

# Legislative Privileges and the Freedom of the Press

## I

### The Concept of the Freedom of the Press

In a democracy, freedom of the press is regarded as extremely vital and crucial. A free press is not only a necessary adjunct of democracy; it is the sine qua non for the proper functioning of a democratic society. The Supreme Court in India has laid stress on the Freedom of the Press in the following words:

"Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Never has criticism been more necessary than today when the weapons of propaganda are so strong and so subtle".<sup>1</sup>

Speaking generally, freedom of the press would mean the freedom <sup>of</sup> ~~to~~ newspapers to print and publish news and views without any governmental

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1. Bennett Coleman & Co. v. Union of India, A.I.R. 1973 S.C. 106.

interference or restriction. An important function of the free press is to inform the people on public issues. The freedom of the press rests on the assumption that the widest possible dissemination of knowledge and information is essential to the welfare of the people.

In the U.S.A., the First Amendment of the Constitution specifically protects a free press. It says: "Congress shall make no law ... abridging the freedom of speech or of the Press". The prime purpose of the free press guarantee in the U.S.A. is regarded as creating a fourth institution outside the government as an additional check on the three official branches viz., executive legislative and the judiciary.<sup>2</sup>

In India, there is no specific or separate guarantee in the Constitution in favour of the freedom of the press. Freedom of the press is a part of <sup>and implicit in</sup> the freedom of speech and expression guaranteed by Art. 19(1)(a).<sup>3</sup> Thus, in India, freedom of the press is

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2. New York Times v. Sullivan, 376 U.S. 254. A number of state Constitutions as well separately and specifically mention liberty of the press in addition to freedom of speech.

3. Art. 19(1)(a) guarantees to the citizens of India the right to freedom of speech and expression. Under Art.19(2), reasonable

regarded as a "species of which freedom of expression is a genus".<sup>4</sup> Freedom of the press being only a right flowing from the freedom of speech, it stands on no higher footing than the freedom of speech of a citizen, and the press enjoys no privilege as such distinct from the freedom of the citizen. As Art.19(1)(a) applies only to citizens, a non-citizen running a newspaper cannot seek the guarantee of Art. 19(1)(a). In a number of cases since the inauguration of the Constitution, the Supreme Court has spelt out from Art. 19(1)(a) various norms concerning the freedom of the press. It is not necessary for the purposes of this paper to go into this question in any great detail. It is sufficient to mention here just a few relevant norms derived by the courts from Art.19(1)(a) pertaining to the freedom of the press. Thus, imposition of pre-censorship on a newspaper,<sup>5</sup> or prohibiting a newspaper from publishing its own views, or those of its corres-

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4. Sakal Papers v. Union of India, A.I.R.-1962 378-385.

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restrictions can be imposed on this right in the interest of the sovereignty of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. For detailed comments on this Article see Jain, Indian Constitutional Law, 446-457.

4. Sakal Papers v. Union of India, A.I.R. 1962 SC 305.

5. Brij Bhushan v. State of Delhi, A.I.R.1950 S.C.129.

ponents, on a burning topic of the day,<sup>6</sup> or imposing a ban upon entry and circulation of a journal within a state<sup>7</sup> - all such restrictions are regarded as infringement of Art. 19(1)(a) and these restrictions can be held to be valid if justified under Art.19(2). The Supreme Court has been quite sensitive on the issue of the Freedom of the Press and has adequately protected it from undue encroachment by pressing into service Art.19(1)(a) read with Art.19(2). Thus, for example, in the Sakal Papers case,<sup>8</sup> the court invalidated S. 3 of the Newspaper (Price and Page) Act, 1956 as well as the Daily Newspaper (Price and Page) Order, 1960. The effect of the said Act and the said order was to regulate the number of pages according to the price charged, to prescribe the number of supplements

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6. Virendra v. State of Punjab, A.I.R. 1957 S.C. 896.
7. Romesh Thapar v. State of Madras, A.I.R. 1960 S.C. 124; Olivier v. Buttigieg, [1962] 2 All E.R. 459.
8. Sakal Papers v. Union of India, A.I.R. 1962 S.C. 305.

to be published and to prohibit the publication and sale of newspapers in contravention of any order made under section 3 of the said Act. This Act also provided for regulating by an order under S. 3 the size and area of advertising matter in relation to other matters contained in a newspaper. The Supreme Court ruled that the purpose of the Act and the order was to reduce circulation of some newspapers by making their price unattractively high for their readers. If the area for advertisements was reduced then the revenue of newspapers would also be reduced and the newspapers would then be forced to raise their prices and this <sup>would</sup> ~~was~~ bound to affect circulation. This would infringe Art. 19(1)(a). In the Bennett Coleman case, the newsprint policy of 1972-73 was invalidated as violative of Arts. 19(1)(a) and 14. The court emphasized that the newspapers must be left free to determine their pages, their circulation and the new editions which they can bring out within the newsprint quota restraint on number of pages, or on circulation or on advertisements would violate Art. 19(1)(a). While the government could evolve a policy of allotting newsprint to the newspapers on a fair and equitable basis, the government

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9. Bennett Coleman & Co. v. Union of India, A.I.R. 1973 S.C. 106.

could not in the garb of regulating distribution of newsprint, control the growth and circulation of newspapers.

However, as the Supreme Court has emphasized in M.S.M. Sharma v. S.K. Sinha:<sup>10</sup> "Further, being only a right flowing from the freedom of speech and expression, the liberty of the Press in India stands on no higher footing than the freedom of speech and expression of a citizen and that no privilege attaches to the Press as such, that is to say, as distinct from the freedom of the citizen". Thus, the press cannot claim immunity from general tax laws or industrial laws.<sup>10a</sup> The government can appoint a committee to enquire into the economics of the newspaper industry.<sup>10b</sup>

## II

### The Concept of Legislative Privileges

Privileges are attached to a House of a legislature collectively, or to the members of a House individually, with a view to enabling the House to act

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10. A.I.R. 1959 S.C. 402.

10a. Express Newspapers v. Union of India, A.I.R. 1958 S.C. 578

10b. The Statesman v. Fact Finding Committee, A.I.R. 1975, Cal. 14.