

## PROFESSIONAL SECRECY, PRIVILEGES AND RIGHTS

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ANY reference to “secrecy” and “privilege” indicates an approach which suggests that the journalist pursues an avocation placing him outside the social order.

The public responds to any such suggestion with suspicion and hostility. Why is this group claiming to keep its operations secret and above the reach of law?

The term “privilege” is an inheritance of the days when royal despotism was resisted by the representatives of the people with the cry of “privilege, privilege”—the rallying call of the Commons to work untrammelled by Royal pleasure. Privilege suggests medievalism as against modern concepts of democracy.

The first question therefore is whether the Press claims a “privilege” to be placed above the law and immune from its operation? Does it assert a right to “secrecy” of the sources of its information because it is engaged in some conspiratorial functioning and does not wish to assist the Courts of Justice?

The formulation by the press of its claims has suffered both for historical and political reasons. Historically the struggle for freedom, of which freedom of the press is an essential part, has been one against autocratic government and organs of the State controlled by a small minority.

The battle for freedom inevitably took the form of opposition to all law and regulation and the assertion of rights by individuals and organizations.

The basic and fundamental claim of the journalist is for the “freedom of the press”. Its validity and urgency have been repeatedly emphasised by the Courts, Legislators and the community.

Freedom of the press to be real must exist where there is positive law to ensure the freedom and not just an absence of law.

The claim therefore is not for an abolition of laws affecting the press and the journalist but the framing of laws which may make it possible for him to act in accordance with the standards demanded by the community.

Such a claim is largely recognised by the community. A lawyer is protected against disclosure of information given to him by his client; communications between husband and wife are placed above enquiry by courts, in several countries the clergy and the medical profession are given similar protection by Law.

Government agencies are given the right to claim privilege from disclosure of documents.

The journalist today enjoys the benefit of several such regulations. He may attend the sessions of the Legislature and the Press Gallery is reserved for him; normally he gets invitations to all gatherings where matters of public interest take place; the Press is given a quota of paper to enable it to publish information; it can make use of telegraph, cable and postal facilities at reduced rates; a journalist enjoys some priority in getting a car or a telephone etc. These regulations recognize that the press pursues a function that is sufficiently important to society to require special regulations.

To assess the requirements of the Press in terms of law and social regulation consider:

1. What function does the community demand of the Press ?
2. What duties have to be performed by the journalist in enabling the press to perform its function ?
3. What is the extent to which the existing framework of law and social regulation impedes the journalist in the proper discharge of his duties ?
4. What changes are required in law or what further legislation is necessary to ensure the conditions in which a journalist may carry out his duties ?

The compelling function of the press is that it shall supply information on all matters which may be of interest to the community provided that the information is accurate and fair. The community wants information not only of tangible facts happening round the corner, but of facts and opinions from all parts of the world. It is not satisfied in knowing merely that a Minister was removed from office, but even more interested in why

he was removed and what is the truth behind the allegation that his sister's son was given a contract to build an atomic research station on terms which would make the jeep scandal child's play.

With the increasing complexity and diversity of world-wide socio-economic relations, the journalist can no longer rely merely on his own or directly verifiable sources of information, but must collect it from diverse sources, which involves:

- (i) Obtaining information from different sources;
- (ii) Ensuring that it is fair and accurate;
- (iii) Publishing the information.

The gathering of facts is the most difficult part of a journalist's functions. There are facts and events which a journalist may observe himself and some others which he can verify on proper enquiry. He can make sure that reports of these are accurate and fair, but a paper which carries only directly observed matter would be an extremely poor one.

So we must consider :

1. Collection of information from sources by direct knowledge such as presence at the place of occurrence or examination of a record.
2. Collection of information from indirect sources, news agencies, foreign sources, statements made by official and public authorities, by leading persons, public meetings, persons specially qualified or otherwise placed in a position to know the facts, or have access to police records and so forth.

To do this there must be :

- i. Right of access to official, semi-official and other places.
- ii. Right of access to records of government, public bodies, courts, tribunals, local authorities.
- iii. Right of receiving communication by post, telephone, radio and all other means.

These rights must be safeguarded by law, regulation or convention subject only to the condition that access may be denied on grounds of paramount public interest—the decision to rest in a designated authority and subject to appeal.

The right of publication must be reviewed in this way :

The Press must have freedom to select and publish the information collected and this implies absence of any pre-censorship, no pressures on publishing or withholding from publication.

Publication may be withheld by law or regulation on considerations of public interest. The recent case of Justice Tar-kunde banning publication of the statement of a witness on the ground that it would harm his business requires reconsideration (ref. judgment of Supreme Court in *Mirajkar v. Karanjia*).

Publication may be penalised only on grounds which have relevance to public interest.

The present restrictions under libel; official secrets Act; contempt of Court; contempt of Parliament need re-examination.

The restrictions must be devised keeping in view the nature of the work to be performed by the journalist and so as not to stifle the sources and impede publication.

Absolute accuracy of news cannot without exception be ensured. Penalties should be examined from this angle:

- (a) Where news is given by the Press from its own sources the responsibility for accuracy should be complete.
- (b) Where the news is given from sources not its own—i.e. foreign sources etc. the responsibility should be qualified—the Press should be able to show that it was acting bonafide. In such cases there should be no penalty for inaccuracy but some provisions for amends.

A major function of the press is the exposure of public evils. This can be done effectively provided that the communicant is sure that his identity will not be disclosed. Non-disclosure of the source of information has not caused any serious social evil. Disclosure should be obligatory where vital public interest is concerned.

No vital public interest is concerned in a libel case. It may be concerned in questions relating to the security of the State etc.

Non-disclosure is permitted to legal profession, in many countries to medical men; there is no reason in principle why it should be denied to journalists in all cases.