CHAPTER: VII

CONCLUSION

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Never in the history of India was there such a pressing need for ascertaining the independence and role of the press as it is today. The vital decisions in every sphere of life be it political, social, economic, or otherwise are influenced by it. The freedom of speech and expression including freedom of press has been regarded by great thinkers and the jurists alike as necessary for achieving a variety of ends.

In the absence of a written Constitution in England the freedom of press means to write whatever it pleases and a cut off line can only be drawn at a point where it violates any law. Thus the liberty consists in printing without any previous licence, subject to the consequences of law.

In U.S.A., freedom of press has been given specific recognition through first amendment which makes any law unconstitutional if it abridges the freedom. It, therefore, not only disallow the censorship but also any action of the government provided it places any hindrance in general discussion of public matters which is essential in a democratic society. However, the view developed by American Supreme Court through a catena of cases is that the freedom of press includes more than merely serving as a "neutral conduit of information between the people and their elected leaders or as a neutral form of debate." A free

press means a press which is free from compulsions from whatever sources governmental, social, financial, external or internal.

A free press is free for the expression of opinion in all its phases but simultaneously it also means that it may be punished under constituionally permissible limitations (evolved by the judiciary) where it offends against an action, legitimately undertaken by the state in order to protect eg. security of state, obscenity and the like and the restriction imposed is in accordance with due process of law.

Though there is no specific provision under the Indian Constitution guaranteeing the freedom of press but Dr.Ambedkar's speech in the Constituent Assembly and the judicial verdicts leave no doubt that it is guaranteed under article 19(1)(a).

The freedom of press means freedom from and freedom for. The essence of the freedom of press lies in the right of dissent and co-existence of varying and conflicting view points contending for the supermacy in the minds of the citizens of a democratic state. Or in other words one of the important feature of the democracy which distinguishes it from dictatorship and other forms of Governments is the freedom to express a view different from that of a ruling party or the individual.

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The observations made by the Supreme Court of India in this regard are noteworthy. In its opinion "Liberty of press remains an **`Ark of covenant'** in every democracy and that it has acquired the role of **public educator.**" The freedom of press thus, is the very foundation of democratic way of life contemplated by the Constitution and the bulwork of the democratic form of Government in India. At the time when the world is facing various problems, vital for the survival of mankind, the press can certainly create a climate conducive for the settlement of those problems.

The press despite its importance in modern society does not enjoy any specific rights or privilege in U.K., U.S.A. or India other than those to which a citizen is entitled. Though as an exception the Contempt Of Courts Act, 1981 in England and the Press Council Act, 1977 in India provide some relief against the disclosure of source of information. Similarly under exceptional circumstances the press has been allowed to enjoy to a little extent some additional rights.

Therehas been no smooth sailing for the press from its earliest days. No opportunity was missed to prevent the press from awakening

the political aspirations among the native people; Therefore, for most of the part the laws made by the British rulers relating to press were appressive in nature barring occassional exceptions during which the press was encouraged to react more freely on the affairs of the state.

The freedom of press primarily means the dissemination of information which in turn is ensured by the freedom of circulation. No measures, therefore, can be adopted which would have the effect of curtailing the circulation and consequently narrowing the scope of information. The freedom not only includes the matter which a citizen is entitled to circulate but also the volume of circulation to propagate his views. Any order, therefore, if forcing a newspaper to cut down its size or raise its price to the extent that it affects the concerned newspaper adversely, or any policy which hampers the free growth of newspaper would be unconstitutional.

However, the liberty of press is confined not merely to freedom of circulation, or freedom of publication, or freedom to determine the extent or volume of circulation, or freedom of fixation of price or page, or freedom to determine the area of advertisement but would also include the freedom which will leave the press free in regard to the choice of employment or non-employment in the editorial force, and above all which will enable the press to choose any instrument for the exercise of the freedom.

However any law which affects the economic position of the press

is not unconstitutional per se, but requires two elements.

(1) it must be made with the specific intention to curb the press; and

(2) it must not be saved under Article 19(2) of the Constitution.

Every modern government, liberal or otherwise has a specific position in the field of ideas; its stability is vulnerable to critics in propagation to their ability and persuasiveness. A government on popular suffrage is no exception to this rule. It does not however, mean that the state is free to take any action against the press to compel it to follow its line. If the press, therefore, refuse to follow the state's directive to adopt a particular stand on certain issues or where it vehemently criticise the state policies, no punitive action may be taken against it by the government. Similarly the state or any public authority can prevent the press by an order having no force of law from publishing any material if it is based on public records. Moreover a person whose own biography is being published can not restrain the press from publishing it provided it is based on public records because the concept of invasion of privacy becomes irrelevant in such cases.

Though the press doesn't enjoy any privilege to defame others but if it is proved that the publication was made in good faith and for public good, no liability would accrue . The good faith implies due care and attention and may be ascertained only after cross examining the accused but at the same time it is not necessary to prove that each and every word spoken or written is literally true. If the allegations are such that having regard to certain facts and circumstances with his knowl-

edge the accused might as an ordinary, reasonable and prudent man have drawn the conclusion which the press expressed in defamatory language for the protection of his own interest, he can be said to have acted in good faith. The reason behind the defense of public good is that right of a person to have his reputation maintained has some times to give way to public good, but any injury caused to a person must be compensated for by the resultant advantage to the public. Nevertheless, press may still be held liable for violation of privacy if it publishes any matter relating to certain aspects, obtained through any other source and without consent of the person concerned.

In present scenario when the economic activities are showing an upward trend, the freedom may come in conflict with the other,s fundamental rights under such situation where respective fundamental rights are claimed by the litigating parties, on balance of convenience approach the press may be restrained from publishing any material which is injurious to the commercial interest of other party. But due to importance the press has in society, the restraint should not last beyond the period than actually required under the circumstances of the case. In other words it may be said that the moment present and imminent danger is removed, the press can not be restrained any more from enjoying its freedom. Though no person can claim as a matter of right to get his views published in any departmental magazine even if it is being published out of public funds. However, if the views of any person against the policy of a particular department are seemed to negate through the 'in house magazine' the person whose opinion is so ne-

gated has a right to reply through the same magazine. The absence of arbitrariness in the action on the part of any authority, therefore, extends even to the publications of the government itself.

The issue that whether commercial advertisements are protected under Article 19(1)(a) or not has now been settled by the Court and such advertisements are now covered under protective umbrella of Article 19(1)(a). The press, therefore, has a right to publish the advertisements which are purely commercial in nature unless they fall under any of the prohibition provided under Article 19(2) of the Constitution.

The absolute powers or rights are always open to be abused by the state and the individuals alike. The absolute power in any society, therefore, is neither practicable nor desirable. The Constitution of India unlike U.S. Constitution where the courts have evolved the noble rules of restrictions, expressly recongnise this principle and provides for reasonable restrictions which may be imposed upon the press on the grounds enshrined under Article 19(2) of the Constitution.

The restrictions however can not be imposed in such manner which take away the spirit of the freedom itself. There must be a balance between the freedom and the restrictions provided under Article 19(2). Consequently it is not permitted to place any restriction on the ground of integrity of India if there is a promise for the development of any particular language recognised by the Constitution itself.

It is universally recognised principle that under no circumstances the press may be allowed to publish any material which may endanger even the security of the state. In India too, this cardinal principle of patriotism is followed without any hesitation. The apex court however. has made it clear that the disturbances of extreme nature and not which create local law and order problem may be dangerous to the security of state. The press, therefore, may be restrained only when there are disturbances of exceptional nature, and not of local, significance on the ground of security of state.

The press may also be restrained from publishing any matter which causes or has the tendency to cause public disorders. In such cases it would not be an unreasonable restriction. The restriction if circumstances warrant may extend even to complete prohibition provided it is done with proper safeguards. But a law which prohibits even the innocuous speech or writing is not a valid law because mere instigation to disobey the law itself is not a disturbance to public order. It excludes normal law and order situations and includes only when there are threats to public peace, safety and tranquility. Similarly the press can not publish any matter the overall impact of which may deprave and debase the adolescent readers into whose hand the book may fall. However, taking the aforesaid plea every work containing suggestive portions can not be banned because there is a difference between obscene and vulgar writing. Therefore, in order to present an honest and correct picture of the events if the language becomes vulgar, it can not be restrained. But on the issue whether language used in a particular

work is obscene or not, the opinion of the experts though not binding upon the Court play an important and dominant role especially where the Court is not conversant with the language used in the work alleged to be obscene. It is for the courts and not the press to decide any case pending before it . The press would be guilty of contempt if it ventures to form its own opinion which cast a shadow on the impartiality of judiciary or place any hindrance in the administration of justice. In a democratic set up, however no public institution is beyond criticism and the judiciary is no exception to such scrutiny. Any fair comment by the press, therefore, made in good faith to point out the short coming and to secure its improvement would not amount the contempt of Court. But the fairness of any comment will depend upon the facts of particular case to be judged by the courts. The apex court has not been very strict in respect of contempt jurisdiction and on most occasions let off the press after giving warning or when an apology was forwarded by erring press. The Court however, has not missed any opportunity to stress that no attempt to undermine the confidence of the people in the administration of justice should be allowed because all those public rights can not outweigh the public interest in the judiciary as the public institution.

The press does not enjoy any right to publish a matter which is defamatory to others. It is however exempted from any liability if the publication is made in good faith and for public good. But the issue whether the publication was made in good faith or not can only be decided after the accused has been cross examined before trial court. The press is not liable to

the state or any of its officials for their alleged defamation unless the publication was false and the same was published without any attempt to verify the facts. Nevertheless such officials continue to enjoy the equal rights with others in their personal capacities. Further the freedom may not extend to a point where it amounts incitement to an offence. Every publication however may not amount the incitement to offence because changes may be brought not only by advocating violence but also through democratic means.

During emergency declared under Article 352 of the Constitution the freedom of speech and expression is suspended under Article 358 to deal with emergent situations. The Constitution (44 th) Amendment Act, 1978 has enhanced the scope of the freedom because the press now, can not be restricted if the emergency is declared under Article 352 on the ground of armed rebellion. It is also obligatory that a law which tends to curb the freedom guaranteed under Article 19(1)(a) must bear a specific recital as provided under Article 358(2)(a) failing which any law placing restrictions upon the press would be unconstitutional. Moreover, a law curtailing the freedom of press, if itself was ultra-vires when enforced would not acquire legitimacy even if a promulgation of emergency under Article 352 is issued subsequently. Declaration of

emergency though suspends fundamental right of speech and expression, the press, nevertheless, remains free to express its views unless it violates any law for the time being in force and the order of censor though may not be challenged as violative of Article 19(1)(a), yet it is still open to be attacked on other legal grounds, i.e. for exceeding its

power and acting without the authority of law etc.

After the First Constitutional Amendment in 1951, it is no more sufficient that the restriction was saved by Article 19(2), but it must also be reasonable. The concept of reasonableness of any restriction includes both substantive as well as procedural reasonableness. The substantive reasonableness refers to the content or subject matter ie. an ordinance, while the procedural reasonableness refers to the manner in which a law, an ordinance or an administrative practice or act is enforced. Consequently where the restriction fails to stand the test of reasonableness it is bound to be struckdown as ultra-vires to Article 19 (1)(a) of the Constitution.

The reasonableness of any restriction may also be tested independently of Article 19(2), and if the 'chilling effect' of the legislation places a restriction which directly affect the press adversely the restriction would be unreasonable and violative of Article 19(1)(a) of the Constitution.

The privileges at present being enjoyed by the parliament and state legislature are identical to the House of Commons. The High Courts and the Supreme Court are competent to examine and settle the issue of existence or non-existence of any particular privilege but once it is established that a particular privilege exist, only the Parliament is empowered to decide whether there is any breach of such privilege or not.

The dual system (Parliamentary privileges and the fundamental rights) has sometimes given rise to a situation where the action of the House is challenged as violative of fundamental rights. It has now been settled that Parliamentary privileges are not subject to Article 19 (1)(a), but Article 21 can be invoked on the ground that the act of legislature is malafide; capricious or perverse. The exclusion of the rule of natural justice too (M.S.M. Sharma & Keshav Singh's cases) in the light of Maneka Gandhi's case is no more a good law. Though a guarantee has been extended to the press under Parliamentary Proceedings (protection of publication) Act, 1977 (which has now been accorded constitutional recognition under Article 361-A of the Constitution) against any proceeding civil or criminal before any court of law but the same protection is not available either against the parliament itself or the Supreme Court and the High Courts.

The entire discussion shows that despite the constitutional guarantee of a free press the government often attempts to interfere by resorting various coercive measures i.e. policies, newsprint control, taxing statute, punitive measures, etc. Whenever its actions do not find favour or criticised by the press. The press too, some times behave in an irresponsible manner but this does not lessen the graveness of the actions of the government. The press is to provide the society a truthful account of events, a forum for exchange of comments and criticism. and agency for the presentation and classification of goals and values of society. If such goals are to be achieved the government must set

limits on its authority to interfere with, regulate or suppress the voice of the press or to manipulate the data on which public opinion is formed. government must set these limits on itself, not merely because freedom of expression is a reflection of important interests of the community but also because it owes a duty about it.

However, there is a consensus of opinion that the government must necessarily have some control over the press as it must over all other sort of institutions operating in the society in a suitable manner which prevent the undermining of the basic structure of the society without affecting the spirit of freedom.

The Supreme Court too, has shown considerable awareness in protecting the press whenever its freedom is encroached upon. It has time and again rescued the press against the arbitrary actions and harsh measures adopted by the government and allowed any restriction only when there is a resultant public advantage. Thus, it has tried to struck a balance between freedom of press and the social and national interests as a result laws dealing with such issues have been given a blanket protection under Article 19 (2). Similarly it has always been over conscious of its criticism resulting into contempt cases. Lately a very positive indication (of extending the scope of fair comment) has been given by the apex court expanding the scope of the freedom. We must hope that this positive attitude on the the part of the apex court would be helpful in broadening the horizons of freedom of the press. The following suggestions may however, be forwarded to strengthen the freedom

of press guaranteed under the Constitution.

(1) Though the Supreme Court has often administered the sermon to the press whenever it transgresses the freedom guaranteed to it under the Constitution but nothing has been done to confer some additional rights to the press required as public institution enabling it to play its role more effectively. Therefore, there is a need to confer certain privileges upon the press as a public institution.

(2) The enactments dealing with law and public order are given almost blanket protection. The experience of the enforcement of such laws in certain cases however, shows their misuse. Such enactments. therefore, should be amended to define the powers of the authorities in clear terms and to assure the compliance of natural justice whenever any action is proposed or taken under such statutes.

(3) The Hicklin's test in cases relating to obscenity is still being followed with certain modifications and while doing so the interest of 'young readers' has been given due protection but simultaneously the interest of 'adult and mature' persons has been overlooked. The Court must pay the attention towards the right of such class of persons.

(4) During emergency promulgated under Article 352 of the Constitution the rights guaranteed under Article 19 remain suspended. The press may be restrained under Article 19(2) on the ground of 'security of state' also, such restriction may extend even to the 'prohibi-

tion' if the circumstances require. The purpose of Article 358, therefore, may be achieved under Article 19 (2) itself. Consequently Article 358 should have no application in respect of Article 19(1)(a). Such step will also eliminate unnecessary interference in the affairs of the press.

(5) The privileges of the Parliament and state legislatures must be codified. It will remove the existing doubts and the journalists would know the sphere of their freedom and stop intruding into the legislature's domain.

(6) The press under certain circumstances is not liable for any civil or criminal liability before any court of law but not against the legislature. The protection must be extended against the legislature also in accordance with the constitutional spirit of rule of law.

Some problems may crop up when the aforesaid suggestions are put into practice and to overcome those problems further study may be undertaken.