

The Position of the Press

IN INDIA, it is well-established, by decision rendered both before and after the Constitution came into force, that the freedom of the journalist is an ordinary part of freedom of the citizen, and (apart from statutory provisions specially applicable to the press) the privilege of the journalist is no other and no higher than that of an ordinary citizen.¹ The editor is in no better position than an ordinary citizen.² This aspect (as well as certain other aspects of the law of defamation) has been considered at some length in a fairly recent Calcutta case.³

Lord Shaw's observations are often quoted in this context, namely :

The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to this power in the dissemination of printed matter may and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments is as wide as, and no wider than, that of any other subject. No privilege attaches to his position.⁴

A journalist who publishes a defamatory statement which is not true about a government servant is, therefore, in the eyes of the law, precisely in the same position as any other person. He is not specially privileged. Rather, he has a greater responsibility to guard against untruths, for the simple reason that his utterances have a far larger publication than the utterances of the individual, and by reason of their appearing in print, they are more likely to be believed by the ignorant.⁵

In the case of newspapers, one particular feature of interest is the fact that in the assessment of damages, the method of publication of the libel counts. What has been printed in a newspaper "may fall into any hands". Moreover, a printed matter is generally of the most permanent character and people are disposed to believe what they generally see in print. Hence, where a libel is

1. *Mitha Rustomji v. Nusserwanji Nowroji*, A.I.R. 1941 Bom. 278, 283; *Balasubramania v. Rajagopalachariar*, A.I.R. 1944 Mad. 484; *Khair-ud-Din v. Tara Singh*, A.I.R. 1927 Lah. 20, 23; *K.P. Narayanan v. Mahendrasingh*, A.I.R. 1957 Nag. 19.

2. *Balasubramania v. Rajagopalachariar*, *ibid.*

3. *N.J. Nanporia v. Brojendra Bhowmick*, 79 C.W.N. 531 (1974-75) See also *infra* p

4. *Channing Arnold v. King-Emperor*, A.I.R. 1914 P.C. 116, at 124. See also *infra* p. 44.

5. *Khair-ud-Din v. Tara Singh*, *supra* note 1.

published in a newspaper, the person defamed is entitled to substantial damages. The mere fact that the proprietor of the paper had no knowledge of the publication of libel in his paper cannot absolve him from civil liability.⁶

The only sense in which being a journalist he may be said to have a special significance is the consideration that it is his duty to comment on matters of public interest or affecting the public good. He is, therefore, within his legitimate sphere when he offers criticism of what he considers *bona fide* for (conduct against) the public good. But the comment must be free from malice and in the public interest and *bona fide*.⁷

Some of the decisions, while describing the position of the journalist regarding comments made by him on matters of public interest, occasionally use the expression "privilege".⁸ However, the use of the expression "privilege" in this context does not seem to be happy, because the law is that no privilege attaches to the position of the journalist.⁹ The range of their assertions, their criticisms, their comments or their publication are as wide as and no wider than, that of any other citizen.¹⁰

6. *Munshi Ram v. Mela Ram*, A.I.R. 1936 Lah. 23-26.

7. *Vishan Sarup v. Nardeo Shastri*, A.I.R. 1965 All. 439, 441, para 16.

8. For example see, *Sarajmal v. B.G. Horrigan*, A.I.R. 1917 Bom. 62.

9. *Gaur Chandra v. Public Prosecutor*, A.I.R. 1962 Orissa 197, 202, para 26.

10. *Ibid.*