CHAPTER: II

HISTORICAL PERSPECTIVE

A) Press and Press Laws upto 18th Century
B) During the 19th Century
C) During the 20th Century
   i) Pre - Independence Period
   ii) Post - Independence Period
The humanity has marched from the "Stone Age" to the "Modern Age". Enormous progress during this period has been made in every walk of life. Be it social, political, economic, scientific or what so ever. One of the gift to the society as a result of such advancement is the press which has played an important role at crucial junctures. C.R. Srinivasan rightly says, "Many are the miracles of modern age of them all, I should think the greatest is the modern newspaper. It is not a miracle in itself. It has laid the foundation for many miracles that we have witnessed in modern life. It makes and unmakes things. It creates and destroys the strength of the nation. It is a pivot around which revolves the universe. It occupies the nuclear position in the life of the world. The present is essentially the age of newspaper and the immediate future is not likely to be different." The history of journalism is the man's striving for ways and means of satisfying his curiosity and learning what is going on in the world. The man, since the time immemorial has striven for the knowledge and the press has made the material available quicker as well as cheaper to all those who desire it. In the words of Herbert Brucker, "Journalism, then, is the instrument we use to stock our

1. Srinivasan C.P: The Press and Press and the public at p. 01
heads with information about the world that we can never know of our selves.²

Like Indian jurisprudence the press too, has got its roots in British counterpart. However, unlike the jurisprudence it has been brought to this country not as a result of “conscious and calculated thought” by those who had built slowly the magnificent empire as a miracle, but by a band of adventurous men who were allured to this country in the expectation of shaking the Pagoda Tree.³

The development of press in any country is essentially according to its political, cultural and economic conditions and, therefore, to understand its development and the influence, it is essential to know the prevalent conditions in that country. Thus, the history of press in India is the history of consolidation and extension of British rule in India. According to Margarita Barns, “A history of Indian press must, to a certain extent be a history of British occupation of India, or a cross section of that society.”⁴

For the better understanding of the development of press and Press Laws in India, the study may be undertaken as following:

1. Press and Press Laws up to the 18th Century.
2. during the 19th Century
3. during the 20th Century
   (a) Pre-independence period, and
   (b) Post-independence period

² Herbert Brucker: Freedom of information at p. 4
³ Sanial, S.C: History of Journalism in India at p. 355
⁴ Margarita Barns: The Indian Press at p. 13.
Press and Press Laws Upto 18th Century

The human mind is always occupied by the instinct of curiosity which in turn creates apetite for knowledge. From the earliest times man's inquisitiveness compelled him to find out ways and means to know about the happenings occuring in different parts of the Globe. The ancient Postal system of Europe and Western Asia and the banjara system in ancient India may be called as earliest form of journalism.

After the conquest of India, the Muslim rulers also followed the ancient system of emissories with certain improvements for the effective administration. They also gave it the form of an organisation. The state regularly maintained a seperate department for keeping the court informed about the description of events, ceremonies and complaints etc. in the form of Waqias or newsletter under the command of Waqia-Nigar. However the origin of modern Indian journalism can be traced to Aurangzeb's regime. Sanial observes, "The earlier distinct mention of ante-typographic newspaper is to be found in the Muntabakhat-Al-Lubab of Khafi Khan where we find the death news of Raja Ram of the House of Shivaji. The great historian also gives us clearly to understand that the common soldiers in Aurangzeb's time were supplied with the newspapers".  

The papers enjoyed great liberty during Aurangzeb's time and it is evident from the fact that the newspapers were often commenting

5. Op Cit note (3)
on the relations between him and his grand son Azim O Shan. In the year 1828 Colonel James Tod has sent to the Royal Asiatic Society in London hundreds of original manuscript newspaper of the Moghul Court (1660). The size of these papers was eight inches by four and half inches, written in different hands. They give notices about promotion, visits by the emperors to mosques, hunting expeditions, the bestowel of presents and items of other interests etc.⁶

The growing weakness of Moghul power caused frequent conflicts among the rival provinces. The death of Nawab inevitably resulted in inheritance tangles among the rival claimants to the throne. The East India Company first seized these opportunities for selling their services to the warring group in lieu of profits and later on started direct intervention to suit her own interests.

The battle of Plassey in 1757, decided the fate of India in favour of the British. Though before this battle printing press has already been brought in India by Vasco de Gama in 1557 to print religious books. The East India Company established its first printing press in Bombay in 1674 and the first official printing press was installed in Calcutta in 1779. The company’s administration took precaution to ensure that any of these presses in its settlement were not used for printing any account of their activities in their country and, therefore, the efforts to start newspapers were strongly suppressed by bureaucrats of East India Company.

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⁶ Journal of Royal Asiatic Society, 1908 at p. 1121
In September, 1768 William Bolts, an ex-servant of the East India Company notified:

Mr. Bolts takes this method of informing the public that the want of a printing press in this city being of a great disadvantage in business and making extremely difficult to communicate such intelligence to the community, as is of importance to every British subject, he is ready to give best encouragement to any person or persons who are versed in the business of printing, to manage a press, the types and utensils of which he can produce. In the Meantime he begs leave to inform the public that having in manuscript things to communicate, which must intimately concern every individual, any person who may be induced by curiosity or other more laudable motives, will be permitted at Mr. Bolts house to read and take copies of the same. A person will give due attendance at the hours from ten to twelve any morning. 7

Mr. Bolt’s notification came like a thunderbolt; it alarmed the administrators. He was served with a notice for deportation. It was held that he, by his attempt to utter “an odium upon the administration and to promote friction and discontent in the settlement” has rendered himself unworthy of any further indulgence from the company and of the company’s protection.

For the next twelve years, no attempt was undertaken to publish any newspaper. Finally on Jan 29, 1780 the first Indian newspaper was published by James Augustus Hicky entitled Bengal Gazette or

7. Quoted in ‘A History of the Press in India by S. Natrajan at p. 10
Calcutta General advertiser. This man was a printer by trade and for his newspaper venture; he says - "I have no particular passion for printing newspaper; I have no propensity. I was not bred to slavish life of hard work, yet I take pleasure in enslaving my body in order to purchase freedom for my mind and soul."

Hickey's "Bengal Gazette or the Calcutta General Advertiser was a two sheet weekly political and commercial paper open to all parties but influenced by none."

Hicky was bitterly opposed to those who were in power and targeted even to Governor General Hastings and his wife. This policy soon landed him in trouble and in Nov. 1780 the circulation of his newspaper through General Post Office was banned. Even then Hicky kept continue his newspaper and it was delivered in Calcutta through peons in neighbouring areas. But Warren Hastings was determined to crush the paper as well as the editor.

Hicky was sentenced to two years imprisonment and a fine of Rs 2000 on another count, he was ordered to pay Hastings Rs 5000 as damages for libel. Bail of Rs 80000 was demanded of him on two counts during the trial. Protesting against the demand of such heavy amount for bail Hicky wrote a letter to the clerk of the Crown. This letter was published in Bengal Gazette during the week June 16-23, 1781. But his prayer was not granted. Failing to deposit Rs 80000 for granting the bail, Hicky was sent to jail. However he continued to edit the paper.

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8. Quoted in 'Press, Public opinion and Government in India' by Shushila Agrawal at p.24
from jail. The equally indomitable, Warren Hasting on the other hand filed suit after suit to harras the Hicky. Finally with the help of his friend Sir. Eliza Impey, chief justice of Supreme Court, he finally succeeded in selling out the Hickey’s press, as he failed to pay the fine imposed upon him.

During this period, Warren Hastings encouraged other men B. Messink and Peter Reed who started in the same year (1780) another newspaper “India Gazette” and assured the authorities that they would abide by the instructions and the regulations issued by them. Four years later “Calcutta Gazette” came into existence under official patronage.

“Madras Courier” was the first newspaper published in Madras in the year 1785 and in Bombay the first newspaper appeared in the year 1791 by the name “Bombay Herald” and another one named “Bombay Gazette”.

The editors of these journals, though, agreed to abide by the rules often attacked the authorities. In turn they incurred the wrath of the such authorities. As a result Bombay Gazette suffered heavy losses, the Editor Mr. Farr, was deported and his successor readily agreed to submit proof sheets to the secretary for inspection before publication. Later on, the paper sought the patronage of government on the ground of heavy losses and became Government paper.

In 1786, Lord cornwallis was appointed the Governor-General and was entrusted with an uphill task of consolidation on the one hand.
and to reform the administration on the other.

But in Bengal the case was different and editors revived their voice against bureaucratic norms. In 1791, William Duane editor of "Bengal Journal" published a false news of the Lord Cornwallis's death. Thereafter, he could not continue as the editor. Nevertheless Duane started another paper, Indian World in 1794. In the meantime his house was twice raided so he decided to sell the paper and arranged to transfer it to new proprietor on Jan 1, 1795. But on Dec 26th, 1794, he was arrested and deported to England without a single word of information or explanation and without providing any compensation for the properties left behind here in India.9

In 1789, Lord Wellesly assumed the office of Governor General when Mr. Bruce, the editor of 'Asiatic Mirror', published an article on the relative strength of Europeans and native populations. Wellesly got furious and wrote from Madras to Sir, Alfred Clarke in Calcutta in April 1799:

"I shall take an opportunity for transmitting rules for the conduct of the whole tribe of editors, in the meantime if you cannot tranquilize this and other mischivous publications be so good to suppress the papers by force and send their persons to Europe".10

This threat was immediately put into action and a fresh set of rules was published to shackle the press on May 13, 1799. Which provided

9. Ghose H.P: The Newspaper in India at p. 11
10. Op Cit note (4) at p. 67
1. Every printer of a newspaper to print his name at the bottom of the paper.
2. Every editor and proprietor of a paper to deliver in his name and place of abode to the secretary to the Government.
3. No paper to be published on Sunday.
4. No paper to be published at all until it shall have been previously inspected by the secretary to the Government or by a person authorised by him for that purpose.
5. The penalty for offending against any of the above regulations to be immediate embarkation for Europe.

The censor was instructed to prevent publication of matter relating to the subjects like "Public Credit". The aforesaid measures were justified on the ground of emergency so long as the necessity existed for the maintenance of absolute power. These new rules were communicated to the editors and printers of various newspapers of that time. The editors viewed them with dismay yet they did not resent them.
The 19th Century is important from the Indian as well as British point of view. On the one hand the British consolidated their position, and on the other hand Indians realised that no foreign administration working for her own country can take care of them against poverty and famines. This factor gave life, impetuous and encouragement to the Indian National Movement and Indian public awakening.

The first decade of the 19th century did not bring any major change in the repressive policies of the government towards press. It continued to regard newspapers with great suspicion and was ready to strike it at first opportunity provided by them. The attitude of the government towards the press during that period is evident from the following opinion, recorded in a minute by Mr. Elliot, Governor of Madras: "The principal objects of those who desire the freedom of press are to disseminate the worst political doctrines of the times, to bring the constitutional authorities in Europe and Asia into contempt and to provide profits for the lawyers from prosecutions of libel in the courts of justice".

Lord Wellesley was very harsh towards the press. All these restrictions led to publication of a large number of pamphlets which bore neither the names of the authors nor those of the printers who printed it. Lord Minto, who had succeeded Lord Wellesley as Governor General.
therefore, in 1811 issued the orders that “It was the duty of all the proprietors of all public presses established in this presidency or its dependencies to cause, the name of the printer to be affixed to all works, papers and advertisements printed at or issuing from those presses and that any breach of regulations hereafter would incur the severe displeasure of Government.

In 1813 Lord Hastings became the Governor-General. He treated the Indian Press with leniency. In 1814 Dr. James Bryce acquired the ‘Asiatic Mirror’ and became its editor. After some time he came to a bitter conflict with Mr. Jhon Adam, the Chief Secretary who was also the censor. Thereafter Dr. Bryce made repeated representations against Mr. Jhon Adams. However, his representations were not acceded.

The pre-censorship came to an end under peculiar circumstances. When asked to exclude certain portions from his newspaper Morning Post, the editor Heately refused to comply claiming that no action can be taken against him as he was a native of India (He was born of a European father and Indian mother). The press censor represented to the Governor-General that he was “powerless in dealing with an editor who was Indian born”. Lord Hastings abolished the post of censor in 1818 and placed the responsibility for excluding any matter likely to affect the authority of the government or anything injurious to the public interest on the editors themselves but the directors of the company did not like it. Therefore, to appease them His Lordship formulated the following regulations prohibiting editors from publishing any matter falling under the following heads:
1. Animadversions on the measures and proceedings of Court of Directors, or other public authorities in England connected with the Government of India, or disqualifications on political transactions of local administration or offensive remarks levelled at the public conduct of the members of the Council, of the judges of the Supreme Court or the Lord Bishop of Calcutta.

2. Discussions having a tendency to create alarm or suspicion among the native population of any intended interference with their religious opinions or observances.

3. The republication, from English or other newspapers, of passages coming under any of the above heads, or otherwise calculated to affect the British power or reputation in India.

4. Private scandal and personal remarks on individuals to excite dissension in society.

These regulations were hailed in India and despite vigilence over press in the form of aforesaid regulations the newspaper press once again breathed a free air, people again got busy starting new journals, when a few days ago none had dared to do such a thing. According to Margarita Barns the, "Most contemporary commentators regarded the new regulations as opening the way to a free press."

11. Id at p. 91
During this period three men played an important part in establishing the freedom of press in India. They were James Silk Buckingham, an indefatigable fighter for press freedom, second Raja Ram Mohan Rai’s three newspapers were considered as fraught with danger and likely to explode all over India like spark thrown into a barrel of gunpowder, because of resolutely opposing Hindu social and religious belief and Lord Hastings who adopted a benevolent attitude towards press because he realised that most effective safeguard for the government was permitting full freedom of discussion by the press as this would serve to strengthen the hands of the administration.\(^\text{12}\)

The same year in 1818, James Silk Buckingham started the Calcutta Journal. He was a strong critic of the East India Company's monopoly, taxation etc. In 1819, he was warned for attacking the then Governor of Madras and after few years in 1823 he was deported when Jhon Adam became the officiating Governor - General.

Meanwhile, Ganga Kishore Bhattacharya started the first Bengali Weekly paper Vangal Gazette. He was a man of progressive reformist ideas which reflected in his paper. Raja Ram Mohan's first Bengali tract on Sati was printed in that weekly.\(^\text{13}\)

In 1822 Raja Ram Mohan Rai had taken over the charge of Samvad Kaumudi, a vernacular paper. He also published one paper Miratool Akhabar in Persian.

13. Sophia Dawson: The Life and letters of Raja Ram Mohan Rai at p. 205
Within the fortnight of Buckingham's departure, Jhon Adam, the Acting Governor - General issued a nine point ordinance making prior registration and licence of every publication compulsory. Six eminent Indians including Raja Ram Mohan Rai presented a joint petition but it was lost and in protest Raja Ram Mohan Rai declared the closure of his papers.

Lord William Bentinck was well aware of the attitude of Court of Directors towards the press in India. He was having a liberal attitude but certainly was not prepared to take any permanent measure to liberate the press. When he fell ill and resigned Sir Charles Metcalf assumed the office of Governor General. He could realise the feeling of bondage. He wrote, "All India is looking for our downfall. The people everywhere would rejoice or fancy they would promote it by all means in their power."  

Metcalf had an intutional love for the freedom of press. Inspite of his knowledge of the contrary views of his colleagues and the Court of Directors he decided to remove all fetters on press in India and frame a uniform law for both European and Indian newspapers. He with the help of Macaulay, the Law member in his council proposed to frame a uniform law for both European and Indian newspapers all over India and to repeal the harsh press laws, prescribing licencing of newspapers and providing for the summary action.

14. Quoted in 'A History of Indian Journalism' by Mohit Mitra at p.101
Maculay pointed out that licencing regulations were indefensible and should be repealed. He expressed the view that the licences to printout not to be refused or withdrawn except under very peculiar circumstances. While agreeing with the views of the Lord Macaulay, the Governor - General expressed the view that as the press laws differed in different provinces the enactment of general law for the whole of India was indispensible. But there were others in the Governor - General's Council who emphasised the importance of the government keeping a watchful eye particularly on the 'Native press'. However, the Council passed a new Act repealing the Bengal Regulations of 1823 and Bombay Press Regulations of 1825 and 1827. The new Act was made applicable to all the territories of the East India Company and required the printer and publisher to give a declaration about the precise location of the premise of the publication. For this change of law Sir Charles Metcalf brought the displeasure of the Court of Directors but under the Metcalf's Act of 1835 the press in India developed rapidly in the three province of Bengal, Bombay and Madras. Sir Edward Thompson on the progress of press in India said.

In India Metcalf liberated the press as Governor General and it angered the directors and that powerful immovable mass, the retired officials. The year 1835, when press was liberated by Metcalf thus marked a turning point in the history of Indian Press. However, a reaction had

16. P.Sitaramiyya: The History of Indian National Congress at p. 19
already begun in 1826, with the publication of First Hindi Newspaper Oodunt Martund. From this year to 1857 the press kept dealing with Indian aspirations and awake the sleeping giants of this country.

When the news of removing all the restrictions over the press reached England, the Court of Directors became furious and dispatched a letter on 1st Feb 1836 which stated, “We are compelled to observe that this proceeding must be considered as the most unjustifiable in as much as it has been adopted by a Government only provisional; and also when a commission for framing a code of laws for the three presidencies was about to commence its important labours.”

Metcalf had to pay a very heavy price for his love for the freedom of press. Inspite of his just claim he was not made permanent Governor - General. The Court of Directors found another opportunity of slighting Metcalf when, in 1836, he was passed over for the Governorship of Madras. One of the Company’s directors informed him that his freeing of press was unforgiven.

Lord Auckland too, followed the foot steps of Metcalf and during his regime cordial relations existed between the press and the Government. This attitude also encouraged the establishment of new newspapers. Five newspaper in Persian language were started. Among them Jamai - Jahannuma and Sultan - ul - Akhbar were more prominent.

Lord Ellenborough who succeeded Lord Auckland in 1842, how-

17. Quoted in 'A History of Indian Journalism ' By Mohit Mitra at p. 104
ever, had no sympathy for the press. This behaviour resulted in a wide gulf between the government and the press. He directed that, "Official documents and papers were in no case to be made public or communicated to individuals without the previous consent of the Government to which alone they belong." The government issued instructions to newspapers prohibiting publication of official orders and deliberations to which they could not have had access except through good offices of highly placed officials. Thereafter a controversy arose as to what may be officially communicated to press and what should not and also by whom? This laid the foundation of Official Secret Act. Later on the idea of Government official publicity was evolved.

The language newspapers devoted themselves to questions like Sati, Caste, widow remarriage, polygamy, the atrocities of the indigo planters and the blunder of young magistrates. The importance of native press by then had become very considerable.

In 1856, Lord Canning became Governor General. He was unlike Dalhousie but the seeds sown by Dalhousie were to sprout. In fact the seeds had not been sown by any particular person but the ideology on which British imperialism was based. As soon as the mutiny broke out the government gagged the press with an ordinance akin to the press laws of 1823. The revolt aroused great apprehension in the mind of the government and it felt that sedition had been poured to an audacious extent into the hearts of the people of India. Lord Canning introduced Act XV of 1857 to regulate the establishment of the printing press and to restrain the circulation of printing books and papers in India.
The Act applied to every kind of publication, be it in English or in an Indian language owned by Indians or by Europeans. Therefore, the Act reintroduced the main features of the Adam's licencing Regulations of 1828. The Act was applicable to the whole of India and was limited for a period of only one year.

In 1860, when Indian Panel Code came up for final adoption, Lord Canning, sensing that the sedition section could be injudiciously used against the liberty of press, recommended its omission and the section was omitted.

In 1861, the first constitutional advancement India Council's Act. 1861 came up, and it stirred the public opinion and resulted in the establishment of a number of newspapers including the Pioneer (1865).

The press in India took a new turn after the mutiny of 1857. It adopted nationalistic approach in character and the aspirations. The vernacular press became more important as it appealed directly to the masses and spoke their own language.

The rapid growth of Indian languages press made the government rather uneasy. The official opinion hardened towards the language press and the diehards among them stressed the need for a more effective law than that which existed. As Mill says "A people may be unprepared for good institution: but to kindle a desire for them is a necessary part of the preparation. To recommend and advocate a particular institution or form of Government, and set its advantages in the strongest light, is
one of the modes, after the mode within reach, of educating the mind of nation, not only for accepting or claiming, but also for the working of the institution".  

The Indian newspapers have already started to nourish the public mind on the important political issues. In 1864 Jhon Lawrence became the Viceroy and during his regime Act No. XXV of 1867 known as the Press and Registration of Books Act was promulgated to regulate the press and newspapers.

In 1869 - 70 the Wahabi movement came to the light. The government, therefore, felt the necessity of new measures to crush such activities. Thereafter, Act XXVIII of 1870 was passed which again inserted sec.124-A I.P.C, omitted by Charles Metcalf in 1835.  

"This section was quite vague in its language and was applied according to the wishes of the rulers. These Acts however, proved a blessing in disguise as the press became more conscious of itself and started to struggle for its own freedom.

The Indian papers were advocating the idea of a national government and their preachings prepared the people for a national struggle.

19. Sec. 124 - A I.P.C provided: "Who so - ever, by words, either spoken or intended to be read or by signs, or by visible representations or otherwise excites or attempts to excite feelings of disaffection to the government established by law in British India shall be punished with transportation for life or any term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or without fine."
With the Russo-Turkish war of 1876, which was joined by the English, people became critical of the foreign policy of the government. In the year 1877, the Press Association, headed by Surendra Nath Banerjee, waited on the then Viceroy and made a fervent appeal not to impose any stringent restrictions on the language press. The Viceroy in his reply made no reference of the subject. In 1878, the Vernacular Press Act was passed. The salient provisions of this enactment were to place newspapers published in the Indian languages under “better control” and to furnish the government with more effective means than the existing law provided for punishing and suppressing seditious writings. The Act empowered the government, if necessary to require the editor of a Vernacular newspaper either to give a bond to print nothing calculated to excite disaffection or to submit its proof for censoring. In case of breach of this undertaking, the security deposits with the district magistrate would be confiscated.

The Vernacular Press Act, instead of cowing down the language press produced exactly the opposite effect. The general tone of the newspapers was one of opposition to Government and its measures. This hostile attitude continued till 1880 when Gladstone, who himself has criticised the Act, as a leader of the opposition on July 23rd, 1878 in the House of Commons, became the Prime Minister, gave directions to repeal the Act. It was repealed in 1882 by Act IIrd of that year which however, maintained the powers of Post Office authorities to search for and seize any vernacular publication of a seditious nature, and to seize any seditious material the importation of which had been prohibited by law.

20 Op Cit note (12) at p. 20
had been prohibited under Sea Customs Act, 1875.

With the advancement in public consciousness the press run by the Indians was gaining influence and strength. In the later part of 19th Century, The Government of India was haunted by the spectre of sedition. *By a notification promulgated on 25th June, 1891, the Government restricted the rights of the free press even in Indian states. The notification prohibited the publication of a newspaper within the territory of a Native State without the permission of a political agent and the disobedience of the aforesaid order made one liable to forcible expulsion.*

In 1894, during the regime of Lord Elgin an amendment was made regarding sedition in Indian Penal Code. Dr. Pattabhi Sitaramayya writes about it: *"While the chronic sores of abridged jury powers, and combined judicial and executive functions were still festering and showed no signs of improvement, new ulcer broke out in the body politics in 1897 which brought to light regulation III of 1818 (Bengal), II of 1819 (Madras) and XXV of 1827 (Bombay) under which anybody could be deported without trial. This was applied to the Sirdar Natu who by the time the Congress of 1897 met had been imprisoned over five months."*

Secret Press Committees were established in 1898 which provoked a vehement protest from Mr. W.A. Chambers at the 14th Congress. These committees acted as thinly veiled censor. Another amendment was passed amending Section 124-A of Indian Penal Code.

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21. Op Cit note (16) at p. 36
22. 124-A Whoever by words, either spoken or written or by signs, or by visible representation or otherwise, brings or attempts, or excites or attempts to excite disaffection towards her majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added or with .................................................................................................. Contd.
In July the same year Amba Prasad, the proprietor, editor and publisher of newspaper called the Jamil-ul-Ulam was charged for sedition under the aforesaid law.

The closure of century thus, saw a critical state of affairs while the public clamoured for political advancement the government did not respond to their call and this led even to few terrorist movements in 20th Century.

Contd:... imprisonment which may extend to three years, to which fine may be added or without fine.
During The 20th Century

Pre - Independence Period

The early 20th Century period has been described by S. Natrajan as "amazingly hysterical period which the press in India passed through". Further Gokhle’s remark that, "no where was the press so weak in influence as it was in India" was borne out by the fact that the Government promulgated an ordinance and enacted laws to control public meetings (1907), followed by the Newspapers (Incitement to offences) Act, 1908. Under the provisions of this Act, power was given to a magistrate to seize a printing press if he was convinced that a newspaper printed therein contained any incitement to murder or to an act of violence or to an offence under the Explosive substance Act 1908. Power was conferred on the magistrate to make the conditional order absolute either by an ex-parte decision in an emergency or after hearing the evidence from persons concerned against the order. However an appeal could have been made to the High Court within 15 days of order being made. The effect of this harsh law was that several newspapers, which expressed sympathy with terrorist activities, ceased publication in 1908.

Meanwhile two incidents occurred. On Nov. 18, 1909, in Ahmedabad, a bomb narrowly missed the carriage in which Lord and Lady Minto were travelling. And in Nasik on Dec. 21, a magistrate A.M.P. Jackson was shot dead by extremists. In order not to allow the press
from highlighting such incidents from nationalistic point of view, the Indian Press Act 1910, was passed.

The Act increased Government control over the printing presses and publishers. The most harsh provision was that all proprietors who had made a declaration under the Act of 1867, for the first time, were required to deposit security of Rs 500/- to Rs 2000/- unless it was waived by the local magistrate. This security was to be forfeited in all cases where the matter contained in the newspaper had a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise, to incite to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, or to seduce any officer from his allegiance or his duty, to put any person in fear or incite any person to interfere with the administration of law or the maintenance of law and order and so on. Similarly a newspaper printed and published in India could not have been transmitted through post unless a declaration was made as required under Sec. 5 of the Press and Registration of Books Act, 1867; and the publishers had deposited security when so required under this Act. Custom and Postal authorities were authorised to detain and search suspicious mail. Once a security was forfeited, a person was required to make a fresh declaration with a higher amount than the first, and on third occasion, if an offence was alleged, the security deposited, the printing press used for printing the newspaper and all copies of such newspapers were forfeited. In all during 1910 - 1914, 355 cases were initiated against the printing presses. Vernacular Publications were main target of the attack and between 1917 to 1920 some 963 newspapers and printing presses which had
existed before the Press Act of 1910, had been proceeded against under the Act.\(^{23}\)

Lord Chemsford became the Viceroy of India in 1916. He used the Press Act with severity and too often. Mrs. Besant was prohibited from entering the Bombay Presidency by Lord Willingdon under the Defence of India Act 1914. In Bengal, the number of young men ran up to nearly three thousand. The Congress urged the government to repeal immediately the Defence of India Act, The Press Act, The Seditious Meetings Act, The Criminal Law Amendment Act and similar other repressive measures.\(^{24}\)

Far from responding to the Indian public opinion to repeal these Acts, the Government adopted harsh measures. The conduct of Gen. Dyar and Lt. Governor of Punjab O'Dwyer came in for strong condemnation in Indian Press. The position had become intolerable and a Press Law Committee was appointed under the Chairmanship of Sir Tei Bahadur Sapru. The journalists deposed before the committee testified that Anglo - Indian Press was free to make most violent attack against them but if they replied they found themselves prosecuted for spreading hatred.

The Press Committee was of the view that the special reasons (to crush the promotion of revolutionary conspiracies) for which these Acts were passed are over and the purpose of these Acts may be served by the ordinary laws by incorporating the provisions in the Act of 1910 of

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23. Agrawal, S.K: Press at the Crossroads in India at p.34
24. Op Cit note (12) at p. 24
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 amendments. Therefore, it recommended to repeal the Acts 1908 and 1910 which was done accordingly by Press Law Repeal and Amendment Act, 1922.

In April 1931, Lord Willingdon became the Viceroy of India. Unsympathetic to the nationalist movement he adopted the policy of non-conciliation with nationalist leaders and Indian Press (Emergency Powers) Act, 1931 was passed. This was described as an Act to provide against the publication of matter inciting to or encouraging murder or violence. This Act imposed on the press an obligation to furnish security at the call of the executive. This security was liable to be forfeited if the press published any matter by which any of the mischievous acts enumerated in Sec. 4 of the Act were furthered eg. bringing the Government into hatred or contempt or inciting disaffection towards the Government, inciting feelings of enmity and hatred between different classes of subjects, including a public servant to resign or neglect his duty. This Act was, in fact, an antiquated revival of trial by Star Chamber of Press offences and the licencing system which English democracy had fought and suppressed. The Draconian law hampered the growth of press in India. Various reputed newspapers, advocating nationalistic approach like Amrit Bazar Patrika, Al-balagh by Maulana Azad and numerous other were persecuted.

The British Government tightened its grip on the printed matter with the beginning of the World War II. The censorship machinery was
revived with a chief censor and advisory committees in each province. Later on the Press (Special Powers) Act, 1947 was passed. It declared that it is an act to continue certain special powers conferred on the administration for the better control of the dissemination of undesirable matter. Under the provisions of the Act power was conferred upon the Provincial Government to prohibit or regulate any matter which tends directly or indirectly to promote feelings of enmity or hatred between different classes of His Majesty's subject. (Sec. 4) It also empowered to prohibit or regulate the entry into or sale or distribution or circulation and publication in a province (Sec. 5). Moreover, this Act also empowered the executive to take preventive measures in the form of forfeiture and seizure of a newspaper or any other document (Sec. 6).

The Act was made applicable to Chief Commissioner's Province and was in force up to Dec. 1949.
POST - INDEPENDENCE PERIOD

After achieving independence on Aug. 15, 1947, the Government of India in the same year appointed a Press laws Enquiry Committee. The Committee submitted its report in May 1948 where it recommended to repeal Indian States (protection) Act, 1934, the Indian Press (Emergency Powers) Act, 1931, and repeal of Foreign Relations Act, 1932, and its replacement with a new comprehensive legislation. However, it recommended the retention of Official Secret Act, 1923, and Section 124-A, 153-A and 505 of the Indian Penal Code dealing with disaffection towards legally established Government, communal hatred and tempering with the loyalty of the armed forces.\(^2^5\)

In the Constituent Assembly Dr. Ambedkar the Chairman of the Constitution Drafting Committee made it clear that the freedom of speech and expression also includes the freedom of Press. But the circumstances after the country got the independence, deteriorated. The partition of country had taken place on communal lines resulting into hatred and mutual suspicion among two major communities named, Hindus and Muslims. The press too could not remain unaffected and, therefore, to curb this menace two steps were taken by the Government. first the constitution was amended in June 1951 whereby three grounds (a) friendly relations with foreign states; (b) public order, and (c) incitement to an offence were added under Article 19 (2) as reasonable

\(^2^5\) Op Cit note (23) at p. 43
restrictions. And Secondly in October 1951 the Press Objectionable Matters Act, was passed. This legislation was similar to those which were passed during 1910, and 1931. The press raised much hue and cry over this Act as a result it was allowed to lapse. It was finally in 1952, Nehru announced the appointment of a Press Commission. It composed of Dr. Zakir Hussein, M. Chalpati Rao and Justice G.S. Rajadhayksha. The commission beside favouring emergency legislation rather than incorporation of the provisions of 1951, Act into Indian Penal Code, improvement of working conditions, salary and benefits for the journalists and vesting administrative control to editor over the staff recommended the establishment of Press Council which came into existence in 1966 through Press Council Act, 1965.

During the Nehru era press enjoyed enormous freedom as he was a democrat to his heart and soul. He strongly favoured the editorial independence and detested proprietal interference in the running of the papers. Even during the Chinese aggression in 1962 when an emergency was declared and Defence of India Act was passed to deal with the situation, the restrictions imposed on the press were minimal.

In contrast to Nehru's era, Mrs. Gandhi's period, marked the confrontation between the Government and the press. Visibly there were two reasons. First - The Indian Press by that time had gained maturity and had started to react more freely second, Mrs. Gandhi's chair was being challenged by the old Congressmen and her action of nationalising the banks, insurance companies and abolition of privy purse made the business community suspicious and frightened resulting in adverse com-
ments in press owned by this strong lobby.

On June 12, 1975, a historic judgement was delivered by Justice Jagmohan Sinha of Allahabad High Court, declaring Mrs. Gandhi's election from Rae Bareilly constituency of Uttar Pradesh, invalid for adopting corrupt electoral practices in the 1971 parliamentary elections and barred her from contesting any election or holding a political office for a period of six years. Mrs. Gandhi filed an appeal against the judgement and Justice Krishna - Iyer ruled that she may remain the Prime Minister conditionally (she was not entitled to participate in the business of parliament or to vote but could speak in either house). This decision further complicated her position and her resignation was demanded by all quarters.

On June 25, 1975, Mrs. Gandhi recommended the president to declare the emergency under Article 352 of the Constitution on the ground of internal disturbances which was done accordingly. On the same day all prominent leaders of opposition were arrested and the newspapers run by these parties were banned. Many journalists were also arrested and among them was Kuldeep Nayer, an internationally acclaimed journalist. However, timely action of Delhi High Court saved him.

Few foreign journalists including Peter Hazelhurst of London Times, Loren Jenkins of Newsweek, Peter Gill of London Daily, Lewis M. Simpson of the Washington Post and most notably Mark Tully of B.B.C were expelled from the country.

During this period, Central Censorship orders were passed and
no news, comment or rumour or other reports relating to an action taken by the government in accordance with the proclamation of emergency, (Maintenance of Internal - Security Act, 1971, Defence of India Act. 1971 and other Acts come into force) could have been published without their first being submitted for scrutiny to an authorised officer of the Government. The Chief Censor was given total responsibility to enforce these measures.

During emergency three enactments which had already come into existence were passed. First, The Press Council (Repeal) Act, 1976 by this Act the Press Council Act was repealed and the Press Council constituted under the Act was abolished on the ground that it had failed to fulfill the objective with which it had been set up. But in fact the actual and proximate reason for this action was that Press Council seemed likely to pronounce against K.K. Birla, a proprietor of Hindustan Times and a supporter of emergency regime.26

The second enactment was Parliamentary Proceeding (Protection of Publication) Act, 1976 which eliminated the Parliamentary proceedings (Protection of Publication) Act which was on statute book since 1956. This was a retrograde step and P.G. Mavlankar, an independent member said, "...... the record (of parliamentary proceedings) may have every thing for the future historians, but people of the present generation will not known what is taking place in parliament".27

27. Ibid
Beside repealing these Acts during emergency another enactment prevention of publication of Ojectionable Matter Act, 1976 was also passed for government’s view, the press in India had been abusing its freedom by vilifying high dignatories which reached at its climax after High Court judgement in election case against Mrs. Gandhi. It was in fact a reproduction of 1951 Act with some improvements with the requirement of Art. 19 (2) of the Constitution.

In General Election of 1977, a coalition of various parties known as Janta Party defeated Congress and came into power. The muzzled Press viewed it as a indication of democracy. The Prime Minister Morarji Desai after assuming office, in an interview said “fundamental rights should never be touched whether, there is an emergency or not. They must be maintained under the Constitution.” He translated this belief by proceeding to dismantle the provisions of emergency by instituting safeguard of press.

The first step taken by his government was to repeal the Prevention of Publication of Objectionable, Matter Act, 1976 by passing a repealing Act on 9th April, 1977. On the same day Parliamentary Preceedings (Protection of Publication) Act, 1971 which had been repealed by a repealing Act of 1976, was passed. A constitutional amendment was also made by which Art. 361 - A was inserted which provided the constitutional protection to the aforesaid laws. Some other amendments were also made in the provisions providing for emergency. [These amendments are discussed in detail in Chapter 3(b)(ii)]

28. Section 5 of the Act empowered a District Magistrate to direct that any matter relating a particular subject or class of subjects may not be published for a period of two months.
The next step which the Desai's Government took was passing of The Press Council Act, 1978, with a more representation, composition and improved provisions. Desai's Government also appointed the Second Press Commission to look into all aspects of press laws in India. But this government could not last beyond July 1979 and in 1980 Mrs. Gandhi again came into power. She re-constituted the Press Commission in 1980. It submitted its report in 1982, however, no special legislation has been passed till date in pursuance of the recommendations of this Commission.

Though the press praised Mr. Desai for liberating the press from shackles but it could not ignore the political, economic and social chaos in the country.

In the words of Prof. D.D. Basu, "Whatever may be the success or failure of Janta Government's rule for two years," he continues, "the press ought to be grateful to them for removing all the fetters that had been imposed on the press during emergency regime". 29

Soon after Mrs. Gandhi sworn in as Prime Minister she was confronted with question of press censorship during emergency. She gave the following reply.

"Censorship was a special remedy for a very severe, acute disease. We dont think that particular disease will hit the country again nor do we want to give the same medicine.

Rajiv Gandhi started well with the press. In early days of his Prime Ministership he was of the opinion that press should be absolutely free and inturn expected the press to present the correct picture of the country to the people. However, Rajiv’s cordial relations with press did not last long because of his two statements, first defending the emergency and reiterating that if the conditions as that of 1975 crop up again, he would not hesitate to impose the emergency and second, he categorically rejected the idea of giving autonomy to radio and television and said that electronic media could not function the way press behaved.30

His relations with the press further deteriorated after income tax raids on big business houses and Bofors scandal in later part of 1985 and early 1986 leading scathing remarks by the press against the government. Rajiv Gandhi blamed that press had changed its attitude suddenly after the government began taking action against erring industrialists including the press barons. A Bill was also introduced in the Parliament in 1988 known as Defamation Bill. This raised a great hue and cry in the press (as it was feared that when the Bill becomes the Act, it would be used frequently against the press). Consequently the Bill was withdrawn.

Similarly during the period after independence in various states also either different laws are passed which affect the press or few Bills were introduced in different State Assemblies in the guise of maintaining law and order.

30. Op Cit note (23) at p. 65
During the regime of Mr. V.P. Singh, Mr. P.V. Narsimha Rao and H.D. Devegowda, the press has so far been free from any notable restrictions.

The above discussion makes it clear beyond any doubt that there has been no smooth sailing for the press from the earliest times. It has been tested time and again by different kind of laws which were felt necessary in pre-independence as well as in post-independence era by different regimes at different times. Nevertheless press has survived on account of its sheer determination to stand against all odds.