CRIMINAL LAW AND THE PRESS

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FREEDOM of the Press, though not specifically guaranteed in the Indian Constitution[1] is included in the Fundamental Right governing freedom of speech and expression[2]. In law, therefore, the Press in India enjoys no special privilege[3] and has to work under the same legal restraints which control an individual's freedom of speech and expression.

Criminal law expects the Press to observe the norms of behaviour. One such norm is the sanctity, reputation and continued existence of state organs, community or individual[4]. Any attempt to breach this is penalised.

Freedom of expression[5] has to be subordinated to the larger

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1. Some of the Constitutions specially guarantee the freedom of the Press and the following are some examples:
   (a) Chile Art. 10(3)
   (b) Jordan Art. 15(ii)
   (c) Peru Art. 63
   (d) Norway Art. 100
   (e) U.S.S.R. Art. 125
   (f) Yugoslavia Art. 27
2. Bhagwati J. "Freedom of speech and expression includes within its scope the freedom of the press ... and the liberty of the press is an essential part of the right to freedom of speech and expression and ... consists in allowing no previous restraint upon publication" Express Newspapers Ltd. *v.* Union of India 1958 S.C. 578.
3. Barman J. "...the freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length the subject in general may go, so also may the journalist" Gourchandra *v.* Public Prosecutor 1962(2) Cr. L.J. 617.
4. Sec 124A sedition "brings or attempts to bring into hatred or contempt, or excites...disaffection towards the Government". Sec 153A I.P.C. promote or attempts to promote feelings of enmity or hatred between different classes of the citizens of India. Sec 499 ... imputation will harm the reputation of the person.
5. Even in the Constitutions which specifically guarantee the freedom of the press there are restrictions in the larger interest of the community. The restriction may be broadly legal restraints as in the Jordanian Consti-

interest of the community. Broadly speaking, the Press is free to express opinions to "change the political and social conditions or for the advancement of human knowledge"[6]. It is entitled to point out critically the mistakes of individuals and of the State[7].

It has been said that the purpose of a newspaper is to make money and build up circulation[8], but its duty is undoubtedly to give news and views to the public[9]. In fulfilling this duty the Press will have to heed the reasonable expectation of an individual to be protected from undue harassment by publicity given to his personal and private matters.[10]

The Press is often faced with the possibility that an individual or a group of individuals, offended by publicity, bring criminal actions. Fear of criminal action often deters smaller newspapers from doing duty faithfully.

This polarisation of interest—of the public and the individual —is the special and continuing problem of the Press and also its perpetual headache. An individual does not face this problem and therefore it appears unfair to apply the same laws to both.

The Press (Objectionable Matter) Act 1951, an omnibus statute dealing with all objectionable matters including incitement to

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tution "within the framework of the law" or Chile "without prejudice to the liability of answering for offences ...committed in the exercise of this liberty" or it may be like the Norwegian Constitution which enumerates the restraints "...incites others to disobedience to the laws, contempt of religion or morality or the constitutional powers or false and defamatory accusations" the third type is the Soviet Constitution which envisages the freedom of the press as being free from capitalist control as it guarantees the freedom "in conformity with the interests of the toilers and in order to strengthen the socialist system."

6. Hidayatullah J. in Ranjit Udeshi *v.* State of Maharashtra 1965 S.C. 885.

7. Vyas J. "...unless mistakes of individuals and State are criticized and commented upon by the press...a democracy cannot function" Durgaprasad Prasanna Kumar *v.* State 1956 Cr. L.J. 704.

8. Widgery J. in Mason *v.* Associated Newspapers 1965(2) A.E.R. 954, 958

9. According to one of the editors of the *London Times* the duty of a good newspaper is to gather and make known news of public interest.

10. Goodman " ...middle course to procure that no scandal can legitimately be concealed, no matter of public concern removed from public vigilance and no inoffensive and law abiding citizen to be pilloried and lampooned for the cruel delictation born or assiduously schooled to love sensation". "Defamation and Freedom of Speech 1960 Current Legal Problems."

crime[11], has been recently repealed. Section 3 of the Act under six different heads enumerated restrictions which were deemed objectionable. These provisions, governing the freedom of the Press, are now found largely in the Indian Penal Code, and the Criminal Procedure Code[12].

The recent enactment of great relevance is the Criminal Law Amendment Act 1961 which prohibits the questioning of the territorial integrity or the frontiers of India "in a manner prejudicial to the safety and security of the country".[13] Similarly, it prohibits the publication or spreading of rumours likely to be prejudicial to the maintenance of public order, or to the essential supplies or services in India in a notified area[14]. It authorises the State and Central Governments to forfeit copies of the issue of the newspaper or book or document in which such writing has appeared[15]. This Act was necessary because of the developments in the border regions[16].

Judges have held that to be a threat to public order, there has to be a "proximate connection or nexus to the public order" and one should not read into its consequences which are "far fetched[17], hypothetical or problematical".

Guidance on the interpretation of the Criminal Amendment Act 1961 can be best sought from cases dealing with offences against community and religion. Writing in the papers on those subjects is unfortunately not rare. Trouble in the border areas can be compared to the communal troubles which India has witnessed in the last few years.

In *Ramji Lal* v. *State of U. P.*,[18] the Supreme Court made it clear that, even though Section 295A of the I.P.C. was an offence against religion, the effect of the offence was a threat to public order and therefore it punished "the aggravated forms of insult to religion which is clearly to disrupt the public order."[19]

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11. An Act to provide against the printing and publication of incitement to crime and other objectionable matter.
12. See some of the more important sections: Sec. 124A, 153A, 295A, Sec. 499—502 I.P.C. and Sec 108 Criminal Procedure Code.
13. Sec. 2.
14. Sec. 3.
15. Sec. 4.
16. Statement of Objects & Reasons 1960 Gazette Part II Sec 938.
17. Superintendent of Central Prison *v.* Dr. Lohia 1960 S.C. 633, 640
18. 1957 S.C. 620.
19. On p. 623

The case was one to determine the constitutionality of the section 295A and the only facts one gathers from the case are that the matter was written in a journal called *Gaurakshak* devoted to the preservation of the cow and was written in language which was clearly meant to insult and outrage the sentiments of the Muslims.

In a case from Patna, the High Court[20] had also to interpret the scope of Section 153A. In this case the editor, publisher and printers of the weekly *Sangum* were being prosecuted for an article, which had appeared on the eve of Bakrid. The writer criticised the nebulous attitude of the Government on the question of cow slaughter. In the writer's view such confusion led inevitably to trouble.

The judge reiterated an earlier view[21] that a balance has to be drawn between the undesirability of strife between communities and the undesirability of preventing bonafide criticism to bring about reform. And the writer was found not guilty because the article read as a whole was merely a suggestion that something should be done to improve the situation.

Judging from these cases there is no yardstick by which one can be certain, what will be construed as "prejudicial to the safety and security of the country" and what will be taken as mere critical writing.

In *Durgaprasad Prasannakumar* v *The State*[22], a Marathi weekly called *Hindu* had used a commonplace incident to write a tirade against the Muslim community. A Hindu girl, having been converted to Islam, had married a Muslim boy who had without any prior intimation or even a hint sent her one morning a *talaqnama.*

From the purely human angle, the girl's bitter statement warning Hindu girls from not committing her type of mistake was understandable. But this weekly made a vicious attack upon the Muslim community referring to its traditions of treachery as also the practice followed by them of putting their fathers in jail.

It went on to lament the creation of Pakistan which was consistently referred to as Papstan—the land of sin—and ended with a critical comment on the selfish, suicidal policy of the Government in accepting secularism. The defence of the writer

20. State of Bihar *v.* Ghulam Sarwar 1965(2) G.L.5 401

21. Annie Besant *v.* Advocate General 461A 176.

22. 1956 G.L. J. 704. This case would today be under Sec 295A I.P.C.

that it was seeking to reform the policies of the government was rejected by both Dixit and Vyas JJ. The former made the point that even when the writer was right in his opinions, the only yardstick was whether the article was likely to have a bad effect on the mind of the average reader.

In a second case[23] under the title *Pant Sarkar ki Rajdhant—Janaza Nikal Gaya* the newspaper *Millat Jadid* had printed an article severely criticising the actions of the police in seizing printing plates, handbills and stopping the work of the press.

Randhir Singh J. said the intention was not to incite any one to violence but to criticise the high-handed action of the police and was a justifiable use of the right of freedom of expression[24].

Offences against the reputation of the State and community, are offences because they are likely to lead to a disturbance of public order; hence no factors such as expense will stand in the way of prosecution of a journalist or a newspaper.

An individual's reputation is regarded as a matter which concerns him alone and, the individual therefore, has to fight a newspaper which will usually have more resources than the citizen. Further, the publicity and the expense of fighting an action will usually deter an individual from going to court. The remedy lies not in compelling an individual to bring actions but in providing facilities for him to do so. An enlightened judiciary should realise that a deterrent punishment is necessary to prevent newspapers from using this powerful medium of publicity to the detriment of the individual.

Even when a journalist has taken all reasonable care to verify allegations he must prove that publication was in the public interest, or prove good faith and for the public good.

How does one prove public good? A judgement from Kerala[25] gives an indication how the judiciary would interpret such a phrase.

Some teachers from a secondary school had been dismissed by the management and, in sympathy, the other teachers as well as the students were on strike. Various political parties had

23. Niaz Mohd Khan *v.* The State, 158 Cr. L.J. 7.
24. The case today would come under Sec 108 Cr. P. Code.
25. Kuttysankaran Nair *v.* Kumaran Nair 1965 Kerala 161.

issued statements urging the public to help in the reinstatement of the teachers.

At this stage a leaflet was issued giving the background of the case which was that the manager usually held back a certain portion of the teachers' salary which he misappropriated. While the allegations were proved to be true, Govinda Menon J. said "no amount of truth will justify a libel unless its publication was for the public good". He, however, held that a publication would be considered to be in the public interest even if a section of the public become interested in it.

Similarly the Supreme Court in *Harbhajan Singh* v. *The State of Punjab*[26] gave a liberal interpretation to good faith. This was a case where Harbhajan Singh, the Secretary of the P.S.P., had made a statement that Kairon's son was "not only a leader of smugglers but is responsible for a large number of crimes being committed in Punjab."

The statement had been published in full in the *Blitz* and extracts in *The Times of India.* Public good was more or less assumed. The fact that similar statements had been made in the Legislative Assembly (which had been reproduced in the Press) as well as the reluctance of persons to give evidence for fear contributed to the Supreme Court deducing that the statement was in good faith and without malice.

Both these cases fall in a category where there can be no two opinions that publicity should be given by the papers to this type of incidents.

In the hands of the Press publicity is a powerful weapon, but in awarding punishments for defamation, the judiciary seems not to regard it as a factor determining the punishment.

If a paper has a history of irresponsible writing, then, bearing in mind the inbuilt inhibitions in India in bringing cases of defamation, a judge should award a sentence of imprisonment which would be a deterrent.

A case involving a public servant was from Orissa[27] and the printer and publisher of *Matribhumi* were convicted for criminal defamation of the Governor.

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26. 1966 S.C. 97.

27. Gaur Chandra *v.* Public Prosecutor 1962(2) Cr. L.J. 617.

The defamatory report was a press conference given by Dr. Lohia in which he attacked the Governor for not accepting the resignation of the Congress Ministry after its defeat, owing to the Governor being under an obligation to the Congress Ministry as some one had secured a job for a near relation of his in the Assam Oil Company.

Investigation showed that no near relation of the Governor was employed in the Assam Oil Company but his son was in a British firm, Andrew Yule and Co. There was no evidence to prove that influence had been used to secure the job.

To expect a daily newspaper working under great pressure, and reporting the press conference of an important political leader, to make a thorough investigation would be well nigh impossible. Evidence that influence has been used to secure a job is rarely available and a mistake between one British company and another would normally be a common slip.

To conclude that truth could not be a defence because the statements were untrue and the ruling out of the defence of fair comment on the ground that no other paper had printed this part of the conference was to apply a very exacting standard to a printer and publisher.

Another statutory limitation on free reporting and commenting by the Press is the Contempt of Courts Act 1952. This Act does not define contempt but, says the Supreme Court, it includes any "disparaging statement... calculated to interfere with the due course of justice or proper administration of law by a Court..."[28]

Contempt of court will also include aspersions cast on parties in a criminal case, which are likely to prejudice the public against them[29]. This is a field in which there is a conflict between two important rights—the right of the press and the right of free judicial process. Between the two "a free judicial process is of greater importance.. for it is only through a free judicial process that the freedom of the press can, if necessary, be vindicated..."[30]

Much damage can be done by the Press publicity in damaging the reputation of persons being tried or the witnesses to a case. The fear of such publicity would often hamper the parties from going through with the case.

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28. 1953 S.C.R. 1169, 1179
29. Padmawati *v.* Karanjia (1963) Cr. L.J. 61
30. Naik J *ibid.*

Whether there is a contempt or not will be judged objectively by the court: Is the writing likely to prejudice a fair trial? The second factor is that the case does not have to be pending but it will attract the penal provision even if it is 'imminent', which, in the view of Naik J, is as soon as suitor has taken "effective steps manifesting his intention of getting it adjudged in a Court of law[31]".

However, the Act provides that an apology tendered to the court by the accused will suffice and there need be no punishment. It is, however, of interest that contempt being an offence against the judicial process, the judges have adopted a strict test for an apology and have not accepted any apology whieh in their opinion is not a genuine one and is not an "expression of contrition."

Therefore both in the case from Madhya Pradesh and another from Bombay[32,33] recently, the apologies have been rejected as not being genuine and the defendant sentenced to pay a fine of Rs. 1,000 in the first case and undergo imprisonment for one month and pay a fine of Rs. 1,000 in the other.

A very different type of restraint placed on the Press is the prohibition from publishing anything which as Kailasham J. said, is grossly indecent and scurrilous[34].

The only danger for the Press or even an individual lies in the fact that it will be the job of the Court to decide what is obscene. No newspaper will know beforehand which review or which advertisement of a book will fall foul of the law.

It is essential for the Press to realise its responsibility especially in a time of a crisis. Inflammatory writings likely to lead to incitement are matters which should be avoided. The misuse of the freedom guaranteed by the Constitution in the case of the Press will have a far reaching effect, as a curtailment of their freedom will have on the smooth working of a democracy.

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31. Note 29, On p. 66

32,33. Kotual J in The State of Maharashtra *v.* Perspective Publications Private Limited report in *Mainstream* February 5, 1966.

34. In re Ramanathen 1965 (2) Cr. L.J. 285