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Freedom of Media in India: A Weapon to Kill Enemies or Protection Guard for Public-The Two Sides

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1.0. Freedom of Press: An Analytical Overview:

"The press [is] the only tocsin of a nation. [When it] is completely silenced... all means of a general effort [are] taken away." --Thomas Jefferson

"Right to Freedom of Speech and Expression" is a fundamental right of the citizens of India. This is mentioned in Part III of the Constitution of India - Article 19(1).

This Article is so wide in scope that Freedom of the Press is included in Freedom of Speech and Expression. It includes the right of free propagation and free circulation without any previous restraint on publication.

The freedom of speech and expression does not give right to every possible use of language. It would lead to disorder and anarchy.

The Article 19(2) of the Constitution imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India.

The security of the state, friendly relations with foreign states, public order, decency of morality or in relation to contempt of court, defamation or incitement to an offense. Whenever, emergency is declared in a country, these rights remain suspended.

All our governments have preferred press freedom to be linked with social and fundamental responsibilities and the obligation to report objectively.

Taking into consideration the constraints of the Indian model of democracy and socialism and the objectives laid in the Preamble of the Constitution or its Directive Principles of the State Policy, the second Press Commission has advocated that the press should be neither an adversary nor an ally of the Government, but a constructive critic.

The press is a great social asset, for it has to serve the entire community of varying minds with its raw material for thought, as also to act as a watch-dog by exercising its role to warn and curb forces of repression, corruption and divisiveness.

The freedom of press is the mother of all other freedoms. This freedom can be used to create a brave new world or to bring about universal catastrophe. (Malhan : 110).

There are media laws which curtail press freedom and the right of the citizen to information, as well as right to freedom of speech and expression, besides the restrictions imposed by constitution. Press freedom can be weighed from two sides.

1. The external and internal pressures such as interference by political and business leaders, pressure from advertisers, physical attacks on the press people, and so on.
2. Various media laws, such as the Indian Penal Code, 1860, Indian Telegraph Act, 1885, The Copy Right Act, 1957, impose restrictions on the exercise of the right of freedom of speech and expression by the press.

The second Press Commission has suggested certain amendments in the existing press laws to expand the scope of press freedom and at the same time to project the right to privacy of the individual and prevent newspapers from indulging into free style of character assassination.

Freedom of the press is the freedom of communication & expression through vehicles including various electronic media & published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other protection.¹

The Indian Press has a long history right from the times of British rule in the country. The British Government enacted a number of legislations to control the press, like the Indian Press Act, 1910, then in 1931-32 the Indian Press (Emergency) Act etc. During the Second World War (1939-45), the executive exercised exhaustive powers under the Defence of India Act & enforced censorship on press. At the same time the publication of all news relating to the Congress activities declared illegal.

In the Post-Constitutional Era, there is a change in the outlook. The Constitution of India in Article 19(1) (a) lays down that “All citizens shall have the right, to freedom of speech & expression.” Unlike, the U.S. Constitution, the Indian Constitution does not expressly provide freedom of press. However, it is now well settled that the words “speech & expression” in Article 19(1) (a) includes freedom of press also.² The freedom of press means freedom from interference from authority which would have the effect of interference with the content & circulation of newspapers.³ The Article 19(1) (a) of the Constitution is subject to certain restrictions laid down in Article 19(2) of the Constitution.

1.1.Position in U.S.A

Freedom of Press is also recognized by the American Constitution. Initially, the freedom of press was not expressly provided in the American Constitution. The freedom of press was inserted only after the First Amendment of the American Constitution. The Amendment prohibited the U.S. Congress from making laws which infringes the freedom of press. The First Amendment of the U.S. Constitution was influenced by the Virginian Declaration of Rights.

1.2.Position in U.K.

The Parliament is sovereign in the United Kingdom. Unlike, the U.S., India & other states the subjects of U.K. does not possess any guaranteed rights. The freedom of press is also well recognized in the U.K. The citizens have full liberty to do anything up to the extent that it does not violate the rule of common law or statute law.

1.3.Status of Freedom of Press in India

In *Romesh Thapar v/s State of Madras*,⁴ Patanjali Shastri, CJ, observed that “Freedom of speech & of the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.” In this case,⁵ entry and circulation of the English journal “Cross Road”, printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as “without liberty of circulation, publication would be of little value”.

The Hon’ble Supreme Court observed in *Union of India v/s Association for Democratic Reforms*⁶, “One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions”. In *Indian Express Newspapers v/s Union of India*,⁷ it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are: 1. freedom of access to all sources of information, 8 2. Freedom of publication, and 3. Freedom of circulation.⁵

There are many instances when the freedom of press has been suppressed by the legislature. In *Sakal Papers v/s Union of India*,⁹ the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2). Similarly, in *Bennett Coleman and Co. v/s Union of India*,¹⁰ the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Court holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court also rejected the plea of the Government that it would help small newspapers to grow.

1.4.Restrictions on Freedom of Press in India

The freedom of press comes within the ambit of freedom of speech & expression. In a

democracy, freedom of press is highly essential as it (the press) acts as a watchdog on the three organs of a democracy viz. the legislature, the executive & the judiciary. But, the freedom of press is not absolute in nature. It is subject to certain restrictions which are mentioned in Article 19(2) of the Constitution. The following are the grounds of restrictions laid down in Article 19(2) :-

- 1) Sovereignty & Integrity of India
- 2) Security of the State
- 3) Friendly relations with Foreign States
- 4) Public Order
- 5) Decency or Morality
- 6) Contempt of Court

The grounds of 'Public Order' & 'Friendly relations with Foreign States' was added by the Constitution (First Amendment) Act, 1951. While the ground of 'Sovereignty & Integrity of India' was added by the Constitution (Sixteenth Amendment) Act, 1963.

1.5.Sedition

Section 124A of the Indian Penal Code deals with the offence of sedition. It lays down that, "Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine". But Explanation 3 says "Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section". In *Devi Saran v/s State* AIR 1954 Pat 254, the Court has held that Section 124A imposes reasonable restriction on the interest of public order & therefore it is protected under Article 19 (2) of the Constitution.

1.6.Current Scenario of Press & Its Achievements

As discussed earlier, press is regarded as one of the pillars of a democracy as it acts as a watchdog of the three organs of democracy. Though, freedom of speech & expression (including of press) is enjoyed by the citizens but there are many instances where the press has to face difficulties as well. In the recent past, in the Tehelka Case, the portal Tehelka.com was forced to shut down completely & its journalists were continuously harassed as the journalists exposed the 'scam' in the defence ministry involving Ex-Defence Personnel & Central Government Ministers. There are many instances where journalists were threatened & even assaulted at times.

Despite of these difficulties the press has achieved a lot of success in the recent past. In Jessica Lal's case, Manu Sharma, son of a Haryana minister, killed Jessica on April 29, 1999, because she refused to serve him liquor in the restaurant where she was working. The case was closed and all the accused were freed due to lack of evidences, but finally, the case was reopened after media and public outcry, which led to Sharma's conviction.

In Priyadarshini Mattoo's Case, Santosh Kumar, son of an IPS officer raped and killed his colleague, Priyadarshini Mattoo, a law student in 1996, after she refused his proposal. Ailing and aged father of Priyadarshini got judgment in October 2006, after a long run trial. The Delhi High Court rebuked lower courts and authority under investigation for acquittal of accused. The media played a significant role in this case as well. Similarly, in Nitish Katara's case the media played an important role. In Aarushi Talwar's murder case, media played an important part by highlighting the loopholes in the case owing to which the police was forced to take some action. Aarushi's father is the prime suspect in this case. Recently, in Ruchika's Case, Ruchika Girhotra, a 14-year-old tennis player, was molested by then Haryana police IG S.P.S. Rathore in Panchkula in 1990. Three years later, Ruchika killed herself, which her friend and case witness Aradhana attributes to the harassment of Ruchika and her family by those in power. Nineteen years later, Rathore walks away with six months of rigorous imprisonment and a 1000-rupee fine, reportedly due to his old age and the "prolonged trial". This led to public outrage & media played a significant role in it. Later on the Government of India asked the Central Bureau of Investigation to re-investigate the case & the police medals awarded to S.P.S. Rathore was also stripped. A case of Abetment of Suicide under Section 306 of the IPC was also filed against S.P.S. Rathore. In 2005 news channel Aaj-Tak carried out Operation Duryodhana which revealed 11 MP's of the Lok Sabha accepting cash for asking question in the Lok Sabha. Later on an Investigation Committee was set up headed by Senior Congress MP Pawan Kumar Bansal. All the 11 MP's were found guilty & were sacked from the Lok Sabha.

1.7. Press needs to be Responsible

Though, the press has played significant roles for public welfare but at times it act irresponsibly. For instance the electronic media hyped the Abhi-Ash wedding in such a way that other important news were neglected. In Prof. Sabharwal's case, when Prof. Sabharwal was killed by ABVP activists, there were a number of news channels & newspaper correspondent were present & they had evidence of the murder but the media acted irresponsibly & the police called it an 'Open & Shut Case'. Recently, when Mumbai was under terror threat in 26/11 the media acted irresponsibly by telecasting live the long sixty hour Operation Black Tornado by the security forces to combat the attack at The Taj Mahal Palace Hotel & Nariman House. It included live feed of air dropping NSG Commandoes on the rooftop of Nariman House. At times news channel covers news such as 'Bollywood Gossips' & 'Page 3' etc which has reduced them to a mere 'Entertainment Channel'. There are many important issues which should be covered by the media but unfortunately it does not. In April 2009, Union Home Minister P. Chidambaram was addressing the media at a press conference a journalist threw show at the minister on protest of acquittal of a Congress leader accused of leading Anti-Sikh riots in 1984. The journalist named Jarnal Singh was a reporter of Dainik Jagran, a local newspaper. Later on he apologized to the Union Home minister for his act. This was one of the most condemnable act which showed the ugly side of the press.

2.0. The Declining Status of Press Freedom in India:

India's ranking in a global press freedom index has fallen significantly in the past year, putting it behind countries such as Liberia, Kyrgyzstan, South Sudan and Albania. India

fell to 131 out of 179 on the Press Freedom Index compiled by Reporters Without Borders, from 122 last year.

The index uses 44 different criteria “ranging from censorship of news media to physical attacks on journalists, and the ability of the media to investigate and criticise” and “reflects the degree of freedom that journalists, news media, and netizens enjoy in each country and the efforts made by the authorities to respect and ensure respect for this freedom,” the US organisation said.

On the list, the Arab nations of Syria, Bahrain and Yemen were the biggest fallers, reflecting the crackdowns on the popular uprisings. “Crackdown was the word of the year in 2011. Never has freedom of information been so closely associated with democracy,” said the organisation. “Never have acts of censorship and physical attacks on journalists seemed so numerous.”

The US fell 27 points to 47, as a result of the arrest of journalists covering the Occupy movement, while China fell to 174 because of a stepping up of Internet censorship and increased control of news outlets as a result of local protests. The top position was shared by Finland and Norway, followed jointly by Estonia and Netherlands. Eritrea remained at the bottom position, a position it has held since 2007.

In India, Rwb pointed to the exposure of violence of journalist as a result of the ongoing conflicts in Jammu and Kashmir and Chhattisgarh, as well as intimidation of journalists by mafia groups in the country's biggest cities. “However the authorities were no better,” they warned, pointing to the “dangerous implications” of the Information technology Rules 2011 introduced last year and which requires Internet firms to remove “harassing”, “obscene”, “libellous” and other forms of content or risk prosecution. Foreign journalists were also impacted, with troubles obtaining visas, and pressure to give the country positive coverage, the organisation said.

3.0.Freedom of Press In India in the 21st Century:

Freedom of press in India if overlooked from a surface looks adequate enough, yet as we go deeper into the crux of the issue the broader, and I may say, ugly picture comes into the highlight. Unlike America, India fails to give special privileges to the press. Like ordinary citizens, press also has its freedom of speech and expression under article 19(1)A, which allows the press to print and publish without any restrictions, both news and views; to criticize, to circulate anywhere in India, to print any number of pages and to access public information.

Like all the laws in India, freedom of press is not absolute. The reasonable restrictions under freedom of press are in the interest of society: security and sovereignty, friendly relations, decency and morality, contempt of court. These restrictions though stand on a justifying grounds, a question which arises is who makes sure that these restrictions is imposed under right circumstances.

As seen in the recent case in Tamil Nadu where six journalists were sentenced to 15 days simple imprisonment for alleged breach of privilege and contempt by the state Legislative Assembly. Another incident which brings the freedom of press under radar is when Alex Perry, a foreign journalist published an article about Prime Minister Vajpayee's fitness, thereby questioning his ability to lead the nation, considerably angered the ruling party at that time.

Another case which questions the freedom of press is the recent blogger case, where Chyetanya Kunte was sent a legal notice by NDTV for suggesting that Barkha Dutta's reports of the Mumbai siege might have endangered lives. This incident got the public to question the freedom of press and there were demonstrations of anger with howls of protest about NDTV's bullying tactics, and defenses of a blogger's right to free speech.

Mr. Shah Jahan, Bureau chief of Asianet News, said that freedom of press is adequate in most of the issues. In corporate cases, the coverage of news becomes a major problem, he says. Even before the 2G scam hit the news channel, there was bits and pieces of news everywhere within all news channels about the scandal, yet no one could come out in open and publish the news due to lack of evidence. Only when the documents were made public by wiki, the news channels were able to confront those involved in it. Thus, one of the major threat which journalist today face, is defamation due to lack of evidence.

Another point to note is that freedom of press is often in the putty of those in power. In India, money and power rules everything, including media. Media, journalist to be more precise is often affiliated towards particular political party due to which news provided by them is biased. The case in point is Times of India and Times Now, which openly claims herself to be left aligned, due to which news is influential towards the congress party. Recently, with the Baba Ramdev case, research shows that Times Now gave a negative report on the midnight crises, purposely downplaying his motives behind the fast and thus creating a furor over the entire issue. They played with the power dynamics clearly in the favour of ruling party, making Baba Ramdev nothing less than a criminal punished for fighting against corruption.

Another factor which risks the freedom of press in India is the ownership of media organizations. Very often editors and journalists cannot enjoy adequate freedom of collecting and disseminating facts and offering comments as they are under the pressure of the capitalist owners. Also, news which is presented in the media has to be in accordance to advertisements and the sponsor's. This was seen in the case of an IBM employer who was forced to resign when he 'commented' on the working of IIPM. This led to a fury within the IIPM administration and they threatened the IBM that they will sever all the future ties with the IBM and also cancel the order of the computers. Due to this, the employer was pressurized to resign least it affect the company and cause a huge loss in capital within the company. Unless this whole structure of ownership and control in the newspaper industry, and also the manner of the economic management of the Press, is changed, the Press cannot be really free.

Jayashree Nandi, of Times of India says that there hasn't been much restrictions on the freedom of press since the emergency in 1984. In comparison to countries in the Middle East and in South East Asia which have strict government regulation on the content the press puts out, India stands in a good position. "Here we are fortunate not to have any such inhibitions or restrictions", she says. The only precaution which is needed to be taken by the journalist, to avoid reasonable restrictions is that they need to be very careful about media ethics and laws and not get involved in defamation cases. Thus, they should quote, provide proof in the form of documents or use RTI to expose issues in the government.

Seetha Lakshmi, Editor of Times of India, feels that the freedom of press is curbed mostly pertaining to religious issues. Journalists are often questioned, when news regarding religious sentiments is published; as there is always a chance that the 'sovereignty' of the country might be threatened as one or more religious groups might feel 'upset' over the comment made by the reporter often leading to riots.

Mr. Anil (job information withheld), feels that freedom of press is frequently misused by the media organizations, and they use the license given to them to write anything without verifying the facts. This trend is seen mostly in the broadcast industry, he feels. In order to lead the race for 'breaking news', 24/7 news channels publish reports without cross checking their leads and sources. Also, in order to produce something different, news is often a product and a reality.

Freedom of press requires checking, and though there is a need for special recognition of press within the constitution, I feel that in order to keep a check on media organizations is by reducing the growing number of 24 hour news channel. 24 news channels is a commercial product which reduces the credibility of news and also often dwell in sensationalism due to which the essence of news is lost. The freedom of press needs to make special consensus with regard to New Media, especially blogs. Also, the Supreme Court must deal strictly with regard to political affiliations and media organizations, as this puts the function of media as the watch dog of the country into scrutiny.

On the whole, Reasonable restrictions imposed by the constitution hold ground but there are a lot of loop holes within these restrictions which needs to be answered by the court. Clear remarks should be given to the journalist about their excise of freedom at the same time some clause should be present which checks the usage of freedom of the press.

4.0.Threat to Press Freedom in India:

The threat to freedom of the press in this country or for that matter in all of Asia hangs like the proverbial sword of Damocles. In India, no political party can boast of respecting the freedom of the press. There have been numerous instances of newspaper offices being vandalised and editors and journalists being roughed up by political flunkies for publishing articles that were critical of their leaders whose credentials were suspect, to say the least. This sorry state of affairs has increased in recent years.

Not long ago, an article published by Alex Perry, a foreign journalist, on Prime Minister Vajpayee's fitness, thereby questioning his ability to lead the nation, considerably angered the ruling party.

The press is considered the watchdog of democracy. Sadly, there is scant regard for this truism in a country which is, ironically, the world's largest democracy.

Self-discipline, which is so crucial for the survival of any democracy, is fast disappearing from the Indian polity. Tolerance levels are declining and arrogance is all-pervasive. More often than not political power is used to further the cause of the power-hungry rather than to serve the masses. When obedience to the enforceable is itself neglected, obedience to the unenforceable is out of the question. Even after more than five decades of Independence, democracy in India has still not matured and the quality of public life is declining alarmingly.

Today, political leaders are voted to power because of their oratory and manipulative skills and not for their wisdom and virtue. We cannot expect better governance if we continue to elect people with criminal track records and malafide intentions. Fortunately, the Indian citizen can depend on a strong judiciary, which has so often come to the rescue.

The press, on its part, should bear in mind that freedom of the press does not mean a license to write anything. This freedom is precious and it has to be used judiciously. When this freedom is misused, public respect for this profession will diminish. The press has to guard against this.

5.0.The Limits of Press Freedom in J&K:Newspapers in J&K are working under twin pressures

The Press wields immense power in a democratic society. Dickens called the Press "the mighty engine". So great is its influence that some have called it the Fourth Estate. Napoleon used to say— "Your hostile newspapers are more to be feared than a thousand bayonets." For, the press forms opinions, shapes movements and controls policies through well-informed criticism.

A free press is the symbol of a free people. An independent, well-informed press is a powerful check on arbitrary governments and irresponsible administrators. For newspapers are agents of the public, which bring to the notice of the people acts of injustice or oppression, or mal-administration that would otherwise have remained hidden away from public knowledge. They augur misgovernment at a distance and sniff the approach of tyranny in every tainted breeze' (Burke). They exercise a constant vigilance on the rulers, which is salutary for all.

Nowadays it is difficult for the press to be free. Either a newspaper is controlled by some financial magnates entirely or it is a mouthpiece of a political party or it is under the thumb of the government and in that case its importance is reduced and independence compromised.

6.0.Constitutional aspect of freedom of press:

The Indian Constitution, while not mentioning the word "press", provides for "the Right to Freedom of Speech and Expression" (Article 19(1) a). However this right is subject to restrictions under sub clause (2), whereby this freedom can be restricted for reasons of

"sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt, court, defamation, or incitement to an offense".

Laws such as the Official Secrets Act, Armed Forces Special Powers Act (AFSPA), Disturbed Areas Act (DDA) and Prevention of Terrorist Activities Act (PoTA) have been used to limit press freedom. Under PoTA, a person could be detained for up to six months for being in contact with a terrorist or terrorist group. PoTA was repealed in 2006, but the Official Secrets Act, AFSPA, DDA continue to be an impediment towards the freedom of press in some parts of India especially Jammu & Kashmir. Pertinent to mention here that Right to Information Act (RTI) has an overriding effect over Official Secrets Act of 1923.

For the first half-century of India's independence, media control by the state was the major constraint on freedom of press in India. Indira Gandhi famously stated in 1975 that All India Radio is "a Government organ, it is going to remain a Government organ. With the liberalization starting in the 1990s, private control of media has burgeoned, leading to increasing independence and greater scrutiny of government.

The Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and impart information and ideas through any media regardless of frontiers"

7.0. Freedom of press in Jammu & Kashmir

The real freedom of the press can exist only where a free people can function freely as in true democracy. It may be asked, why do I say there is no freedom of the press in J&K? The reason is that this part of the world has been in a state of conflict, chaos and confusion since last more than six decades and the press has not at all been so free which it should have been. The unnecessary interference of various state and non state actors, different so called agencies has hampered the growth of the fourth estate in Jammu & Kashmir. Not only the press but other institutions as well could not grow here due to this conflict.

Twenty-seven journalists have been confirmed as being killed for their work in India since 1992, according to Committee to Protect Journalists (CPJ) research, and 10 of those deaths took place in Jammu and Kashmir, a higher concentration than any other state. India ranked eighth on CPJ's Impunity Index in 2010. That index lists countries where journalists are killed regularly and governments fail to investigate. It calculates unsolved journalist murders as a percentage of each country's population. It is impressed upon the J&K Government to ensure protection of journalists. The Kashmir based press has been literally sandwiched. If it writes what people demand the DAVP advertisements are snapped by the Ministry of Information & Broadcasting or even the local Information Department and if it writes in favour of the Government the press faces wrath of the people.

The working journalists in J&K need to undergo various capacity building programmes on the issues related to various aspects of journalism but unfortunately no such centers have been provided by the Government or any Non Government Organization (NGO) where such programmes could be undertaken. It is a matter of serious concern that we do not have even a press club in Srinagar where such type of activities could be held. The Chief Minister Omar Abdullah had assured valley journalists soon after assuming to

power in early 2009 about providing press club facility in Srinagar but till date there is no progress on this matter and remains only a dream for the journalists. The continuous ban on Srinagar based local cable news network by the Government also raises a big question on the freedom of press in J&K.

8.0.Freedom of Expression and The Right to Know:

Freedom of expression is enshrined in the Constitution of India as a fundamental right under Part III of the Constitution. Nevertheless, there has been a hierarchy of values and a gradation to these rights. The right to property, for instance is considered to be the weakest of these rights and is, at present, only a legal right- not a fundamental right. Even though freedom of expression is a fundamental right, with the passage of time, through several amendments a number of restrictions have been placed on the exercise of this right which have narrowed down their scope considerably.

Intimately associated with the freedom of expression is the idea of Human Rights - the basic right of every human being, irrespective of colour, race, gender or status, to live with dignity which means the right to food, clothing, shelter,

primary health and education. It also means the right to practice (or not to) religion and the right to dissent. In recent years in India, dissenters have been persecuted and threatened, and in a few cases even physically eliminated. Dissenters who questioned beliefs, especially what were considered accepted practices, were the ones who faced the ire of the intolerant.

As in the case of the Hindus. In Hinduism there is flexibility at the philosophical level but not at the sociological level where one confronts the caste system. Even today, the caste system is so rigid that many who break caste rules are punished by what are known as the caste or *jaati* panchayats. At the religious level, we witness the re-emergence of the cultural police who have no hesitation in issuing *fatwas* against dissenters.

Despite freedom of expression being a fundamental right its unfettered exercise was scuttled even in the days of Jawaharlal Nehru. Even then there was always some form of censorship for the benefit of the rulers. For example, Mr. A. D. Gorwala's column in *The Times of India* written under the pseudonym "Vivek" was discontinued at Nehru's insistence for it was too critical of him. And no other newspaper was ready to publish Mr. Gorwala's column. This compelled Mr. Gorwala to start his own small weekly which he named Opinion to publicise his views and his right to free expression. The situation got worse over the years and during the (so-called) Emergency of 1975-1977 these freedoms were suspended.

A new phenomenon that has developed menacing proportions in recent years is what can be described as cultural policing not only by the party in power but by communal or non-secular parties who decide what is good or bad for our culture. Fortunately, the judiciary has been a source of protection of freedom of expression. In India, there has been only one case where the Supreme Court banned a book on the ground of obscenity and that was D. H. Lawrence's *Lady Chatterly's Lover*. In most cases pornographic books and movies, though they attract legal action under obscenity laws,

generally die a natural death. A case in point is the blue films that were screened at a couple of theatres in Bombay. People got tired and ultimately the theatre had to stop screening such films not because of any legal or police action but simply because of the operation of the law of demand and supply.

The hurting of religious sensibilities is something that every group alleges when someone says or writes on a religious theme that is not to the liking of the religious group concerned. Unfortunately, those who claim their religious freedom has been affected generally take to the streets. This stifles freedom of expression. On the ground of protecting religious susceptibilities banning of books has become a passion with India's rulers of all hues. Books are banned without reading them, like the *Satanic Verses*. In fact, India has the dubious distinction of banning this book even before the Islamic countries did so. Pradip Dalvi's play *Godse* was banned on the ground that it hurt the image of Mahatma Gandhi and justified his assassination. Such censorship is detrimental to the healthy growth of civil society. Even the Mahatma would himself have opposed the ban on the *Godse* play. The destruction of works of art (the most recent case being the paintings of M. F. Hussain) is also a clear sign of growing intolerance. In a democracy there are civilised ways of expressing one's dissent.

On the other hand, the sensible way in which certain Dalit writers like Namdeo Dhasal reacted to Mr. Arun Shourie's book on B. R. Ambedkar is a salutary example of democratic dissent. They opposed the banning of the book as it would go against their earlier stand when they opposed a demand made by caste Hindus for a ban on Dr. B. R. Ambedkar's *Riddles of Hinduism*. *Riddles of Hinduism* is a chapter in the Complete Works of Dr. Ambedkar published by the Government of Maharashtra. Liberals need to applaud the stand of the Dalit writers for their mature response to a provocative book by Mr. Arun Shourie.

The audio-visual media, especially television and the cinema are showing a growing number of films depicting violence

some of which are extremely gory. Though it is not easy to establish a direct correlation between cinema, TV viewing and violence, there can be no denying that such depiction

have had ill effects on the immature, adolescent, the unemployed or school dropouts. This has, for example, been responsible according to some for the "Shahrukh Khan phenomeno" where disappointed lovers kill girls who do not reciprocate their love, leaving an already marginalised group like women in a more dangerous public space. A film hero doing such things gets a sort of legitimacy among some sections of the public.

The writing of history books has been another major problem where the group, for the time being in power, seeks to inject its views, like under Congress rule, the Nehru-Gandhi dynasty sought to marginalise all other leaders including the Mahatma's role in the freedom movement. Even in the regional writings of history, the local heroes are exaggerated to look bigger and greater than they really were. This has led to the creation of sacred cows who cannot be touched. There is therefore need to draw the line between learned research and licence.

The recent spurt of celebrating festivals in public, disrupting traffic by erecting *pandals* on public thoroughfares has intruded into the freedom of expression of citizens who do not wish to participate in such festivals. This has led to the hardship of ordinary citizens who use these roads. But the politicisation of these festivals has led to greater problems. Initially it started, more as a weapon during the freedom movement, with a 10-day *Ganpati* festival. This festival was largely confined to Maharashtra. But in recent years it has spread to other cities and towns outside Maharashtra. *Durga Puja*, a 10-day festival in Bengal, equivalent of the *Ganpati* festival in Maharashtra is now assuming the same importance and duration in Bombay. One would have understood it if this arose from religious fervour. But there is increasing evidence that these festivals are promoted by the politically powerful. For almost a month each year public thoroughfares are at their disposal, not to speak of a variety of gangsters and

thugs who patronise these festivals who spend crores of rupees in building plaster of paris and thermocole replicas of well-known monuments and temples. The right to dissent here is not accepted and there is fear of physical retaliation for those who dare to protest; contributions are forced, film songs which are far removed from prayer not only rob the occasion of its solemnity but the loud music goes on round the clock taking the decibel level to an unbearable pitch. Thus the right of dissent is swept away by giving in to a false illusion of a majority that does not exist.

The national obsession with secrecy to hide uncomfortable facts is a blot on our democracy. In India this idea of the right to know is closely connected to the freedom of the Press which calls itself the "fourth estate". Till very recently the electronic media was controlled by the state and the newspapers were considered the only free agents. But are they really free? Are they not controlled by caste interests, joint families or joint stock companies. It is the print press that has unearthed a lot and has played the role of the

opposition. But they do not have any more rights than ordinary citizens. There have been instances when this right has been misused as a weapon to intimidate the famous where it has degraded to licence and mudslinging. This is no freedom, for freedom entails responsibility which has to be exercised with self restraint and for a social purpose.

At the same time, this has led to public offices and institutions becoming more transparent and accountable to the public whose money they spend. Citizens groups in Rajasthan have organised protest against the reluctance of officials to part with information and have insisted that they have a right to know how much has been spent on building a bridge, for example. In fact, audit reports once placed on the floor of the House are public documents, but one sees a desperate bureaucracy trying to keep them away from public scrutiny. To begin with, at least all economic documents can be made public for there are no secrets in it that affect state security.

With the explosion of technology and the beginning of the

information age, the concept of national sovereignty will soon become redundant because no country can control the flow of information on the internet.

Then there is the Right to Privacy which should be harmoniously blended with the Right to Know. How justified was the media in prying into the private lives of Princess Diana and President Clinton? Wasn't the Starr Report a waste of public money where the private sexual exploits of two consenting adults disturbed the fabric of American society and almost wrecked the Presidency.

Freedom of Expression constitutes one of the central principles of liberalism. The Indian Constitution - largely liberal in spirit - recognised this inasmuch as "liberty of thought, expression, belief, faith and worship" figures in its admirable preamble.

Freedom of Expression is also recognised universally as a Human Right - a basic right of every human being, irrespective of colour, race, gender or status.

Since the promulgation of the Indian Constitution, the Right to Freedom of Expression has been under siege, both by the state and certain groups in our society. The First Amendment narrowed the ambit of this freedom. In the last fifty years, this freedom - which should have evolved into a larger one - has been more narrowly defined to reduce spaces where freedom can be exercised.

Further, in the last few years, greater, and perhaps even dangerous death threats have emanated from extreme groups or parties which have become self-appointed guardians of

"morality" in the country. It is they who want to enforce what people can or cannot read, which film or play to be censored or which performer can or cannot appear on stage; or what an artist can portray.

In a free society which boasts of democracy, it is the Constitution that should be the supreme law, not *fatwas* or edicts issued by cultural vigilantes.

The destruction of works of art or the banning or burning of books is a clear sign of growing intolerance. In a liberal democratic state, even while such acts should be curbed with an iron hand, there is need to educate people on forms of protest that are consonant with a liberal society.

There is a genuine concern, with the growing trend in films made for the cinema and TV to depict violence and scenes of rape in a revolting manner. But even here, it is not for the State to interfere. It is the media itself which needs to institute self-regulatory mechanism to check this undesirable trend perhaps on the lines of the Press Council.

Threats to freedom of expression appear not only against the media or against widely known authors or artists. There are also growing threats to academic freedom and this is evident particularly in the writing of history. There is an increasing trend encouraged and promoted by fundamentalist and ideologically motivated groups to "invent" pasts which glorify exclusively and exaggeratedly their own specific traditions. This abuse of scholarship and distortion of history needs to be resisted.

Freedom of the press - a bastion of a liberal and democratic society - too has been under constant threats and pressures, not only from the State, but from extremists who do not hesitate even to use violence to silence journalists who do not share their beliefs. There is need to develop appropriate measures to protect the privacy of the individual particularly in the context of the intrusive powers of modern communications technology.

There is need, further, to inquire into and modify laws relating to the privileges of legislators which have often tended to curb the freedom of the press to report and inform their readers.

In addition, the Courts too have not been always helpful, as they could be, in safeguarding the rights of the press. The frequent use of "stay orders" have tended to limit the freedom

of the press to inform their readers. The Right to Know is a corollary to the Right to free expression. In a liberal state, citizens can exercise their Rights meaningfully only if they

are also adequately informed. An informed citizenry is a pre-condition of responsible citizenship.

The Right to Know, however, has acquired significance and relevance in our society, only recently. It is not unsurprising for governments - even the democratically elected ones - to hide uncomfortable facts from the people. The need to safeguard the country's security interests is often the excuse advanced to withhold information. Under the blanket term "state security", numerous acts of omission and commission are hidden from public scrutiny.

Liberals should support any legislation which seeks to empower citizens with the Right to Know, particularly in the areas where large financial outlays have been made. In a liberal society, acts of governments should be both transparent and accountable.