorporating the provisions in the Act of 1910, as to seizure and Confiscation of seditious publications in the Press and Registration of Books Act, the sea customs Act and the post office Act, by suitable amendment.

4.2.1.9 Official Secrets Act, 1923

Official Secrets Act, 1923 is an act which consolidates the law relating to official secrets and deals with offences like spying and wrongful communication of secret information. This is a pretty draconian piece of legislation.

Section 6 of the Act makes it an offence if any person for any purpose prejudicial to the public safety and the
interests of the state (a) approaches, inspects, passes over or is in the vicinity of, or enters any prohibited place or (b) makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy or (c) obtains, collects, records or publishes or communicates to any person such sketch etc. In a prosecution for an offence punishable under Section 3(1) of the Act, with imprisonment for a term which may extend to 14 years, it not necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interstice of the state, and not withstanding that no such act is proved against him, he may be convicted, if from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the state. Happily, there have not been many cases of prosecution under this Act.

4.2.1.10 Press (Emergency) Powers Act, 1931

In 1931 very important event in the History of Freedom Movement when on the call of Mahtma Gandhi, Civil Disobedience Movement was launched for the attainment of “Purna Swaraj”. This movement was highly detested by the Britishers which led them 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.

4.2.2 AFTER INDEPENDENCE

After independence, in 1947, the Press initially found itself in a new and unfamiliar situation. Its role as a crusader seemed suddenly to have withered. With Jawaharlal Nehru at
the helm of the Country, and with a firm democratic base established, a militant approach seemed inconsistent. Those were the times, all over the world too, when the adversary role of the Press vis-a-vis the establishment was not fully accepted or exercised. The Press found it improper and unfair to be over critical of the new fledgling state and nation. The tide of nationalism and anti-colonialism ran very strong, and a broad national consensus existed.

Before independence the Press was supposed to have “missionary” goals. After independence it became a prosperous industry and the grant of Press legislation in India revolves round this conception of “prosperity” and not the goal for which the Fourth Estate exist.

Draft constitution was under consideration in the constituent assembly. The government of India appointed a Press Law Enquiry Committee to “review the Press Laws of India with a view to examine whether they are in accordance with the fundamental rights formulated by the constituent Assembly of India”. This committee recommended, inter-alia, a repeal of the Press (Emergency Power) Act, 1931, and the incorporation of some of its provisions in the general statutes laying down the law of crimes.

4.2.2.1 Press (Objectionable Matter) Act, 1951

The Government of India replaced the Press (Emergency) Powers Act-1931 by a revised measure, ‘The Press (Objectionable Matter) Act, 1951’. This Act of 1951 looked innocuous as it was “to provide against the printing and publication of incitement of crime and other objectionable
matter”. The other improvements which were proposedly made were as follows:

(a) The act was a temporary one;

(b) The act of 1951 was to remain in force for a period of two years;

(c) The new Act of 1951 provided for a judicial enquiry by a sessions Judge before security could be demanded from a printing Press or forfeited to government.

(d) The person against whom a complaint had been made, could demand the matter to be determined with the aid of a jury, and had a right of appeal from the order of the sessions Judge to the High Court.

The Act suffered from certain defects and bore the marks of imperialism, since there was no need for a special law imposing restrictions upon the publication of certain matters instead of leaving them to be punished under the general law for specific offences.

4.2.2.2 Delivery of Books and Newspapers (Public Libraries) Act, 1954

The Act defines a newspaper to mean any printed periodical work containing public news or comments on public news published in conformity with the provisions of section 5 of the Press and Registration of Books Act, 1867. Section 3 A provides for that the publisher of every newspaper to deliver at his own expense one copy of each issue of such newspaper as soon as it is published to each such public library as may be notified by the Central Government.
4.2.2.3 The Young Persons’ (Harmful Publications) Act 1956

It is an Act to prevent the dissemination of certain publication harmful to young people. The statement of objects and reasons say that the dissemination of pictorial and other publications containing stories of glorification of crime, violence and vice is likely to encourage antisocial tendencies amongst children and exert a harmful influence in young generation. The Act seeks to prohibit the production in India of such literature or any variant and its circulation within India.

4.2.2.4 The Parliamentary Proceedings Act, 1956

This Act is intended to protect the publication of reports of proceedings of Parliament, except in newspapers. Section-3 of the Act states that no person shall be liable to any proceedings, civil or criminal in any court, in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have been made with malice.

4.2.2.5 Copyright Act, 1957

The Act is important both for what is defined as copyright and what is not Section-52 of the Act enacts that certain acts shall not constitute an infringement of copyright, such as fair use, fair quotation, bonafide abridgements and the like.

In so far as newspapers are concerned, Section 52(1)(b) (i) specifically mentions that there will be no infringement of copyright by a fair dealing with literary, dramatic, musical or
artistic work for the purpose of reporting current events in a newspaper, magazine or similar periodical.

4.2.2.6 Criminal Law Amendment Act 1961

In 1961 Parliament enacted the Criminal Law Amendment Act, 1961 (23 of 1961) imposing restrictions upon the freedom of expression and of Press as well as the freedom of assembly and of movements on grounds of “security of state”. The “scope of object” of this Act was ‘to stop certain activities, prejudicial to the safety and security of India which had been taking place in the areas bordering Pakistan and China for some time. It supplements the criminal law and seeks to punish persons who may question the territorial integrity on the frontiers of India.

In order to give a specific Constitutional protection to this Act, Article 19(2) was amended by the Constitution (16th) Amendment Act 1963, inserting the words “Sovereignty Integrity of India” as additional ground of restriction upon freedom of expression guaranteed by Article 19(l)(a) of the Constitution.

4.2.2.7 Defence of India Act 1961

As Mudholkar states it, upon the declaration of emergency, the fetter on the power of Parliament to make laws affecting the freedom of the press disappears and the law made by it cannot be challenged on the ground of legislative incompetence. For as long as the emergency lasts, a citizen cannot claim the protection, of Article 19. Clause 7 of Section 3 of this Act deals with the entire gamut printing and publishing of any newspaper or book and the imposition of censorship.
4.2.2.8 Press Council Act 1965

A Press Council was constituted in 1966. The object of such establishment was to ‘preserve’ the freedom of the Press and to maintain and improve the ‘standards’ of newspapers in India. It was to form a Code of Conduct to prevent writings which were not legally punishable but were yet ‘objectionable’. This Act was repealed in December 1975, with the promulgation of the publication of objectionable Matter Ordinance, 1975.

4.2.2.9 Civil Defence Act 1968

The Civil Defence Act was passed in 1968, to take the place as a permanent Act, of the Defence of India Act 1962, upon its expiry. It was passed to safeguard life and property from attack during any external aggression not amounting to any actual combat or internal disturbances.

The Act enforced the Central Government to make rules in regard to number of matters (Section 3). The relevant provisions relating to the Press are to be found in Sub-Section (1)(w) of section 3 and sub-section (3) provided for penalty for contravention of any order made under the rules. Sub-Section (1)(w) authorised the making of any order prohibiting the printing the printing and publication of any newspaper containing matters prejudicial to civil defence and also for printing and publishing such matters.

4.2.2.10 Contempt of Courts Act 1971

Any action taken or any writing published with an intention to bring a court of law into contempt or lower its authority or to obstruct or interfere with due course of justice
or lawful process of the court amounts contempt of court. For example, publication of proceedings of a case being heard in camera, false and grossly inaccurate reporting of court proceedings, publication that may tend to interfere with orderly administration of justice, or publication that scandalizes the court, the judges, counsels, parties or witnesses come under this category.

The press enjoys the privilege of fair comment but personal attacks on judges attributing partiality, political bias, corruption, judicial dishonesty, improper motives or other considerations in the court amount to contempt of court.

**4.2.2.11 Prevention of Publication of Objectionable Matter Ordinance 1975-76**

For some time Government of India has been, feeling that the Press in India had been abusing its freedom from any restrictive laws in vilifying high dignitaries. On December 8, 1975, therefore, the President promulgated the Prevention of Publication of Objectionable Matter Ordinance, 1975, which was, in substance, a reproduction of Act of 1951, with such improvements as were considered necessary to make its provisions consistent with the requirement of Article 19(2) of the Constitution. This Ordinance was later enacted as permanent statute. Two other enactments were passed in consequence to the passing of prevention of publication of Objectionable Matter Act, 1976,

(i) **Press Council Repeal Act, 1976**

By this Act, the Press Council Act of 1965 was repealed, and the Press Council constituted there
under was abolished because it was considered that the Council had failed to fulfill the objective with which it had been set up.

(ii) Parliamentary Proceedings (Protection of Publication) Repeal Act 1976

This was a retrograde step in as much as it eliminated the Parliamentary Proceedings (Protection of Publication) Act, which was on the statute book since 1956 (i.e. for two decades).

4.2.2.12 Insertion of Article 361 A in the Constitution

The Janata Government removed all the fetters that had been imposed on the Press during Emergency regime. The first step, the repealment of the Prevention of Publication of Objectionable Matter Act, by passing a Repealing Act on 9.4.77. On the same date was passed the Parliamentary Proceedings (Protection of Publication) Act, 1977, by which was re-enacted the privilege which had been taken away by the parliamentary Proceedings (Protection off Publication) Repeal Act, 1976. The law on this point was expanded, giving it constitutional protection, by inserting Article 361 A in the Constitution, by the Constitution (44th Amendment) Act, 1978. By this Amendment, Article 361-A was titled “Protection of Publication of Proceedings of Parliament and State Legislatures”, and provided that:

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

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

4.2.2.13 Press Council Act, 1978

The next step was the enactment of Press Council Act 1978, by which the Press Council was re-established, with a more representative composition and improved provisions, in some respects. The aim of the Act was “preserving the freedom of the Press and of maintaining and improving the standards of newspapers and news agencies in India.

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