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THE
PRESS AND DEMOCRACY

24 OCT 1957

MADRAS

BY

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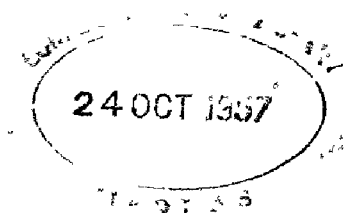
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To
MY WIFE
AND
TO OUR DAUGHTER, TAPATI,
AND TO OUR SON TAPAN



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FOREWORD

Dr. Sen has conferred a benefit upon all those interested in the philosophy of free government and a free press by the nature and scope of his discussion. British, Indian, and American readers will be instructed by his use of materials from all three countries. But his work has wider applications: all nations that are striving to become democratic will have much to learn from Dr. Sen's elucidation of the principles of democracy and of the laws and practices affecting the press that flow from these principles. Dr Sen's work is important because it is firmly grounded in principle.

It is at the same time set in the midst of the contemporary world. An effective Constitution is a living thing, and Dr. Sen's analysis of the Constitution of India, which must be of enormous interest to all students of government, will, since it appears in the infancy of that document, undoubtedly influence its development. British readers will be enlightened by Dr. Sen's description of a Constitution that is in many respects British, but that is written. Americans will have much to learn from a study of a Constitution that is written in much greater detail than their own and that rejects one of the chief constitutional doctrines with which they are familiar, the principle of due process. Every reader will be struck by the new problems that both the press and the government face in India and by Dr. Sen's suggestions with regard to the ways in which they should be solved.

The dilemma is everywhere the same, though it manifests in diverse forms: [given the will to have a democratic government, the people must be informed and enlightened. The agencies of enlightenment must be free and independent. Yet the government is responsible for the maintenance of the state, and the press may dedicate itself to misinformation and confusion. Where there is no competition, and there may be little when costs become very high, the people must buy whatever they are offered; the defense can no longer be made that the owners of the press must give the people what they want. The people then have no choice. Nor is competition any guarantee that quality will be maintained. Boston, Massachusetts, has six newspapers, as compared with Louisville, Kentucky, which has two owned by one family. There is no doubt that the task of enlightenment is better performed in Louisville than in Boston.

Nobody wants government control of newspapers. To the extent to which the government controls the press, to that extent the purpose of the freedom of the press is defeated. But if competition is not the answer, what is? The British and Swedish Press Councils may have had some effect, but it does not seem that they can be regarded as of much significance. They have spoken sternly on trivial matters. A statutory council has objectionable characteristics, which Dr. Sen has pointed out.

It may be that a private, voluntary, continuing commission composed of eminent persons, including representatives of the press, like that recommended by the American Commission on the Freedom of the Press, would be a hopeful experiment. The press in Britain and America does not criticize itself. It reacts neurotically from criticism from others. But it is the only uncriticized institution in society. It sees to it that everybody and everything else is criticized. Perhaps it will turn out that organized criticism is the only protection against repeated attempts at governmental regulations.

We know, however, that the main thing is understanding, understanding of democracy and of the role of the press in it. The independence of universities, for example, seems to depend not so much on the form of their organization or the source of their funds as on the attitude of the people toward them. In Britain, Holland, and Scandinavia the independence of academic bodies is guaranteed, not by the forms of law, but by a tradition more powerful than law. In the United States, where the people tend to regard all universities as instrumentalities to serve immediate needs, popular pressure has sometimes driven higher education from the path that scholars would have chosen.

Dr. Sen's book is an important contribution to the understanding of the role of the press in a democratic society.

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Robert M. Hutchi.

its risks. But much more risks to society lie in the suppression of open discussion. [Public opinion is to be formed by free discussion; it is not to be moulded by coercion and insinuation. Thus, three things are essential: (a) people have the right to know news about the conduct of Government; (b) they have the right to debate freely, (c) they are entitled to a fair trial, when they are charged with the violation of the laws of the land. Government by representation leads to government by misrepresentation when the Press cannot function freely. The interests of the free Press call for the acceptance of the following political postulates, laid down by the U.S. Supreme Court Judges:

(1) "I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with dangers, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country." (Justice Holmes)

(2) "No danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence." (Justice Brandeis)

(3) "The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free Press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means". (Justice Hughes)

(4) "Unless and until extreme and necessitous circumstances are shown, our aim should be to keep speech unfettered and to allow the processes of law to be invoked only when provocateurs among us move from speech to action." (Justice Douglas)

The Press comprehends every sort of publication which affords a vehicle of information and opinion. The liberty of the Press, in its historic connotation, is a weapon in the defence of freedom and democracy. It generally consists in the right to publish, with impunity, the truth "for good motives and for justifiable ends". This can be achieved if there is "freedom from censorship over what shall be published, exemption from control in advance over the dissemination of ideas by writing or printing". The emphasis is on exemption from previous restraint.

To quote the words of Blackstone, "the liberty of the Press is essential to the nature of a free State, but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every free-man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the Press; but if he published what is improper, mischievous or illegal, he must take the consequence of his own temerity." The censorship of the Press has to be prevented. Not only that. Any act of Government seeking to obstruct free and general discussion of public matters has to be prevented.

The essential rights of people are to be secured against "legislative and executive ambition." The Press has to be exempt not only from previous restraint by the Executive but from legislative restraint also. The liberty of the Press has to be understood in the context of the following secure foundations, viz, (1) the punishment for the abuse of liberty by the Press is essential to the protection of the public; (2) there should be the authority of the courts to punish for contempt when publications directly tend to prevent the proper discharge of judicial functions; (3) representatives of people in legislatures must not be hindered by the Press in the discharge of their parliamentary functions.

The freedom of the Press should be the rule, not the exception. There is the need for an interchange of ideas. The liberty of man to search for truth ought not to be fettered. There is the need for open minds. Hence, free speech and free discussion are the wells of democracy. Mr. Justice Brandeis made the following classic observations:

"To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated."

The following observations of the U.S. Court are to be remembered by advocates of the free Press:

"The right of freedom of speech, of fair comment with an honest purpose in matters of public concern, is on the foot of

pro bono publico, and founded on public policy. Free discussion is the foundation on which free government itself is builded. That lost, all is lost; the two exist or perish together. They mean the same thing. It is only in despotisms that one must speak sub rosa, or in whispers, with bated breath, around the corner, or in the dark on a subject touching the common welfare. It is the brightest jewel in the crown of the law to seek and maintain the golden mean between defamation, on one hand, and a healthy and robust right of free public discussion, on the other."

We in India are engaged in the task of building up a welfare State. The concept of the social service State has come to stay. And in the social service State, the visible ruler is the party in power, and the invisible ruler is the Administrator. "The administration of government is becoming more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliance and official neglect emphasises the primary need of a vigilant and courageous Press". Public misconduct and official misconduct, they will be inevitable if the Press ceases to be an independent unit. [The free Press is one of the great interpreters between the Government and the people.] "To allow it to be fettered is to fetter ourselves."

Fair and honest criticism promotes the public good. It is the lesson of history that undue restrictions excite and inflame, and that social progress is facilitated when the restraint is the least. The interests of the individual, the Press and the public have to be synthesised. There was much logic in what Sir Frederick Pollock stated: "I think it quite right that all matters that are entirely of a public nature—conduct of Ministers, conduct of judges, the proceedings of all persons who are responsible to the public at large—are deemed to be public property, and that all bona fide and honest remarks upon such persons and their conduct may be made with perfect freedom, and without being questioned too nicely for either truth or justice." Public welfare can thus be promoted by liberalising the laws of libel and sedition.

The Constitution of India and the U.S. Constitution are, more or less, patterned on the same ideals of the freedom of expression. I quote the following observations of Mr. Justice William O. Douglas from his book, "We The Judges":

"The decisions of the (U.S.) court involving freedom of speech have the flavour of due process, not the absoluteness of

the prohibition in the First Amendment. The construction adopted by the court has left the legislature with considerable leeway to outlaw utterances, not only where defamation and sacrilege are concerned but where large public issues are involved. The gloss which has been placed on the First Amendment does in part what the Constitution-makers did when Article 19(2) was written into India's Constitution."

The Supreme Court of India took the position that writings even inciting the commission of violent crime had to be considered "as a whole and in a fair and free and liberal spirit." The following observations of Justice B. K. Mukherjee of the Supreme Court of India stressed the nature of the function, performed by the Indian judiciary:

"The propriety or reasonableness of the satisfaction of the Central or the State Government upon which an order for detention is based cannot be raised in this court, and we cannot be invited to undertake an investigation into sufficiency of the matters upon which satisfaction purports to be grounded. We can, however, examine the grounds disclosed by the Government to see if they are relevant to the object which the legislation has in view, namely, the prevention of objects prejudicial to the defence of India or to the security of the State and maintenance of law and order therein."

"The liberty of the citizen is assured when the judiciary is impartial and when the administrator knows he must be accountable to a judicial body for his actions. The Constitution of India guarantees the freedom of expression and the judicial review. It is not enough that the law is fair on its face and impartial in appearance, but it is not to be applied and administered by public authority with "an evil eye and an unequal hand."

"The pattern of democracy in a country is largely determined by the pattern of its free Press. The one influences the other." The "freedom of expression is a live issue in all countries and at all stages of history. I have not accepted the thesis of Vyshinsky who observed in "The Law of the Soviet State": "In our State, naturally, there is and can be no place for freedom of speech, press, and so on for the foes of Socialism".

There are statutory laws, passed by the legislature. There are administrative laws which are designed and developed by the Administration. Conveniently, administrative laws may be put under four categories, viz. (1) the rule-making power to issue regulations for the filling up of details of statutory policy; (2) the power of the administrative authorities to grant or refuse to renew or revoke licenses or permits, required by the statute; (3) the investigatory power of the administrative authorities; (4) the

directing power, delegated to administrative authorities. [Political scientists are agreed that the central problem of administrative law is the reconciliation of authority and liberty.] The public policies should be carried out in a way that public interest is protected and public welfare promoted. To quote the words of an eminent jurist, "the task of administrative law is the synthesis of public and private interest." Article 226 of the Constitution of India empowers the High Court to issue writs, and such writs are issued when the administrative authority acts without jurisdiction or if there is a violation of the principles of natural justice. ✓

[Where discretion is absolute, man has suffered. Absolute discretion is bad. It is to be checked. It can only be checked by the rule of law. When the ruler or an administrator is accountable, he acts more prudently. A citizen has protection against passion, obstinacy, irrational conduct of an official when he can appeal to an independent judiciary. [It is to be noted that the Socialist order of society has been declared to be the goal of India.] It entails the development of the Public Sector and a marked growth in the powers of administrative authorities. The authority of the Executive is increasing.] In a parliamentary democracy, technically the Ministry is responsible to the electorate through the legislature. The blame of the public servant has to be shouldered by the Minister concerned. But in a welfare State, crawling towards the Socialist order, the Administrator is no longer the invisible authority working behind the screen; he is very much on the stage, restricting the citizen at every turn. It is the administrator who controls the traffic of governmental service in a Socialist society. Accordingly, the Press cannot remain indifferent to the public activities of the Administrator and even to the judicial findings on the public welfare policies of Government. (When the citizen has to stand face to face with the administrator, the nineteenth century concept of the Press indifference to the activities of the administrator is not socially desirable.)

[The Constitution of India is helpful to the citizen. Articles 32, 136, 226 and 227 give ample powers to the judiciary to protect the citizen and to curb senseless interferences by the Executive. The judiciary in India enjoys large powers. But there is a complaint that the judges in India, under the spell of British jurisprudence, are not anxious to enlarge the jurisdiction of the court. They are "over-cautious navigators." Moreover, Section 123 of the Evidence Act prohibits disclosures in judicial proceedings regarding "affairs of State" without the permission of the departmental head, and Section 124 prohibits courts from compelling

public officers to disclose official communications. These act as handicaps to courts to sit in judgment over the propriety of many administrative acts. The official privilege of disclosure should be defence and diplomatic secrets.]

[The relation between parliamentary privilege and the right of the Press to criticise the actions of people's representatives in Parliament is, to say the least, obscure. There is the accepted principle that the scope of parliamentary privilege ought not, in the public interest, to be extended.] But there are sensitive legislators who resent reflections on their conduct in the legislature. The position is this. There should be freedom of legislators to speak and vote without restraint. The debates in Parliament are not to be impeached or questioned in any court. But members enjoy the protection of privilege only in their parliamentary capacity. The right of the Press to publish fair reports of parliamentary proceedings is now conceded. It is to be noted that "to establish a claim of privilege and distinguish right from usurpation it must appear that it is indispensably necessary for the performance of the duty they are employed in." Insults to the dignity of the House are to be punished

There is a view that the real test of parliamentary privilege is that "nothing ought to be done which is calculated to put a member in such fear of consequences if he speaks or acts in a particular way that he will refrain from speaking or acting in that way." But this does not satisfy legislators who are keen on extended parliamentary privileges. The legalistic approach is this. Reflections on the conduct of members of Parliament tend to diminish the respect due to the House. And under cover of insults to the dignity of the House, legislators perfer to enjoy unbounded privileges. In law, Parliament is not a court. But in matters of parliamentary privileges, it exercises the functions of a judicial nature. The question is if an alleged breach of privilege tends to obstruct the functioning of the House. There is a school of thought that such alleged breaches could be assessed by courts in accordance with judicial standards. Today, there are risks of adverse comments on the conduct of a parliamentarian in the House and also on the decisions of the Committee of Privileges. These risks are reduced if the courts handle such issues.

[The position under the Constitution of India may be stated as follows: (A) Both Parliament and a State legislature are sovereign within the limits assigned to them by the Constitution (B) Clause (3) of Articles 105 and 194 determine the privileges and powers and immunities of Parliament and State legislatures (C) Articles 122 and 212 expressly prohibit the jurisdiction of the courts in respect of the exercise of powers vested

in any officer or member of Parliament or an officer or a member of the Legislature in whom powers are vested under the Constitution for regulating procedure or conduct of business or for maintaining order in respective Assemblies. (D) A Speaker of Parliament or Legislature or the Chairman of the Rajya Sabha are officers within the meaning of Article 122 or 212. Ministers of the Government, whether of the Centre or of States, are also members respectively of Parliament or Legislature, as such the courts cannot interfere with them in the part they play in the proceedings or business of the Assemblies nor can they interfere with their privileges, as the rights of any of them to introduce any Bill in their respective Assemblies are rights and privileges of these members whether as members or as Ministers. There is an inherent right in the Legislatures to conduct their affairs without any interference from any outside body. (E) There is no jurisdiction in the High Court to issue any writs against a Legislature or Parliament or the Speaker or any officer of these Assemblies. And, neither a Writ of Prohibition nor a Writ of Certiorari nor a Writ of Mandamus will lie to restrain the State Legislature or Parliament from enacting any legislation even if it is *ultra vires* their powers. (F) A court has no general or roving superintendence over an undefined field, nor is it its function to declare void or directly annul a law immediately it is promulgated unless its interpretative function is sought by any person or party who challenges that law as having infringed his rights on the ground of its being *ultra vires* of the powers of the legislative body.

The courts in India are to give effect to the provisions in the Constitution, and not to do away with, or whittle down, the powers conferred by them by a process of construction. But if the functionary concerned acts in excess of the powers conferred upon him, the courts will refuse to uphold his action. But that is the limit of the function assigned by the Constitution to courts.

The Constitution of India favours free, frank and fearless discussion in the legislatures. But Article 194 of the Constitution makes it clear that the immunity from liability to prosecution extends to only what is said within the walls of the legislature. Official publications of the proceedings of the Legislature carry immunity for all concerned or connected with such publication. The Calcutta High Court rightly holds that "the mere fact that the person making a defamatory statement is a member of the Legislative Assembly will not spell out for him an absolute privilege. In order that he might successfully plead privilege and claim immunity from proceedings in court, it has to be established that the prosecution relates to something said in the Assembly or that the publication in question is by or under the authority of

the House. Immunity from liability to proceedings in court can only be claimed on proof of the fact that what was said was a part of the proceedings of the legislature or that the offending words were part of the proceedings published under authority."

The express constitutional provisions in clauses (1) and (2) of Article 194 form a complete code as respects the privilege of free speech and immunity from liability to proceedings in court for anything said in the Legislature or for publication of its reports "Anything which falls outside the ambit of these provisions is liable to be dealt with by the courts in the country in accordance with the law of the land." A member of the Legislature cannot be prosecuted for anything said in the Assembly Chamber, nor can he be held liable in respect of any publication under the authority of the House of any report or proceedings. But he cannot claim privilege of speech and publication which is not guaranteed under clauses (1) and (2) of Article 194. Newspapers in India have to be on guard in the matter of publication of disallowed questions or undelivered speeches. They should not give unwarranted headings in news-columns of reports of proceedings of the Legislature.

The Press in India appreciates the Parliamentary Proceedings (Protection of Publication) Act, 1956, aimed at protecting the publication of reports of proceedings of Parliament. Under this Act, no person shall be liable to any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have been made with malice. The publication of any matter will not be protected if it is not for the public good.

The Constitution of India broadens the base of democracy in India and introduces the modern concepts of democracy which were, more or less, unacceptable to Hindu thought. The preamble to the Constitution of India proclaims the aspirations of new India, viz., to secure to all its citizens justice, social, economic and political, and liberty of thought, expression, belief, faith and worship, and equality of status and opportunity, and to promote the dignity of the individual and the unity of the nation. The concepts, embedded in the preamble, find greater recognition in the Fundamental Rights and Directive Principles of State Policy. Article 15(1) states: "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them" Article 17 states: "Untouchability is abolished and its practice in any form is forbidden" Article 38 provides: "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall

inform all the institutions of the national life." [Article 25 states: (1) "All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion; (2) Nothing in this article shall prevent the State from making any law (a) regulating or restricting any economic, financial, political and other secular activity which may be associated with religious practice, (b) providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

The above Articles provide for the emergence of a positive State authorised to interfere with legal, social and religious practices of Hindus. [The legislature is endowed with powers to renovate and rebuild society on new principles. Hindu society is the product of the caste system and the joint family.] [Hindu institutions, social, religious and legal, are sought to be reformed from within and not from without.] [Caste system and the joint family are related to a rural economy.] Hindu institutions have encouraged the growth of a parallel society outside the ambit of governmental interferences. The Constitution of India has been conceived on different postulates, leading to the disappearance of parallel society and rural economy. It frowns upon the village-biased Hindu social orthodoxy, when it contemplates interferences with Hindu social and religious and legal practices. It is a revolutionary idea, inherent in the Constitution of India, that solutions have to be suggested and reforms brought about not by social urges from within but through conscious and purposive action by the State. The Hindu political thought did not accept the right of the King to legislate in social matters and religious practices. That society is subject to governmental ordering may be said to un-Hindu in its conception. I do not propose to discuss this controversial point here. But there is no doubt that the Constitution of India has been largely influenced by the postulates of the liberal democracy of the West and by the concept of a positive welfare State. I quote with approval the following significant observations of Sardar K. M. Panikkar.

"The challenge that Hindu society faces today is something which it never had to face in history. It is the authority of a national State, armed with plenary legislative powers and motivated by a desire to bring Hindu institutions in step with new ideas. Once this movement starts, it cannot stop. A legislating State and a static society cannot exist side by side."

There are critics who argue that the Hindu mind, ordered by the caste system and the joint family, does not develop democratic ethos. The Hindu social institutions are criticised as walls which shut out the sunshine of thought and the breath of life.

It is strange how the high metaphysics of the Upanishads and the ethics of the Gita could foster a social system, based on the principles of segregation and exclusiveness. The point to be noted is this that Hindu social institutions are unconnected with Hindu religion; they are based on law and custom; they have decayed, because there was no continuous examination to adapt them to the new social needs. There were no appropriate modifications in response to social needs and urges. The unregulated growth of Hindu social institutions has led to disastrous results. It is not the Hindu religion that is at fault. Religion can work only through social institutions representing the living social conscience of the people, not the dead urges of a remote past.

There is the charge that the Hindu mind is a committed mind, not a receptive mind, and as such it is not fertile for liberal democracy. This charge is substantiated by the dominance of Hindu social institutions in social behaviour. But students of history will note that Hindu social institutions have grown through historical reasons, often in scorn of the teachings of Hindu religion. The Church or the State, they had no authority over Hindu social order. The caste and the joint family which are the basic institutions of Hindu society were sanctified by the authority of law-givers and influenced by local and family practices. Hindu social order is not to be mixed up with Hindu religion. Hindu religion carries a philosophy which is helpful for the flourishing of the democratic faith. But Hindu social institutions can hardly do justice to the ethics of Hindu religion. Thus, the law of growth was arrested "The envelope by which we try to protect life checks its expansion. The bark which protects the interior of a tree must be as living as that which it contains. It must not stifle the tree's growth, but must expand in response to the inner compulsion. An institution appropriate and wholesome for one stage of human development becomes inadequate and even dangerous when another stage has been reached." It was a sad day when we had clung to inadequate and inappropriate institutions in quest of self-preservation. Hence, we are drifting, not advancing, waiting for the future to turn up. This fatalistic attitude has been broken by the Constitution of India and by the concept of a welfare State in free India.

The main Hindu democratic theories found in the Hindu approach to life and religion may be stated as follows: (1) Religion is not correct belief but righteous living. Those who love their sects more than truth really love themselves. (2) Every human being, every group and every nation has an individuality worthy of reverence. (3) Hinduism does not believe in bringing about a mechanical uniformity of dogma and worship by a

forcible elimination of all that is not in agreement with a particular creed. (4) Hinduism does not believe in forcing up the pace of development. It does not interfere with one's natural way of thinking; it hates the compulsory conscription of men into the house of truth. (5) Error of judgment is not moral obliquity. Hinduism does not mistake tolerance for indifference. (6) Hinduism does not support the sophism that is often alleged that to coerce a man to have the right view is as legitimate as to save one by violence from committing suicide in a fit of delirium. (7) The Hindu solution of the conflict is that nothing is good which is not self-chosen and that no determination is valuable which is not self-determination. (8) The stature of man is not to be reduced to the requirements of society. Man's social efficiency is not the measure of his spiritual manhood. (9) Hinduism repudiates the belief resulting from a dualistic attitude that the plants in my garden are of God, while those in my neighbour's are weeds planted by the Devil which we should destroy at any cost. (10) Nature cannot be hurried by our desires; each man has his own specific nature; each kind of service is important.)

Some of the central principles of the Hindu thought, as discussed by Dr. S. Radhakrishnan in "The Hindu View of Life", are recited to underline the point that democratic contents are fully vindicated in the Hindu approach to life and society. Hinduism does not encourage committed minds. To quote the words of Dr. S. Radhakrishnan, "Hinduism is more a way of life than a form of thought. It insists not on religious conformity but on a spiritual and ethical outlook on life. Hinduism is not a sect but a fellowship of all who accept the law of right and earnestly seek for the truth. Hinduism is a movement, not a position; a process, not a result, a growing tradition, not a fixed revelation". It should be found equal to any emergency that the future may throw up. True, there is much wood that is dead and deceased in Hindu society. All this has to be cleared away. That is the task before the legislating State which is proclaimed in the Constitution of India. [The candle in the darkness can be lighted if the laws of democracy and growth are respected.] In short, the Hindu religion is not impervious to liberal and democratic forces.) The following observations of Dr. Arnold Toynbee are to be noted: "The Indian religions are not exclusive-minded. They are ready to allow that there may be alternative approaches to the mystery of existence. I feel sure that in this they are right, that this Catholic-minded Indian religious spirit is the way of salvation for all religions in an age in which we have to learn to live as a single family if we are not to destroy ourselves."

Democracy is to be judged by two tests, viz, if it is a move towards equality of opportunity and a move towards freedom. Equality is not uniformity. "There is nothing equalitarian about a society which disregards individual differences." The uniform pattern of existence can only be achieved by a ruling class possessing authoritarian rights. If people are to be forced to wear a strait-jacket, then the designing of the strait-jacket has to be left to a dominating class. Equality basically means the equality of opportunity. Society must share out its opportunities to all without favour. The recent trends in Socialist thinking indicate that equality of opportunity has two positive contents: (1) people with similar capacities should have similar opportunities, (2) people of different capacities should be given opportunities which are different but equal. Equality of opportunity means "fair shares of freedom". Every opportunity is a freedom. Everyone wants freedom for himself. What he denies is freedom for others. "The struggle for equality is a struggle against the violation of other people's freedom."

Man must broaden the bound of his freedom, not by filching it from others but by extending freedom's frontiers. Here the Press comes in. It is the duty of the Press to struggle for the enlargement of human freedom. The struggle will continue. The struggle has to be carried on, not with emphasis on rights alone but with emphasis on obligations also. Thus, three things are necessary in an enlightened democracy: (a) Rights are to be known, (b) obligations are to be accepted, (c) community feeling is to be promoted. The Press must work for the willing recognition of obligations and the strengthening of loyalties which bind people to each other. "No one seriously believes that, under our democratic methods, a day will suddenly come which everyone will recognise as the opening of a new era, and all those who have previously sought their own undisguised advantage, will immediately be transformed into servers of their fellow-man."

The world is a hot-bed of propaganda and counter-propaganda. The one form of propaganda is to advocate one's belief; the other form is to destroy confidence in those beliefs produced by your opponents. The primary thing in a democracy that there must be institutions guaranteeing freedom and individuals practising it. The Press is an institution for the safeguarding of democracy. Without free Press, democracy is a prisoner put on show. The wrongs are wrong, not because wrongs are made, but because wrongs hurt people and society. Thus, the Press is to see that the interests of society do not suffer. And the interests of society lie in the guaranteeing of

freedom, the promotion of a community feeling and in the growth of the creative and adventurous spirit of man.

The Press needs freedom; it has to be responsible. The type of freedom is to be limited to the control of "forms of misbehaviour". So far as the Press is concerned, the principle of self-regulation is valued. The All-India Newspaper Editors' Conference has asked for the vindication of the principle of self-regulation. Mr. Nehru in his address to the Calcutta Press Club on January 16, 1957, stated: "Anyhow, there must be freedom of the Press. Anyhow, also, there must be some limit to anti-social activities, in an extreme sense, not in a minor sense, of the Press. I mean, preferably, this should be done by the Press itself."

It is precisely in obedience to the principle of self-regulation, the All-India Newspaper Editors' Conference adopted a code of ethics. The Press Commission of India referred particularly to the following principles which should find place in a code of journalistic ethics:

- (1) Journalists should not allow personal interests to influence professional conduct.
- (2) Any report found to be incorrect and any comment based on inaccurate reports shall be voluntarily rectified.
- (3) There is nothing so unworthy as the acceptance or demand of a bribe or inducement for the exercise by a journalist of his power to give or deny publicity to news or comment.
- (4) The carrying on of personal controversies in the Press, where no public issue is involved, is unjournalistic or derogatory to the dignity of the profession.
- (5) It is unprofessional to give currency in the Press to rumours or gossip affecting the private life of individuals.
- (6) Calumny and unfounded accusations are serious professional offences.

[The Press Commission of India underlined the following salient points, viz. (a) the literary side of the newspaper is the undivided responsibility of the Editor; (b) he is to be made independent of the proprietor or his agent; (c) the journalist must regard his calling as a trust, and he must be willing to serve and guard the public interest; (d) in the discharge of his duties, the journalist should attach due value to fundamental human and social rights, (e) the journalist should observe restraint in reports and comments, likely to aggravate tensions; (d) the Editor should devote his time exclusively to his paper.]

The A.I.N.E.C believes in self-regulation. Lord Selbourne explaining his Press Authority Bill stated that certain sections of the British Press had in recent years dragged down a great

and honourable profession. He wanted to set up an authority with legal powers for enforcing a code of conduct on newspapers and news-agencies. The Bill had a formal first reading in the House of Lords. The declared objective was to preserve the liberty of the Press by preventing its abuse. The British thinkers do not generally favour any such statutory Press authority.

Newspapers can be known and assessed by the sources of their news and by the methods of coverage of news. In India, Reuter's foreign news service is mainly distributed through the Press Trust of India. Agence France-Presse has a similar arrangement with the United Press of India. The International Press Institute Secretariat prepared a report on sources of Asian news in the Press of Asia in connection with the Tokyo session of the I.P.I. Conference. The said report mentioned the following criticisms, received from Indian Editors: (1) China is the worst-reported country in Asia, (2) Reuter gives good coverage of all Asian countries including the Arab and South-East Asian groups except China and Indo-China (especially that part of Indo-China which is under Vietminh administration). (3) Indonesia and Malaya are also under-reported; Thailand is not well reported. Indian Editors felt the need of more news on economic and social developments in Asian countries. One Indian Editor wrote: "Reuter's coverage of political, commercial and sports events is exhaustive and leaves no room for further improvement, only that a more sympathetic view of the national aspirations of the Asian peoples would be welcome. P.T.I.'s coverage of political news is many times more than we need. Attempts should be made for accommodation of other news, such as reports on the cultural, educational and economic activities of the Asian nations, even if the volume of European and American news would have to be reduced."

A very instructive report was prepared in 1956 by the Indian National Committee of the International Press Institute on P.T.I. coverage of Asian news. The Press Trust of India has its own correspondents in the following Asian countries: Pakistan, Nepal, Burma, Thailand, Ceylon, Japan, Malaya and New Guinea. For the coverage of news from other countries in Asia, it depends on an arrangement with Reuters. The survey of the P.T.I. file for a specified period, made by the Committee, yielded the following broad findings:

1. The coverage of Asian news as a whole by the principal news-agency serving the Indian Press in relation to its total coverage of foreign news is conspicuously small. Non-Asian news forms as much as 80 p.c of the total foreign file. Some

of the Asian countries like Thailand and Indonesia are meagrely covered.

2. Political news, both internal and external, forms a predominant part of the news coverage from nearly all the Asian countries.

3. Social and cultural developments are barely covered in the reports.

4. In regard to Communist China, there is no independent coverage of news. All reports about China, apart from those got by interviewing people coming out of China, were either picked up from the Peking Radio or taken from the New China News Agency, the official Communist Chinese News Agency.

5. There are very few mailers from Asian countries with the result that periodical background stories giving a connected picture of events are absent.

6. Nearly one-third of the news from Asia is accounted for by the news from Pakistan

7. Reports about China were mostly received from Hong-kong. They are also received from London or from Tokyo.

The Newspaper (Price and Page) Act, 1956 was hotly criticised in the foreign Press. The bonafides of the Government of India were doubted. The Press Commission of India was anxious for the safeguarding of newspapers with smaller resources and those published in Indian languages. The Government of India accepted the proposition that unfair competition should be discouraged. Accordingly, the Newspaper (Price and Page) Act, 1956 was passed

It was an act to provide for the regulation of the prices charged for newspapers in relation to their pages and of matters connected therewith for the purpose of preventing unfair competition among newspapers so that newspapers may have fuller opportunities of freedom of expression.

It shall cease to have effect on the expiration of a period of five years from its commencement except as respects things done or omitted to be done before the expiration thereof

Section 3(1) of the Act provides:

"If the Central Government is of opinion that for the purpose of preventing unfair competition among newspapers so that newspapers generally and in particular newspapers with smaller resources and those published in Indian languages may have fuller opportunities of freedom of expression, it is necessary or expedient so to do, the Central Government may from time to time, by notification in the official gazette, make an order providing for the regulation of the prices charged for newspapers in relation to their maximum or minimum number

of pages, sizes or areas and for the space to be allotted for advertising matter in relation to other matters therein."

An order under Section 3(1) may contain different provisions for daily newspapers and newspapers appearing at other periodical intervals and for different classes of newspapers, and may, in particular, make separate provisions for weekly editions of daily newspapers whether appearing under the same title or not, and also for supplements or special editions of newspapers issued on special occasions.

Before making any order, the Central Government shall consult associations of publishers and such publishers likely to be affected by the order as it may think fit with respect to the action proposed to be taken.

No court shall take cognisance of any offence punishable under the Act except upon a complaint in writing by the Press Registrar appointed under the Press and Registration of Books Act, 1867 or by any officer authorised by him in writing in this behalf

The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, is to be taken note of for proper assessment of the position of the working journalist in India. It amends the Industrial Disputes Act, 1947 and the Industrial Employment (Standing Orders) Act, 1946 and repeals the Industrial Disputes (Appellate Tribunal) Act, 1950. The Act is careful to ensure that industrial disputes are settled by independent persons with judicial temper. The presiding officer of a Labour Court shall be a person who has held judicial office in India for not less than seven years. The presiding officer of an Industrial Tribunal shall be a person who is or has been a judge of a High Court. The presiding officer of a National Tribunal shall be a person who is or has been a judge of a High Court.

The Labour Court or the Industrial Tribunal or the National Tribunal shall consist of one person only. And no person shall be appointed to, or continue in, the office of the presiding officer of a Labour Court, Tribunal or National Tribunal if (a) he is not an independent person, or (b) he has attained the age of 65 years. No order of the appropriate Government or of the Central Government appointing any person as the presiding officer of a Labour Court, Tribunal or National Tribunal shall be called in question in any manner.

The opinions expressed in the book are personal; they are neither institutional nor organisational. I have tried to state the case for free Press in a liberal democracy in the context of conditions obtaining in India. I trust the book will attract the attention of students of political thought. As a working journa-

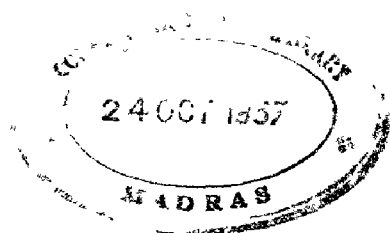
list, I love the glittering words of Chief Justice Hughes of America :

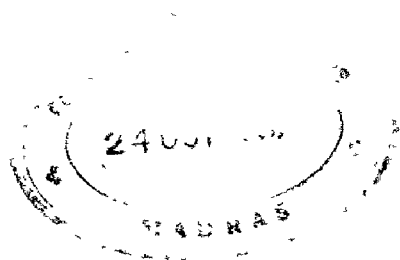
“The fact that the liberty of the Press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the Press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege.”

My friend, Mr. Sures C. Das, M.A., Editor, The Free-Lance, Calcutta, showed active interest in the publication of this book. His publishing firm took all steps for its speedy publication and attractive production. I value his friendship.

The Indian Nation,
Patna,
April 1957

Sachin Sen





CHAPTER I

FREEDOM OF THE PRESS

There can be no rigid yardstick to measure the concept of freedom. Freedom is a comprehensive term, a multi-tuned lyre. [The freedom of expression which includes the freedom of the Press forms part of the various devices of freedom. Freedom generally means the absence of restraint. But that is a negative concept. The positive concept is a call to the creation of conditions and the development of institutions which are "necessary guarantees of individual happiness"] The absence of impositions from without is one thing; the presence of conditions helpful for the expansion of the individual is another thing. [Men are free, when they are not forced.] They cannot be forced into freedom. But they are not free when grievances accumulate and find no remedies. Thus, freedom must respond to the removal of grievances.

The individual is the centre of society. The individual's experiences, tastes have to be noted. Human desires are diverse; the individual's experiences are variegated. [The individual's happiness often depends upon the happiness of others. The following facts are inescapable. (a) the world is diverse; (b) the path to happiness is not a single one, (c) the individual's happiness is bound up with the welfare of the community.]

The problem is not easy. There is the diversity of desires; there are competing interests; there is the

pressure of numbers, there is the need for a political authority to integrate individual choices with the interests of society; men in power always abuse power, particularly when power is uncontrolled. The freedom of expression is needed for striking the balance, for assisting the emergence of a higher synthesis and for the widening of the opportunities of expansion for a citizen, as an individual and as a member of society. It is not enough to say that the individual needs freedom "for the continuous expression of his personality" or that the individual freedom will be limited for the good of the community. But men must have the necessary desire, knowledge, urge and experimental ways of using freedom in a correct way. That is why we talk of social consciousness, of the training of mind to look to the welfare of society and of the limitations on the authority of the State. The passion for freedom has something to do with the passion for equality. By equality, I mean that all should get equal opportunities for expansion and that all barriers that hamper or hinder any particular section should go. "The ultimate fact of the variety of human nature, our difference of both hereditary capacity and social nature, these are inescapable."

The position is this. The individual has rights; society also has rights, the State which exists to integrate the interests of the individual and society has positive rights. The individual is not to be abstracted from society. The individual gives way to the greater good of society. But men in authority interpret the contents of the "greater interests of society". The individual is asked to surrender his liberty by men in power. The scrutiny of history shows that men in power have to be kept under checks, so that they cannot misbehave. Hence, the political

theory is that men in power must be accountable to society. The freedom of an individual is to be curtailed, as it is to be subordinated to the interests of society. The authority of Government is to be curbed, because it has to be accountable to the electorate, representing the urges of the given society. The individual and the State, both find meaning in subordination to the rational purposes of society. The older concept that the individual in obeying the State is, in fact, obeying the best part of himself does not hold the field. If it is argued that the interests of society find the best expression in the activity of the State, there is a case for the tutelage of the individual to the State. But the concept of a positive State is that it is the agency for the realisation of the greater interests of society. New demands, new feelings, new urges arise. Nothing bad happens if men in power show their accountability by taking note of the new emotions and urges. The obedience to the State is thus subordinated to the interests of society. The individual is to surrender his liberty, not to make men in authority more powerful, but to accelerate the pace of promotion of social welfare. The Government is to demand obedience for the sake of social good, not for the strengthening of the ramparts of the authority of the body of men, controlling the apparatus of the State. The individual and the State have to respond to the larger end. The problems are complex and difficult. The following considerations need attention:

(1) There is the uniqueness of an individual. Every individual is distinct; he has his own tastes and experiences. The final variety of human wills exists.

(2) The individual comes into contact with the outer world, but reactions of every individual are peculiar. Every individual has his own scheme of

values. He works in co-operation, but his self grows often in isolation. He is not the automaton of the environment.

I agree with the following observations, made by a competent political thinker:

"There is no single and common will in society, unless we mean thereby the vague concept, entirely useless for political philosophy, that men desire the good. Each of us desires the good as he sees it; and each of us sees a good derived from an individual and separate existence into which no other person can fully enter. Our connection with others is, at the best, partial and interstitial. Our pooling of experiences to make a common purpose somewhere is in no case other than fragmentary. We remain ourselves even when we join with others to attain some common object of desire. The ultimate isolation of the individual personality is the basis from which any adequate theory of politics must start."

The State-will does not represent the common will; it represents principles emerging through wills of minds of men in authority. The Party represents its own will when it talks of the general will. When the individual will is receptive to the general will and the State-action responsive to new urges and motivations, nothing terribly bad happens. The State really clashes against the individual when it fails to represent the rational desires of society at the given period. When the State uses force, it accepts defeat. Force may vindicate the State, but it does not necessarily vindicate the cause. Whenever there is the surrender by the individual or repression by Government, freedom is hurt.

There can be no freedom unless the following postulates are accepted.

- (1) Men in power tend to abuse power, and there

should be checks on the exercise of power. Unlimited power is to be resisted.

(2) There can be no freedom without democracy. Democracy means accountability to the electorate and the share of the voter in making the Government. The electorate's consent must be freely given.

(3) The conferment of power must not be permanent. Power that is not based on free consent makes men the instruments of the ends of the ruling authority.

(4) No person should be condemned by accusations he is not given the opportunity to refute.

(5) There must be free flow of criticisms to stop wrongs and to enliven social consciousness.

It is not unusual that the individual-will runs counter to the State-will. The individual wants to act on his judgment. And the experiences of different individuals are different. Experiences are not identical. "It is a multiverse embodying an ultimate variety of experiences, never identical, and always differently interpreted." If freedom is the objective, democratic institutions should be developed. The democratic forms should be as follows: (a) The excessive concentration of power at the centre is bad. There should be decentralisation of powers. (b) There should be maximum consultation, and the individual must realise that the State exists for his ends. (c) Laws are to satisfy human desires. They are obeyed willingly, when they are based on consent and on an assessment of the multifarious needs of people. (d) Administration must be responsive to local opinion, to the shades and expressions of local thought and want. Administration from without means the administration without reference to local wishes and feelings.

Democratic institutions are not enough. It should be seen that they do not degenerate. We shall have, therefore, to remain eternally vigilant; we shall have to resist wrongs and injustices; we shall have to see that power is exercised for social ends. These are the functions of the free Press, and they are to be stated and re-stated unreservedly, unblushingly and ceaselessly.

Liberty was at first conceived as something static and absolute. It was later on rationalised. The philosophy of *laissez faire* kept liberty on the individual level. With the emergence of a positive State, individualistic liberalism moved towards collectivism. Liberty cannot flourish in a collectivised society. It needs free society, open mind, mutual confidence, a spirit of moderation and compromise. The unbridled will is the denial of liberty; the regimented way of life is the negation of liberty. "Liberty lies in the hearts of men and women; when it dies, there, no constitution, no law, no courts can save it." All democrats will agree with Justice Learned Hand that "the spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded." The free press must not yield a foot upon demanding a fair field and an honest race to all ideas. "Blame not before thou hast examined; understand first and then rebuke. Answer not before thou hast heard; interrupt not in the midst of speech." I agree that "that community is already in process of dissolution where each man begins to eye his neighbour as a possible enemy, where non-conformity with the accepted creed is a mark of disaffection;

where denunciation, without specification or backing, takes the place of evidence; where orthodoxy chokes freedom of dissent, where faith in the eventual supremacy of reason has become so timid that we dare not enter our convictions in the open lists, to win or lose." There can be no free Press if we frown upon open and free discussions.

Men wish to be free, but they want something else also. They want to achieve the maximum satisfaction of human wants or expectations. But this is possible if the desires or wants or expectations are reconciled and adjusted "so as to secure as much of the totality of them as we can." Thus, there is the continual search for adjustments. Law and justice must be helpful for such adjustments. The purpose of law is "to adjust relations and order conduct so as to give the most effect to the whole scheme of expectations of men in civilised society with a minimum of friction and waste." In the analysis of Justice Cardozo, logic and history and custom and utility and the accepted standards of right conduct are the forces which singly or in combination shape the progress of the law, and which of these forces shall dominate in any case must depend largely upon the comparative importance or value of the social interests that will be thereby promoted or impaired.

The struggle for liberty is not liberty tomorrow; it is liberty today. If man is to be sacrificed for society, there is the end of individual liberty. But if man is to exist for himself, there can be no reduction of inequality. Man is not only to grow up; he is also to live every moment of his life. "Without altruism we are orang-outangs, without egoism we are nothing but tame monkeys." Thus, man needs the emergence of a new philosophy, born out of the principle of sacrifices for society and of the principle of

self-centred individual existence. (Man is a free agent, not a wheel within a machine. He wishes to live; he wishes to be loved; with him every historical moment is full. He belongs to the present; he hopes to own the future too. That is why he battles for the enlargement of freedom and for the reduction of inequalities. "Every year has its own spring and its own summer, its own winter and autumn, its own storms and fair weather. Every period is new, fresh, filled with its own hopes and carries within itself its own joys and sorrows." Those who want to crush the liberty of today for the liberty of tomorrow, are caught in the cobwebs of restriction and repression. Fuller growth is not possible. The purpose of life is to be lived. And it cannot be lived, if it thinks of life as a means to a goal which is not attained. Hence, sacrifices for the future in scorn of the present have a limit. The political thinker who advises to work for the distant goal does not think much of individual liberty.

The Press has a philosophy. It cannot ignore the present. It is to interpret the current demands. It is to create conditions for fruitful living. It is interested in individual liberty and social welfare. Man has two positive instincts, to live his life and to own the future. He cannot reject either the present or the future. Those who think of and act for violence, rebellion, torture and martyrdom are supposed to be working for the future. Those who are indifferent to the widening of the horizon of the common man and to the broadening of the path of social welfare for guaranteed individual happiness are too much bound up with the present. It is socially desirable for man to think both of the present and the future, so that he does not function either as a wheel within a machine or as a self-centred individual. (Democracy wants man

to be socially conscious, so that he may not only live his life but may also grow. And the historical truths must be accepted that "it is not possible to build houses for free men out of materials designed for prisons", and that "nothing is gained by teaching the parrot a new word." (The Press as the guardian of liberty is to see that man does not become a parrot and that prisons are demolished.) Those who believe in the employment of State coercion "in the transition period" are sacrificing both the present and the future. Humanity can never be liberated by men in bondage. In other words, personal freedom and civil liberty are not to be raped under the slogan of achieving a very noble ideal. True, there is a conflict between the enlargement of freedom and the achievement of equality. The increase in the power of the State is justified for the collective good. The decline in personal freedom is inevitable. But there is a danger if the reasonable limit is crossed and if the common man is handed to the hierarchy of business executives, trade union leaders and party bosses. In a democracy, a political party may rise or fall, and accordingly, the loss of liberty at the dictate of the ruling party is painful. But in countries where the ruling party brooks no rival political parties, all roads are bound to lead to serfdom. It may be argued that the threat to liberty comes from the philosophy of idealised abstractions or from the philosophy of liberation of mankind. Democracy aims at two objectives, the enlargement of freedom and the reduction of inequalities. (There is a philosophy) which is, more or less, accepted (in the social service State of the twentieth century) that man must always sacrifice himself to society. In other words, human life is a social duty. This philosophy is based on the following postulates: (a) There is a final solution; (b) man must make sacri-

vice for the liberation of humanity, (c) man must own the future and work for the bright goal.

Once this philosophy of sacrifices is accepted, there is the case for the crushing of man's freedoms and pursuits in the interests of social welfare. Thus, violence, torture, rebellion, dictatorship, all are supported for the sake of "dim, confused, distant goals." This philosophy of sacrifices for the liberation of humanity does not help the enlargement of freedom. There are other points of view, valid in a liberal democracy. First, there is no final solution. "Each epoch, each generation, each life has had its own experience, and en route new demands grow, new methods." Secondly, life is to be lived. Life loves novelty; life does not repeat itself, life knocks at thousand doors, some of which will open. Thirdly, the struggle for liberty is to see that life can be enjoyed. Man must liberate himself, he must not be sacrificed for the distant goal of liberation of humanity. The struggle is ceaseless, and it will take different forms in various epochs. Fourthly, "from the crooked timber of humanity, no straight thing was ever made." Circumstances vary; individual characters differ; the nature of life itself changes colour. There are no guaranteed methods, no sure paths to social welfare. Human problems are not treated as if they are soluble. They are to be faced, and we must do our best to reduce tensions. "If humanity marched straight towards some result, there would be no history, only logic." To quote the words of Herzen, "history is all improvisation, all will, all extemporised." There are no frontiers, there are no time-tables, no itineraries. All that exists is specific conditions, and sacred discontent, the flow of life and its endless challenge to the fighters to try their strength to go where there is a road, and when there is no road, there genius will blast a path."

There is Abraham Lincoln's magnificent saying: 'As I would not be a slave, so I would not be a master'! It arises from the philosophy that there is no such thing as absolute right or absolute truth. There is the obligation to do right. But will the right to do wrong be permitted? We have the right to err; but no one should have the right to do wrong. And if wrong is not permitted, how are we to arrive at the right conduct? Has the majority a right to do wrong? These are problems which have to be answered. But history cannot give a straight reply. The test of liberty, rather of civilisation, is the test if we can work for the obligation to do right. It is difficult to distinguish right from wrong. But the right to do right must be there. We ask for free Press, so that the free trade in ideas is not hampered. I agree with Stephen Spender that 'one ought to measure the quantity of tyranny in a country not by whether the State is run by one man or two men or three men, but by the attitude of the ruler or rulers to truth.' If truth is treated as equal with lies which can be manipulated for the convenience of the Government, then one should not be deceived about the nature of that society."

In the realm of ideas, the theory of co-existence is not attractive. New ideas come through heresy and dialectics, not through conformity and sophistry. But, co-existence means, to borrow the definition of Stephen Spender, "accepting things as they are whether their are-ness is on the other side of the world or five centuries back in history." Stephen Spender contends that co-existence is in fact an almost unattainable ideal. This is how Stephen Spender states his case: "No system which insists on analysing all pasts and presents outside itself into its own ideology can co-exist with any other present or past. Communist

Marxists will not be able to co-exist with geography until they have learned to co-exist with history, and there is not the slightest sign that they wish to co-exist with either. Through the excessive practice of analytic methods and the widespread belief that the analysis of the fact is more significant than the fact itself, every country, every culture, every school of thought has become isolated within its own terms. This makes the acceptance of simple facts as facts extremely difficult."

Freedom of the Press has to be subordinated to the public safety, to the interests of society and to the search for truth. The Press is to serve the basic purposes of the State, to release forces for the widening of the horizon of the common man and to give the utmost help for the discovery of truth. The most ticklish issue arises when public safety is imperilled. The free Press must discourage violence, the use of force in the discussion of public issues. The U. S. Supreme Court favoured "the clear and present danger test". The test was formulated by Mr. Justice Holmes in 1919:

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

The position is this that an emergency can justify repression of free expression. To quote Mr. Justice Brandies, "no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion." The danger apprehended must be serious. Maladjust-

ments arise as the Executive defines the clear and present danger test in its own way.

Every idea is an incitement. "It offers itself for belief and if believed it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth." If the idea expressed induces an uprising against Government at once and not at some indefinite time in the future, it should not be given a chance. Justice Holmes correctly stated that "the ultimate good desired is better reached by free trade in ideas that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out" (Life is an experiment. Hence, "we should be eternally vigilant against attempts to check the expression of opinions that we loath, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.") The only meaning of free speech is that new beliefs and faiths "should be given their chance and have their way."

The Commission on Freedom of the Press, of which Mr. Robert Hutchins, Chancellor of the University of Chicago, was the chairman reported in 1946 that the freedom of the Press was in danger. The danger comes from two sources, viz, from the governmental authority, from the inadequate service provided by those who use the machinery of the Press, and from the anti-social practices of those who direct the machinery of the Press. The Commission, however, took its stand on a very sensible thesis, and the thesis was: "freedom of expression, of which freedom of the Press is a part, has always been in danger. The Commission can conceive no state of society in which

it will not be in danger. The desire to suppress opinion different from one's own is inveterate and probably ineradicable."

The modern Press is the agency of service; it is an instrument of propaganda. It has both social and anti-social contents. It can widen the horizon of the common man; (it can also release reactionary forces) It can assist or hinder progress, peace and plenty. It can enliven or vulgarise mankind. It can foster desirable social emotions; it can also encourage animal and tribal instincts. Thus, modern society needs a responsible press. The Press can be responsible if it is guided by self-restraint, the spirit of toleration, the ethos of understanding. And these characteristics develop when society shows a democratic temper and declares adherence to democratic institutions. In short, the modern Press has not only to be responsible but also free, free from pressures and free to serve society.)

(The concentration of political and economic power is a threat to democracy. The present trend is that political and economic powers are to reside in the State. This concentration will lead to totalitarianism if the Press ceases to be free. The Press has thus to be free from pressures of the Executive. That is the first condition of a free Press. If a newspaper does not serve, it will fail to attract public's support. But if a newspaper is not critical of the Executive, it cannot serve the cause of democracy. In modern society, the Press and the Government are the two main agents for the enlightenment of the common man. If the Government seek to regulate and control the Press, there is the end of democracy. The Government may have their own agencies for the education of the citizen, but they are not to interfere with the free functioning of the Press. The ambit of political liberty

is narrowed down if the Press is not free. The basis of liberty is free expression, free consumption of ideas. There is the sophist; there is the dialectician. The sophist is out to win a case. The dialectician is out to know the truth. The sophist uses rhetoric; he argues out a case in a favourable way. The method of dialectics is to confront ideas with opposing ideas, so that pros and cons may be known. In a liberal democracy, the conviction is definite that truth can only be known when both sides are known. Dialectic is the principal method of knowing truth, as far as possible. Sophistry is a method of advocacy, it is treated as a trial of strength; it is taken not as a means of elucidation. As Aristotle says, dialectic is a process of criticism wherein lies the path to the principles of all inquiries, but rhetoric is concerned with the modes of persuasion.

The freedom to think and speak is to be valued as the means of discovering truth. The sophist wants the freedom to think and speak to persuade others; the dialectician prizes the freedom as the method of knowing the truth. The sophist wants freedom for propaganda, special pleading, lobbying, salesmanship etc. The dialectician wants free debate, free criticism, so that the truth may be discovered. If the sophist dominates, the conditions for regimentation of thought are created. If the dialectician dominates, the base of free Press is widened. (Journalists must function as dialecticians, not as mere sophists. I agree with Mr Lippmann that "it is only from the hope and the intention of discovering truth that freedom acquires such high public significance." The right of self-expression is not a mere "private amenity", but a "public necessity".)

The freedom of expression carries the obligation to subject any utterance or view to criticism and

debate. Truth comes out when ideas are challenged or criticised. But truth cannot be discovered if there is misrepresentation or if opinions are accepted without any free debate. Thus, two basic points are to be noted. First, as Mr. Walter Lippmann puts the case, "the dialectical process for finding truth works best when the same audience hears all the sides of the disputation." Secondly, truth can be sifted from error through the dialectic of debate. I agree that "when genuine debate is lacking, freedom of speech does not work as it is meant to work". If unrestricted opinion is bad, the absence of debate is worse. The lack of debate leads to the ascendancy of propagandists, procurers and panderers. If there is the freedom of speech without the freedom of debate, the degradation of opinion is inevitable.

History gives numerous instances when persons or parties attain power through democratic institutions, but they love to continue in power through the stifling of such institutions. Free debate pulls down vested interests, and power-loving persons do not like any challenge, any confrontation, any critical discourse. In this pluralised society, free debate is the soul of a free society. The masses may love the strong man rather than the suppliant, but the basis of the free way of life is to continue the search for truth through the dialectic method of sifting right from wrong. The anonymous masses have no faith, and beliefs. The free institutions can be safeguarded by those who want to adhere to sincere inquiry and rational debate. The masses whose whole stake is in their physical existence have the impulse to escape from freedom and develop the urges for the improvement of their standards of physical existence. They easily rise up against freedom if their problems cannot be solved. They refuse to travel a long road.

Thus, enemies of freedom of expression work for the ascendancy of mass psychology. Proletarians who are "of" but not "in" the community they live in are not enthused by common and binding principles, needed for the synthesis of competing beliefs, opinions and interests. This is the world of diversity and change. In the journey of an individual or of a nation, there is no final resting point. We cannot choose one pattern, rejecting all others. We are to work for balance, rhythm and harmony. The State must be distinguished from Government. The Government is the agent of the State. The Government exists to carry out the purposes of the State, but it is not itself the supreme coercive power. The Government is not to be identified with State. The Government acts under certain limitations, mapped out by the Constitution. Men in power who form the Government are likely to make mistakes. They have their own philosophy of service to society. They cannot satisfy all citizens in an equal measure. There may be other views, other programmes, other philosophies which do not represent the official opinions. This possibility of different views and differing faiths is there. The Marxian law of dialectics accepts the basic proposition that something in life is always dying and that something new in life is always being born. That which is dying fights for its existence; that which is coming into the world is defending its right to existence. The struggle between old ~~desires~~ and new ~~desires~~ can hardly be carried on if there is the monolithic party in power claiming sovereignty and infallibility and repression of all forms of opposition. The forward movement of development is not possible without criticisms. The primary function of the Press is to be critical, to release forces for a higher synthesis.

Liberal democracy accepts the following postulates: (1) Human desires, unlike those of bees in a hive, remain largely individual; (2) The world is not only dynamic; it is diverse; there can be no single path to the achievement of the goal of happiness; (3) no truth is absolute, and truth is neither completely attainable nor completely unattainable; the quest for truth is ceaseless; (4) every man and woman is neither a slave nor a rebel, but a citizen who will agree to think and co-operate; he or she is not to be too submissive or too self-assertive; (5) the welfare of the State resides in the welfare of the individual; (6) power is the means, not the end, and the end is the chase for the resolving of the given contradictions.)

The Prime Minister of India, Mr. Nehru, who loves free Press and free society most, placed an intriguing point of view on the freedom of the Press in course of his speech at the annual session of the All-India Newspaper Editors' Conference in 1952. He pointed out that a great newspaper was a very expensive financial undertaking. He was worried if the freedom of the Press might come to mean the freedom of persons who had a knack of making money through newspapers. Mr. Nehru argued that in the given situation, the freedom of the Press might mean not so much the freedom of the writer to write what he would but rather the owner of a newspaper to see that the writer wrote something that he had wanted him to write. In his analysis, the freedom of the Press means a real expression of opinion for or against whatever it might be, and no suppression of any real opinion, provided it is not indecent or vulgar and provided it is not exploited for wrong ends.

{ Mr. Nehru is a devotee in the shrine of liberal democracy. He is a great believer in a free Press. He told the A.I.N.E.C. that "persons in authority

should be subjected to criticism, to ceaseless criticism, I hope, to friendly criticism but criticism as strong as you like." He made the following significant observations on the freedom of the Press: "To my mind the freedom of the Press is not just a slogan from the larger point of view, but it is an essential attribute of the democratic process. I have no doubt that even if the Government dislikes the liberties taken by the Press and considers them dangerous, it is wrong to interfere with the freedom of the Press. By imposing restriction you do not change anything; you merely suppress the public manifestation of certain things, thereby causing the idea and thought underlying them to spread further. Therefore, I would rather have a completely free Press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated Press." (speech at the All-India Newspaper Editors' Conference on December 3, 1950.)

Freedom of the Press is an institutional freedom. It urges that the institution, represented by the newspaper, must be free to express, to comment and to criticise. It may be argued that the principle of freedom of Press was valued as the means of individual expression. The newspaper is now an industry, involving great finances and greater skill in organisation. The newspaper organisation has swallowed the individual. It employs men of differing faiths in the literary side of the organisation. But the newspaper is committed to the policy of its own. Thus, all workers on the literary side must express collectively, not individually. The emphasis on institutional freedom, as distinguished from individual freedom, affords the key to the understanding of the freedom of the Press in the present age. The Government feel tempted to control an organisation which is an indus-

try for profit. But the literary side of the journal forms the public service aspect of the industry. The Government is not to interfere with the literary side. The literary side must be free to criticise the official opinions of the day. If it cannot, it cannot serve democracy or the interests of the community. The Government is undoubtedly the powerful agency for the service to society. (But Government in the democratic order is the party in power, and the one party may be replaced by the other party. Free Press is there to check the animal appetite of the party in power. Those who get into power do not like to abandon power; they love it most, and they like to cling to power. The Press is to see that the party in power does not abuse its authority. The ruling party is not to stagnate.)

The fundamental points in a liberal democracy are: (a) free press nourishes free society; (b) power in a democracy implies responsibility in its exercise, (c) no institution in a democracy, governmental or private, can have absolute power; (d) freedom of the press is not a freedom from responsibility for its exercise; it is a freedom for responsible exercise of power (A democratic society is split into groups.) It is complex and pluralistic. There can be no uniformity of standards in a democratic order. The need for continuity and unity is there, but diversity is not to be rooted out. If any group thinks that its standards and philosophies are final, the race for progress receives a set-back. But, at the same time, if any group which has something worth-hearing to say finds no access to newspapers, that is a peril to freedom of expression. (Thus, the concentration of newspapers in the hands of rigid or anti-social parties, groups, or blind owners is bad for social health. The Press is, in my analysis, reactionary when it is committed

to the official opinions of the ruling party or to the partisan approach of any political group. It must be in a position to bring pressure on Government or on any group which looks upon its philosophy as final. The newspaper is to be judged by its role, by its nature of service to free society, by its contribution to the enlivening of social consciousness. The form of ownership should be of no material importance in the pattern of society, moulded by free enterprise. Freedom of the Press is not a fixed and isolated value, the same in every society and in all times. It is a function within a society and must vary with the social context. The conditions of our society change; new emotions and urges hold the field. The Press has to interpret new patterns of thought and feeling. Freedom of the Press is an "accountable freedom." This accountability to society gives new contents to the freedom of the Press. The Press looks up to Government for the protection of its freedom, primarily because of its "accountable freedom." It resists governmental interferences, primarily because it wants to sustain the democratic temper and ethos of society. The point to be noted is this that Government can interfere to make the Press accountable to society.)

Modern society needs a truthful account of the events, a forum for the exchange of comments and criticisms, and an agency for the presentation and clarification of the goals and values of society. Technically, freedom of the Press means "the right to be just or unjust, partisan or non-partisan, true or false in news column or editorial column." But the Press cannot be erratic in its ways. It enjoys privilege because it has to be socially responsible. It must serve the public need; it is to represent variant facets of opinion. It should not offer falsehood

knowingly, because it is to be responsible to society, not to Government. Both Government and Press are to be responsible to people; both of them are free to serve the interests of public from their own angles. All methods are experimental; both of them are fallible. The Press has the right to be in error. "Man in error is actually trying for the truth." But the Press has not the right to function in a way, hurtful of the interests of society. This social accountability is the heart of the freedom of the Press in the modern set-up.

The world is not free from conflicts, contradictions and tensions. First, the world is not static. A change must happen bit by bit. Conditions change; people themselves change; new feelings arise; old values depreciate; new needs appear. Change is inevitable. The process may be painful and jerky, but it is not tragic. Secondly, the world is not only dynamic, it is diverse. Thirdly, those who are in power must not be allowed to abuse their power. Their accountability to people must be a living reality, and it is not to be assumed that the good of the community depends upon the continuance of their power. They must not be allowed to build up nests of their vested interests, impeding the working of a higher synthesis. Thus, the dynamic nature of the world, the diversity of desires, the poisonous effect of uncontrolled power, contradictions between individual choices and interests of society, all these underline the need for eternal vigilance, the need for the principle of live and let live, the need for a higher synthesis. On any showing, the gains are in the harmonisation of the interests of society with the logic of democracy. The way to meet dictatorships is through revolution. The violence of revolution leads to the vehemence of the counter-revolution. Liberty depends upon the

tolerant give-and-take attitude; it perishes on the lap of the violent revolution.

In sum, contradictions never cease; the race for the formation of vested interests by men in power continues. In a democracy, we shall not rest in the search for a higher synthesis. This search will never end. I agree with the philosophical postulate that "truth is neither completely attainable nor completely unattainable, it is attainable to a certain degree, and that only with difficulty." This postulate is valid in a democracy. It cuts clear of scepticism and dogmatism; it breathes no respect for closed minds. It recognises that no truth, no solution, is valid for all times to come. It discards the cat-and-mouse ethics. It values the universalising contents of sympathy and understanding.

I am not preaching the philosophy of perfection. The philosophic conception of the State has withered away. They say that the State exists to promote good life. But there is no agreement on the attributes of good life. In a modern State, the individual is not to be extracted from society. And the individual is also not to be an automaton. A modern State is engaged in the process of expanding its contours. It touches upon all sectors of national life. It is the active agent of social welfare. But it travels on its own road. Tragedies occur when men in power identify their personal insights with inescapable truths. "Half the tragedies of social change arise from our inability to persuade ourselves that we may be wrong."

In a modern State, I am conscious of the importance of power politics. The modern State ceases to be living if power politics does not operate. But power is to be the means, not an end. The yardstick to be used is if power is being exercised for desirable

social ends. In the words of Bertrand Russell: "to suppose that irresponsible power, just because it is called Socialist or Communist, will be freed miraculously from the bad qualities of all arbitrary power in the past is mere childish nursery psychology." Power has to be made innocuous, not by transforming good men into irresponsible despots but by insuring that power may not be abused.

Movements away from democracy are no new thing. Man lives with others and in others. He finds it profitable to live in communities. But "human desires remain largely individual" His experiences are personal, and he has to serve society through his personal experiences. This is the root of maladjustments; therein lies the difficulty of Government. Political distemper is found, primarily because (a) the desires of politicians are largely individual; (b) they seek to impose their personal experiences on others, and (c) those who achieve power love it more than most and do not like to abandon power. Hence, it is necessary that the individual should develop social conscience, and those who have power should promote social consciousness and social co-operation.

All this shows that the "vocation of leadership" must not be in the hands of unworthy men. The checks and balances have to be provided by society. And free Press should be the spokesman of free society. The real brake can be given by a self-conscious society. We should all struggle for it, work for it. Julian Huxley gives the following definition of a self-conscious society: "A self-conscious society would be one in which every individual comprehended the aims of society, his own part in the whole, the possibilities of intellectual, artistic and moral satisfaction open to him, his role in the collective knowledge and will."

The chief incidence of freedom is the right to think and the right to express. This right can be exercised when there is toleration, when there is the play of reason, and when there is the active participation of men and women in the making of environments. Where the temper of compromise is absent, where the light of reason is overshadowed by the heat of argumentation, and where the interests of society are jeopardised by the possessors of power, there is the denial of freedom. (In other words, "the use of reason is the law of liberty") and conflict means the erosion of liberty. The persecutor thinks that he holds the truth. Thus, the liberty has to be fought afresh every day. (There is no absolute truth; there is also no absolute liberty.) The historic process is that the novelty appears and that grievances accumulate. (The novelty is to be understood, and the room for new experiments has to be widened.) There must be remedies for grievances. (We are to give expression to the novelty or grievance.)

(The Press exists for the right to question persecutors, and to advocate the pattern of social institutions where men can argue, reason and state their conclusion.) (Men who are in a passion do not argue; men who are drunk with power cannot reason; men who create special interests do not favour new experiments; men who love the cult of power are not friends of liberty.) (We Pressmen can save the degradation of the persecutor by strengthening the claims of the persecuted. But we shall not serve the cause of freedom if we lose respect for reason, for toleration and for the larger interests of society.) (The right to liberty is associated with the right to question and the right to be heard.) (Those who repress the expression of novelty or experience upset the balance of society, and destroy the quality of fellowship, so essential for the main-

tenance of liberty. Hence, every vehemence is a threat to freedom; and the price of conflict is the destruction of freedom.)

Democracy needs a free Press. Democracy is an appeal to reason, a plea for toleration, and a search for experimentation with new ideas. The Press is an instrument of information and instruction. The proper function of the Press is to comment on matters of public interest, to inform, educate, entertain and enlighten its readers and to provide a forum for the expression and exchange of opinion. The Press cannot discharge its role if it is under the influence of Government. It should serve the common man without Executive interferences. It may experience pressures from within, but the essential attribute of the democratic process is that it must be an independent agency. In a democratic State, Government means the party in power. The democratic postulate is that the ruling party may change, and it is accountable to the electorate through the legislature. No political party is a free agent. It has its own creed, own ethos, and own technique of governance. It is also not free from pressures, from jerks from within. The same case is with the Press. But in a liberal democracy, the Press must be free from the coercive influence of the ruling party. It must be free to judge the official doctrines of the ruling party. If it cannot, it does not serve. The right of the Press to state, argue and defend its case and to differ from and to criticise governmental measures has to be conceded. It is the test of our culture, of our civilisation. A subsidised Press weakens the plant of democracy. It retards human progress. The Indian Press Commission argued that the accent of the Press should be "tolerant and friendly." I differ. The accent of the Press should

be tolerant and critical. Reasoned criticism is the breath of a free Press.

Critics of the free Press argue that the Press is privately owned and may be blindly managed. And Government being based on the free consent of people, they are in a better position to judge the interests of the community. May be. If the Press is under the control of blind persons, it will not be read by persons who have seeing eyes. But if the ruling party has a democratic temper and wants to observe the rules of the game, it must not ask the Press to conform to the official opinions of the day. The Press is not to be the mouthpiece of the ruling party, nor is it to be a broker of the official creed. The attribute of democracy is the independence of the Press, not the impartiality of the Press. The doctrine of independence has to be distinguished from the doctrine of impartiality. We need not blush if the Press is not impartial, but all of us should feel hurt if the independence of the Press is stifled.

⌋ In the ultimate analysis, the freedom of the Press lies in the independence of the Press. The Press must be free from executive interferences in the matter of reporting and commenting. It is a disastrous theory that the Press can be regulated to subserve the governmental patterns of social justice. Even on the patterns of social justice, the Press must be free to hold its own views. All struggles for "social justice" are fought in the name of people, but at different periods of history and in different countries, differing patterns have emerged. The scrutiny of history shows that the ruling party or authority wants the pattern of social justice to conform to its own philosophy and programme. And no patterns can be eternal. In this view of the situation, independent agencies should not be atrophied, under any plea, in the interests of

democracy. "Being democratic is not the same thing as professing advanced opinions or believing in democracy." Democracy begins in knowing his neighbours, understanding their problems and finding out remedies by experimental methods. Unless it begins there, it does not begin at all.

All free institutions have to be supported, in a modern State, by the authority and power of Government. They can function only in a society, spontaneously united in giving support to them. Thus, we Pressmen have to look up to our Government for the safeguarding of the freedom of the Press. No freedom is absolute. The freedom of the Press cannot be absolute. The Press is not to bicker violently; it is not to accentuate class antagonisms; it is not to attack the fundamentals on which the security of the State stands. Without democracy, there cannot be liberty. And without liberty, free institutions cannot work. We shall welcome those restrictions which are undeniably social necessities. That liberty is not licence is an overpopular thesis. But we must be critical of every proposal that asks for the surrender of liberty. Political philosophers have stressed three important points. First, no conduct should be inhibited unless its practice, in a reasonable way, stunts the development of society. Secondly, the proportion of men in the service of freedom is always small, unless dramatic and exciting situations prevail, and men in power tend to attack liberty on seemingly social grounds. Thirdly, tyranny follows easily from the accumulation of petty restrictions, because the persecutor always believes that he is right. Hence, the Press, as an independent fact-gathering agency, should be respected.

The Press has numerous obligations. It cannot run away from Government. It must co-operate with

Government in the maintenance of an atmosphere which gives the opportunity of continuous initiative, the opportunity of experimentation without danger to the neighbour. (The Press does not lose freedom by its free co-operation, it is not to be coerced into co-operation. It will be bad for us if we do not seek to judge the Government; it will be worse for us if we do not maintain a helpful, co-operative attitude towards welfare plans of Government. Our vigilance is necessary, so that men in power may not stagnate by assuming their infallibility.)

Freedom of the Press is an integral part of the freedom of expression. It is always in danger. The desire to regulate, if not suppress opinion, different from its own opinion, is there with every ruling party. There are three parties involved in the Press—those who issue the newspaper, those who read the newspaper, and the interests of society. If power is concentrated in the hands of owners and exercised against the interests of society, it is a threat to progress. But if power is in the hands of Government to break up owners and to cast newspapers on the mould, acceptable to the ruling party, there is the threat to democracy. Thus, the freedom of the Press is not a simple issue. Free Press is to be a forum for free criticisms. The Press is not free if those who operate it are deaf to the needs of a free society, based on free criticisms. It is also not free if the Government controls the forum of public discussion on the alleged plea of social progress. Liberty, we must repeat, is experimental. Free Press must be allowed to make experiments. Freedom of the Press means freedom from and freedom for—freedom from compulsions and freedom for making its contribution to the maintenance and development of a free society. It must be accountable to society. It is not to be monopolistic.

and exclusive in its wisdom. It must not deny any one to make its contribution.

Free Press has thus dangers both from Government and blind Management. Public discussion is a necessary condition of free society. "Ideas deserving a public hearing shall have a public hearing." Social conflict can be lifted from the plane of violence if there is a free public discussion. The Press has to remain private and free, but it is to be accountable to society. The Press must not forbid public discussion: the Government must not repress the voices of the Press. The free Press must be free to all who have something worth saying. In a democracy, Government itself is one of the main objects of public discussion. It is, therefore, socially undesirable if Government do not set limits upon their capacity to interfere with, regulate, control or suppress the Press or manipulate the data on which public opinion is formed.

People have the right to know facts. They should have the freedom to collect facts, to present facts and to comment upon facts, freely collected and published. The freedom of information is the sine qua non of a liberal democracy; it eases tension, reduces cold war mentality and broadens the path of a higher synthesis. Any tendency on the part of Government to slant or manage news or to prevent the publication of the other side of the shield is undesirable. If the proprietor of a newspaper wants to taint news, there is protection in the hands of the consumer of newspapers. But if Government favour the feeding of the public with one-sided data, the process of erosion of democracy is accelerated. The real danger to free Press comes from illiberal Government.

~~Free India is working for a liberal democracy.~~

The Constitution of India is committed to the freedom of expression and the freedom of movement; it believes in the doctrine of judicial review; it urges for the accountability of the Executive to the Legislature. By liberal democracy, I mean the respect for compromise, the search for a synthesis of the individual freedom with social responsibility, the race for peaceful bickerings, the urge for moderation of tone and sense of responsibility, and the spirit of tolerance and the rejection of an absolute philosophy valid for all ages and for all countries. Totalitarian democracy is a state of affairs in which "we shall have regimentation and conformity, without respect for the needs of the individual soul, the puritanism of a hygienic morality in the interest of efficiency, uniformity of opinion through propaganda, and art only encouraged when it flatters the official doctrines of the time." There can be no free Press in a totalitarian democracy, but the health and the vigour of liberal democracy are imparted by a free Press. The free Press is really unfree when it functions in watertight compartments to play the game of a swarm of narrow-minded local and specialised interests. Free Press and liberal democracy go hand in hand, provided the Executive and the Press do not misbehave.

Democracy needs discipline and asks for discipline. It discourages overdoing and unbalance; it cannot grow, when there is too much of shrieking, and less of understanding with sympathy. (Mr. Nehru put the position constructively and significantly in the following words: "The less the imposed discipline and the more the self-discipline, the higher is the development of democracy.") The difficulties of a politician and of a newspaperman were also pointed out by Mr. Nehru when he had stressed that they

had to function from day to day, hour to hour and minute to minute. They have not much time to think. This is a danger. Both Pressmen and politicians have to function maturely. Mature thinking comes from leisured thinking and wisdom. Democracy demands that they should avoid hurried thinking.

It is not true that the work of a journalist is to be of only passing interest. His writing is not "ephe-meral". He is concerned with the affairs of the day, but the best writings in journalism are not the second-rate writings. I agree with T. S. Eliot that there is no useful distinction between journalism and literature in the scale of literary values. But journalism represents a type of mind which is to turn to writing or produce its best writing under the pressure of an immediate occasion. It is this type of mind which is to be treated as the journalist's type. The Editor or the leader-writer should not write in haste, should not say things indecently and should give their best thought to the problems of the day.

Politics is an "obscene farce", when it is in the hands of politicians who shout and of journalists who abuse. Those who shout and abuse live in airtight compartments; they are sealed off from contact with logical reasoning. They carry the Iron Curtain in their skulls and the Chinese Wall in their behaviour. They may be described as "gestures without motion, shades without colour, shapes without form". Politics gets a direction when thinkers are found in the camp of politics. In this changed and changing world, problems cannot be answered without changing the framework. Old problems cease to have any meaning, and new ones appear. The task of liberation has to be faced by thinking politicians. "We must unlearn our ideas about an unchangeable human

nature and an omnipotent environment. There is no knowable limit to change or growth”.

A politician must prefer experimental methods and attitudes. [There can be no social reconstruction with complete adaptation to the environment] The essential point in politics is that we must try to control the environment. Political thinking is the facing of facts. It needs extensive scrutinising and observation. It aims not at perfection as the goal, but at “the ever-enduring process of perfecting, maturing, refining”. A good politician is not to set up social welfare as an end of action but to engage in “social action” which consists in fostering conditions that “widen the horizon of others and give them command of their own powers, so that they can find their own happiness in their own fashion”. The politician in a free country is there not to display kindness and to make personal sacrifices for others through good and noble deeds, but to liberate the powers of people and to engage them in activities that enlarge the meaning of life to them. There is a difference between moral conduct and social action, and politicians are concerned with the latter. There can be no moral advance without attention to social forces. We live mentally and physically in and because of environment. We are socially and environmentally conditioned. Thus, importance has to be attached to social action, not to abstract morality.

I want to underline the reality that the Press has the double function of liberating the powers and widening the horizon of others and also of answering the problems arising from contemporary difficulties. The Press has to give equal attention to men of thought and men of politics. It has to encourage “social action”; it has to assist in the application of experimental methods and attitudes to social pro-

blems. It has to be conscious that "fruitful progressive living must rely on trial and error". It should shed its routine, incurious approach. It is not a healthy sign that the Press of today gives more attention to professional politicians, less to creative thinkers and standard-bearers of social action.

Professional politicians have certain advantages. People want to be deceived. Masses look up to those who offer the grossest myths. When the stresses of history are at a maximum, they appear in the stage and try to justify their existence. Society should not stop. It must move. When political and social thinkers are involved in the entanglements of doubt, the tribe of second-rate professional politicians flourishes. From the point of view of the community, the justification of the free Press is that it should persist in being independent, conscious, logical. It must have the will to question, the capacity to inform and enlighten, and the temper to struggle for a higher synthesis. It should broaden the arena of social action and narrow down the field of unthinking politicians.

I respect those politicians who want to solve problems by the experimental attitude of analysis and observation, who like to work for a new frame-work, for new urges and motivations and who are engaged in the widening of the horizon of the common man. But there are empty politicians who are T. S. Eliot's "hollow men", "stuffed men". They do not like to face facts; their judgments are based on their wishes and fears; they love to stick to their dream-world. They choose to dwell in the "wish-and-fear universe" (to borrow the expression of Arthur Koestler), they never grow up; they remain eternal adolescents. We can have no respect for those who think that the paradise is lost if their wish-and-fear universe col-

lapses Let no journalist speak like Shakespeare's Lucetta. "I have no other but a woman's reason; I think him so, because I think him so" (The journalist must think rationally and express logically with full awareness of the needs and demands of society. The future of the country is dark if "hollow" politicians and "stuffed" journalists dominate the stage.)

PRESS COUNCIL

In the context of a free Press, the question of Press Council has an importance of its own. (The Indian Press Commission has favoured the proposal of a statutory Press Council to safeguard the independence of the Press and to maintain the standards of journalism.) There is a "large quantum of objectionable journalism" which does not fall within the purview of the law, and the conduct of the Press in the matter of objectionable writings which are not legally punishable should be the concern of the Press Council. The Indian Press Commission argued that the best way of maintaining professional standards in journalism would be to bring into existence a body of people, principally connected with the industry whose responsibility it would be to arbitrate on doubtful points and to censure any one guilty of infraction of the code.

The Press Commission further stated that the Press Council should be brought into existence by statute, and that its members, individually and jointly, should have legal protection in respect of the action taken in discharge of their responsibilities. The British Royal Commission on the Press (1947-49) did not go in for a statutory Press Council. It took note of certain peculiar features of the Press. First,

the Press cannot perform its functions adequately if it is not aware of its responsibility, but it cannot perform them at all, if it is not free. The Press cannot give the service required of it if its independence is undermined. Secondly, the means of maintaining the proper relationship between the Press and society should be sought not in Government action but in the Press itself. Thirdly, the Press is virtually a part of the country's political machinery, in which the community as a whole is interested. Hence, the Press Council should derive its authority from the Press. The statutory Press Council depends for its effectiveness on statutory sanctions.

The proposal of a statutory Press Council raises certain grave issues. On July 13, 1955, Sir Anthony Eden rejected in the House of Commons the suggestion of a statutory Press Council on the ground that it would impinge on the freedom of the Press. He leaned on the experiment of a voluntary Press Council. A statutory body imposes its will on the strength of statutory sanctions. There may be differing views on the forms of objectionable journalism. Every newspaper must be permitted to serve society in its own way. It is not to conform to set principles of behaviour. True, there is a considerable measure of agreement on what constitutes sound professional practice. The Press Council should "express and extend that agreement, safeguard the traditions and the aspirations of the profession, and use its influence to eradicate discreditable practices." But the code of conduct is liable to differing interpretations. And the Press Council, enforcing a particular interpretation, creates conditions for the shrinkage of the orbit of the freedom of the Press.

There are certain obstinate problems before the Press. I am cataloguing some of them. First, there

is the alleged invasion of private rights. It is agreed that a newspaper should not invade rights or feelings without sure warrant of public right as distinguished from public curiosity. The "public right" may be interpreted narrowly or widely in a particular case by the Press Council. The newspaper concerned may lose much of its freedom if the findings of the Press Council are legally binding on it. The room for honest differences has to be recognised. Secondly, there are often vague charges, deploring the moral tone of reports of crime, sex case and sport with a gambling element. Thirdly, there are occasions when private and confidential documents are to be disclosed in the public interest. The Editor must be free to interpret the public interest. Fourthly, there is a general principle that a newspaper must not promote any private interest contrary to the general welfare. The Editor must not lose the right to distinguish private interest from the general welfare. Fifthly, if the Press Council has the last word on the vulgarity, triviality and bad manners of newspapers, the arena of free discussion is closed. Sixthly, the Editor has the right to close a correspondence, to choose the news for publication, to publish corrections in the way he likes, to permit a particular headline and to make even partisan comments. The Press Council may try to enforce a particular code of conduct by moral sanctions. But statutory sanctions limit the right of the newspaper to serve society in its own way. The Government and the Press, both the agencies are to serve society in their own way. It is the public interest which should regulate the Government and the Press.

.The second annual report of the British Press Council contains the following significant paragraph:

"Lord Selborne suggests that the Council should

be armed with disciplinary powers analogous to those possessed by the Law Society and the British Medical Association. The trouble is, however, that conditions are in no respect analogous. There is all the difference in the world between the open, universal profession of journalism and the closed, conformist professions of medicine and the law "

A statutory professional body without the right to control entry into the profession is somewhat peculiar. There is a sense of vocation among Pressmen; there is the urge among Pressmen to serve society in their own way. Society has diverse interests, competing claims. The free flow of discussion is not to be dammed. Thus, the Press Council should depend for its effectiveness on its moral authority. The experiment of a voluntary Press Council in Britain is, according to its Chairman, "succeeding" Colonel Astor, Chairman of the British Press Council, and his successor, Sir Linton Andrews, stated that its appeal to conscience and fair play had rarely been in vain.

Four members of the Indian Press Commission, (Acharya Narendra Deva, Mr. A. D. Mani, Mr. Chelapathi Rau and Mr. Jaipal Singh) who submitted a note of dissent on Press legislation recorded the view that "the experiment which we have suggested of a Press Council functioning under statute is an unprecedented one " They further stated: "In other countries of the world, professional conduct is sought to be exercised by voluntary organisations while in India we have accepted the view that the needs of the situation call for a statutory Press Council." They also held the view that "voluntary restraint on the part of the Press in regard to publications concerning matters of taste, decency and public propriety would be effective." Thus, they recom-

mended the "unprecedented experiment" in view of the special needs of the situation in India. The needs of the situation, referred to, were not, however, fully explained in the Note of Dissent.

In the Note of Dissent, they stressed the following points of view: (1) In the interests of freedom of the Press, "a certain element of risk has to be taken". They quote with approval Madison's magnificent utterance that "it is better to leave a few of its noxious branches to their luxuriant growth than by pruning them away to injure the vigour of those yielding proper fruits." (2) "At this stage of the development of Indian democracy, we feel bound to express our anxiety that the democratic process including the working of the Press should be free to the utmost extent possible and that, if necessary, the Government would undertake the trouble and incur the risk necessary to promote the success by putting trust in the vital elements of democratic working like the Press." (3) Scurrility, in particular, cannot be dealt with by any amount of legislation. Where it is dealt with, there can never be a firm assurance that the prosecution is on a non-partisan and non-political basis. It can be dealt with adequately only by an organisation like the Press Council and by measures of self-regulation by the Press".

The signatories to the Note of Dissent noted that some of the State officials who appeared before the Press Commission were highly sensitive to even legitimate, if strong criticisms in the Press and saw mischief where none existed, that many of the State Governments were extremely sensitive and intolerant of criticisms, and that voluntary restraint on the part of the Press in regard to publications concerning matters of taste, decency and public propriety would be effective. They were evidently uneasy when they

supported the experiment of a statutory Press Council. They were anxious to see that the Press Council should function "unhampered by the embarrassments of special Press legislation."

According to the Indian Press Commission, the main objectives of the statutory Press Council will be to safeguard the freedom of the Press, to help the Press to maintain its independence and to ensure the maintenance of high standards of journalism. It shall be open to the Press Council to go into any instance of infraction of code of ethics or professional conduct. And the Press Council shall not usurp the functions of a court of law.

Pandit Govind Ballabh Pant, India's Home Minister, who has the reputation of being a top thinker and an able administrator is reported to have observed, in presiding over the 75th anniversary of the Tribune, an English daily of Ambala, in March 1956, that Government would like to step aside and leave the setting up of the Press Council entirely to Pressmen and that such a Council would be more useful in persuading newspapers of their own accord not to publish objectionable matters, than Government intervention in the matter. In his view, unattached and non-party newspaper is a great asset to the nation inasmuch as objectivity is necessary for educating public opinion in the country. In short, Pandit Pant was arguing the case of a voluntary Press Council and of a free Press. A subservient Press or an obliging Press cannot serve its allotted functions. A Press Council with statutory sanctions is not in tune with the findings of the Indian Press Commission that "well-established newspapers have, on the whole, maintained a high standard of journalism" and that "they have avoided cheap sensationalism and unwarranted intrusion into private lives.

The weaknesses of the Indian newspapers have been recited by the Press Commission, and they are as follows: "Some of them are partisan in the presentation of news in respect of the financial interests with which they are allied; there is a certain timidity to expose courageously the shortcomings of those who are in a position of power and authority; there is an element of arbitrariness in the publicity given or denied to individuals; there is a tendency to suppress facts which are unfavourable to their own interests or to the financial interests with which they are associated." The interests of democracy demand that these undesirable features are to be dealt with.

Sir Linton Andrews, Chairman of the British Press Council, makes the following observations as 'foreword' to the second annual report in 1955: "The Council has taken action on a number of issues of high significance, it has declared a policy on certain general questions, and it has helped persons with grievances against newspapers to get satisfactory answers from the Editors concerned. Certain of its decisions have been resented by those against whom verdicts were given, but this is a frailty of human nature any tribunal must expect. The Council already fulfils a most valuable purpose (It exercises a healthy and much-needed influence in relations between the public and the Press.)"

There was much force in the contention of Sir Anthony Eden that he found it hard to see how statutory powers could be effectively arranged which would not have some effect on the freedom of the Press. In order to eradicate discreditable practices in journalism, the Press Council has not only to check the abuse of journalistic power, but it has to clean up much public misunderstanding and to scatter away

prejudice and bias which obscure clear thinking and understanding. True, the Press Council becomes effective when it is endowed with statutory powers. But a voluntary Council has obvious advantages, particularly when it has to take note of the unenlightened practices of the Press, the Government and the public. The Press Council cannot stop at dealing with the newspapers only. It has to lay down principles, meant for the education of all the agencies, viz. the Press, the Government and the public.

"The Indian Press Commission accepts the following postulates: "Democratic society lives and grows by accepting ideas, by experimenting with them, and where necessary, rejecting them.....The Press is a responsible part of a democratic society." "

If the principle of experimentation is accepted, new ideas, new urges have to be accommodated, so that new answers can be given to new queries of history. Environments change, and tastes also vary. And with changes in tastes, new faiths spring up. This process is endless. The Press Council with statutory sanctions is likely to release forces for the stifling of new experimentation which democracy calls for. There is every possibility that a statutory Press Council will be a clog on the freedom of the newspaper. A voluntary Press Council is ineffective; there are certain risks if the ineffective Press Council holds the field. But these risks have to be faced, if the process of experimentation is not to be halted. In a democracy, the ultimate appeal is to reason and to a sense of fair play. The mansion of democracy becomes weak, if fair play and compromise are eliminated. The findings of the Indian Press Commission were to the effect that "in every part of the country, there have been examples of vulgarity, indecency and obscenity." But "objectionable features have been

noticed in a small section of the Press.” And if the objectionable features are sought to be curbed by the directives of a statutory Press Council, there may not be the healthy growth of society as a whole, unless the responsibilities of Government and the public in the growth of sensational and objectionable journalism are assessed. The Press is bound up intimately with society. Social growth in a democracy has to be brought about by new experimentation and by the forging of a higher synthesis. Similarly, the Press has to be dealt with by voluntary agreement among members of the profession of journalism, not by imposed decisions of a statutory body. The code of journalistic ethics is eminently desirable, but it is also desirable that there should be no rigidity or finality about the interpretations of the code with regard to particular instances. With a statutory Press Council in operation, the public discussion of its findings on the infraction of the code by any individual newspaper will not be profitable.

“The Press Council Bill, 1956, introduced in the Indian Parliament, contemplates the establishment of the Press Council of India, representing working journalist, the newspaper management, literary bodies and the Indian Parliament. The Chairman shall be chosen not by Council members. The majority of members will be from the profession itself. The Council is to help newspapers to maintain their independence, to build up a code of conduct for newspapers and journalists, to ensure the maintenance of high standards of journalism, to provide facilities for the proper education and training of persons in the profession of journalism and to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers. The Council will censure the newspaper or the journa-

list, found guilty of the infringement of the code of journalistic ethics. The Fund of the Council shall be provided by the Central Government."

COMMUNIST DEMOCRACY

The Communist doctrine of the freedom of the Press is geared to certain basic propositions which form the heart of the philosophy of Communism. For the sake of perspecuity and precision, they may be stated categorically. First, Marx looked upon truth from the activist point of view. The truth is not to be isolated from practice. The task is not to interpret the world, but to alter it. Thus the Marxist becomes part and parcel of the Party, engaged in the pursuit of the "objective truth." Secondly, a Marxist hopes little from persuasion, everything from class war. He is committed to the doctrine of a master class, and there is insistence upon ideological orthodoxy. Thirdly, in Communist society, power belongs to the proletariat. The Press expresses the interests of the Party. According to the Communist doctrine, the freedom of the Press is guaranteed by the communal ownership of the means of production. The Press is to be controlled and guided for serving the interests of the proletariat.

The following authoritative statement appeared in the issue of Pravda, dated September 24, 1945.

"The Soviet Press is in the service of the people. The Soviet journalist is free, because no exterior opinions can influence him. The Soviet journalist is a worker. He gets a salary for his work, but he does not work for money. He does not sell himself, nor does he trade his ideas or his news. Does any foreign correspondent have such freedom? Abroad the jour-

nalist's profession is a career. With us it is a combat post."

This is a very candid statement. A Soviet journalist has no opinions of his own; he has to work with a closed mind. He is at his post to help the work of the communist party. With him, journalism is not a profession, and he has no freedom to present the two sides of the shield. His freedom lies in working for the Party, for the vindication of the official opinions of the ruling class.

Communists argue that the freedom of the Press, as understood in the countries of liberal democracy, is "a rope on which a capitalist publisher keeps his journalists." "If the rope is long enough, freedom of speech is relatively long. If the rope is short, freedom of speech is short cropped." There is some glamour in the charge. But the freedom of speech in a liberal democracy is guaranteed by certain historical factors. First, the newspaper in a liberal democracy is submitted to the decentralised control of numerous capitalists. And capitalists are not combined into a united front. And the capitalist in a newspaper industry is often not a physical person but a corporation, breathing through share-holders of various social strata. Secondly, in a liberal democracy, there is the growing emphasis on the art of persuasion, and the accepted doctrine is that truth cannot be known unless the two sides are known. As the capitalist must sell his newspaper, he will try to serve the given order of society through persuasion and through presentation of all facets of news. The newspaper has to be sold, and in society receptive and responsive to diverse urges and motivations, a regimented newspaper will make no appeal. Thirdly, liberal society is based on the principles of multiple organisation and free debate. Men and women differ; they argue and state their case.

Whatever is worth hearing must find a space in the newspaper. With a journalist, journalism is a profession, and he is to work his way to eminence by showing merit. He is not to function as a dedicated worker with a single track mind; he is to keep his eyes open to record new waves of public feelings and aspirations. True, a journalist is a literary artist within the framework of the policy of the newspaper. But no newspaper in a liberal democracy can attract the reader by running away from the objective presentation of news. Distortion, bias and prejudice cannot, however, be completely shut out. That is inevitable in the laboratory of human affairs. But the fact that the newspaper is to serve the interests of society through the accepted doctrines of a free society puts a severe embargo on the whims of proprietors or of the management.

The communist view of the State differs from the concept of the traditional school. As Lenin puts his case, "the State is the product of irreconcilability of class antagonism. The State arises then and there, when and where class antagonism cannot be objectively reconciled." In other words, the existence of the State proves that class antagonism is irreconcilable. The implications are this that the State cannot be a conciliator of clashing class interests. And the State is an organ of exploitation. Lenin and Engels agree that capitalism, once having taken possession of the State, builds up its power and increases its influence through the State machinery. Thus, universal suffrage is also the instrument of bourgeois domination. Their favourite theory is that with the extinction of classes the State will pass out of existence. Thus, the proletarian State will wither away. Stalin, however, pointed out that capitalist encirclement was the real cause that the Communist State in U.S.S.R. had not

withered away. And this bourgeois encirclement can be shattered, not by ballot-boxes but by "world revolution."

I am here concerned with the Communist concept of the State. This concept is dictated by the laws of dialectical development, stressed by Marxists. Students of Marxian theory know that the development takes place as a disclosure of contradictions. Development through contradictions is an eternal process, and development will not cease. Antagonistic classes may be eliminated, but contradictions will continue. And the contradictions have to move forward to a higher synthesis under the supervision of the State. Communist thinkers look upon the Party as the agency for the resolving of contradictions in a communist regime. The struggle between the dying and the nascent is the foundation of development. Communists talk of criticism and self-criticism as a lever of progress, and they think they can do so under the aegis of the Communist Party. They talk of learning from mistakes. But the Marxian doctrine of the negation of negation (that is, the negation of the old qualitative state and the coming into being of the new qualitative state) can hardly occur except through the aid of the State machinery.

The classical theory is that the State exists to promote good life. The concept of the State possessing a coercive authority, legally supreme over any individual or group, is inherent in the classical theory. If the State is supreme, it can command obedience. Thus, the State grows as a conciliator of clashing interests. As contradictions in society will never cease, the State will never wither away. The State is a power-organisation for the enforcement of its will. But the State never acts. It is acted for by those who form the Government. Every Government is com-

posed of fallible men. They make mistakes. It is the Government which make mistakes. Thus, there is validity in the overthrow of Government, but such validity is not found in the assault on the security of the State, in the attack on the fundamentals of the sovereignty of the State.

The State is sovereign; it is supreme; it exists for the resolving of conflicts and the synthetising of contradictions. But the State apparatus is exercised by men who are in power. In a liberal democracy, Government means the party in power. In a totalitarian democracy, the party in power assumes the supreme coercive authority residing in the State. The authority of the ruling party is confounded with the sovereignty of the State. If the ruling party assumes sovereignty and represses all forms of opposition in the name of common weal, there is the end of democracy. And if liberal democracy languishes, the Press becomes the forum of the official opinions of the ruling party. The party in power continues, and it develops vested interests and contradictions. The Press is thus forced to serve the ruling party.

Communist thinkers of today who rule the Soviet Union are slowly moving away from the orthodox Communist standpoint. The Khrushchev thesis of today is distinct from the Stalin thesis of yesterday. The Soviet Communist Party leader, Mr. Khrushchev, is said to have come out with the following theses in his address to the Soviet Communist Party Congress in Moscow in February 1956.

(a) "It is quite likely that the forms of transition to socialism will become more and more variegated. It is not obligatory for the implementation of these forms to be connected with civil war in all circumstances"

(b) "Parliament may be converted from an organ

of bourgeoisie democracy into an instrument of genuinely popular will by rallying around a toiling peasantry, the intelligentsia and all the patriotic forces.

(c) "There are different forms of social revolution. Force and civil war is not the only way of transforming society. The winning of a stable parliamentary majority, based on the mass revolutionary movement of the proletariat and the working people would create conditions for ensuring the implementation of fundamental social transformation.

(d) "It is ridiculous to think that revolutions are made to order. When we say that in the competition between the two systems of capitalism and socialism, socialism will triumph, this by no means implies that the victory will be reached by armed intervention on the part of the socialist countries in the internal affairs of the capitalist countries. Our confidence in the triumph of communism is based on the fact that the socialist mode of production possesses decisive advantages over that of the capitalists."

I am referring to the Khrushchev thesis to underline the central point that there is the recognition of the variegated forms of social revolution, applicable to different countries under differing conditions. If force, civil war and class struggle are not considered inevitable and if revolution is sought to be achieved by the winning of parliamentary majority through the united front of the toiling peasantry, the intelligentsia and other "patriotic forces," the concept of Soviet democracy is bound to change. I have briefly referred to the Soviet concept of State and law. And if revolution is proposed to be implemented by parliamentary majority, the Soviet doctrines of State and law will have to undergo changes. True, the theory of the dominant class and the doctrine of proletarian dictatorship through intensification of the drive against

the "dying classes" and "capitalist encirclements" are fully there. I am not concerned here if the Soviet Union will follow the softening of the tone against civil war and class struggle in its activities on the international front or in the canalising of the activities of the Soviet bloc. The point to be noted is this that the Soviet concept of democracy is developing new trends, inherent in the acceptance of the variegated forms of social revolution. Its implication is this that the Press should be allowed a little more elbow-room to move about in the consideration of the forms of social revolution. The concept of democracy is of vital importance to the Press.

The non-communist concept of democracy is this. Democracy is a form of government. It is based on Lincoln's formula, government of the people, by the people and for the people. "Democracy is a form of government, not a consideration of the purposes to which government may be committed." Thus, a liberal democracy is more allied to the process of making decisions than to the contents of decisions. The good of society is undoubtedly the objective, but the processes of achieving the common welfare must be democratic. In sum, they should be based on free consent and free discussion, and there must be no rigidity about them. Democracy consists in knowing and understanding others, in encouraging an atmosphere of tolerance, and in freeing men's minds from the thralldom of absolute truths. Democracy needs creative minds, not captive minds; experimental methods, not the methods of imposition; the form of orderly and peaceful co-existence, not the patterns of coercion and indoctrination. Hence, democracy asks for decentralisation of political authority, multiplicity of organisations, collaboration among various elements in society and free debate. The heart of de-

mocracy lies in two central facts: (a) the majority will rule, and majority decisions will be accepted by the minority, (b) the minorities must have the right of political expression and the opportunity of becoming a majority. The pattern of social structure determines the pattern of democracy. Hence, democracy is "so limited as not to interfere with the basic social relations whereby the ruling class maintains its position of power and privilege." And, therefore, it is not surprising if governmental changes "revolve within the given framework of basic institutions and ideas." The central point is this that a one-party monopoly is not compatible with democracy. The institutional base in society is democratic when opposition groups can put up "meaningful resistance."

The communist concept is based on the anarchical theory that with the establishment of communism, there shall be neither class division nor State authority. But during the period of transition, the State and law will be weapons for the safeguarding of the ruling class. Marx is positive that "the working class will replace the old bourgeois society by an association which will know nothing of classes and class antagonisms." Political power, in the analysis of Marx, is the official expression of antagonisms which prevail in bourgeois society. The condition for the emancipation of the working class is that all classes will be done away with and that there will be no class antagonisms. When class antagonisms will no longer exist, social evolution will cease to be political revolution.

Thus, the doctrine of the withering away of the State and law is bound up with the theory of abolition of class antagonism. Class distinction cannot be liquidated if another "class dominion" is set up. That is what is happening in the Soviet Union. The bourgeoisie is suppressed, but class divisions in the ranks

of the working classes are growing through inequality of incomes, through the growth of ruling coterie, and through the dominance of the managerial class. The Marxian dream was to set up a classless society. An economically classless society may be defined as "a society in which no group of men, by virtue of special or economic relations, has any special rights of ownership in the instruments of production." Mr. James Burnham was, in no sense, wild when he had found managerial economy in the Soviet Union, and in his view, the managerial economy is an exploiting economy, an economy wherein one group receives a relatively larger share of the economy than another. The result is not "classlessness" in Soviet Russia but a new form of exploiting, class society—managerial society. To quote James Burnham from "The Managerial Revolution," "the managers will exploit the rest of society as a corporate body, their rights belonging to them not as individuals, but through the position of actual directing responsibility which they occupy. They, too, through the possession of privilege, power and command of educational facilities, will be able to control, within limits, the personnel of the managerial recruits, and the ruling class of managers will thus achieve a certain continuity from generation to generation."

The point to be noted is this that with the emergence of managerial economy, the pattern of class division has changed, but classlessness is not being achieved. Managerial economy may have better attractions to some than the capitalist economy. I am not here concerned with that aspect of the question. But the reality is this that "managerial society is a class society, a society in which there are the powerful and the weak, the privileged and the oppressed, the rulers and the ruled."

There are certain distinctive characteristics of the managerial society of Soviet Russia. First, in managerial society, politics and economics are directly interfused. The economic arena is the arena of the State. Thus, there is no separation between political officials and captains of industry. In managerial society, managers become the State. Secondly, in Russia, it is the managers, the directors of factories and State trusts and big collective farms, who as a group are getting the largest proportionate share of the national income. The managers decide in practice who shall be denied access to a factory or a mine or a large farm. "From the vantage point which their functional role in modern economy gives them, the managers will strengthen and consolidate their social position, and will establish society on a strong basis that will guarantee their rule, whoever may be the figures who stand in the political limelight." Thirdly, in Soviet Russia, where there is one party, nothing much is left for Parliament to do. The politically significant body is the controlling institution of the ruling party. Thus, sovereignty becomes, de facto and de jure, localised in administrative boards and bureaus, functioning under the advice of the party executive's directions. In managerial society which exists in Soviet Russia, the administrative bureaus proclaim the rules, make the laws, issue the decrees. All this is to the advantage of managers. The parliament in Soviet Union is "a mere sounding board and propaganda agency." Effective decisions are taken in the party forum and in administrative bureaus. Managers in a managerial society can maintain their ruling position "through assuring for themselves control of the State and of the instruments of production." Hence, the one-party monopoly in the political arena has grown in managerial society.

The class structure in Russia's managerial society developed for obvious historical reasons. Leninism supported the following postulates: (1) Masses cannot be sufficiently trained and, educated under capitalism on the concepts of socialism, and they have to be trained; (2) masses do not know their own interests, they will be acquainted with their interests, their role in the unfoldment of the new scheme of society; (3) the transition to socialism has to be supervised by an enlightened vanguard which understands the historic process as a whole and can act for the interests of the masses. Thus, the need of a ruling class is visualised. And it is the nature of the ruling class to see that its rule is accepted by people. Accordingly, under Stalinism, the one-party rule in Russia was established; the cult of leader's hegemony was developed; trade unions became party adjuncts. And the role of the ruling class in Russia is not to work for a classless society but to indoctrinate the masses with the acceptance of managerial rule. It will undoubtedly try to curb capitalist economy at home or abroad. Leninism—Stalinism has to be studied as "a great social ideology rationalising the social interests of the new rulers and making them acceptable to the minds of the masses."

There is thus no escape from a ruling class, and accordingly the search for classless society takes us into new experiments, although the class basis cannot be altogether eliminated. Hence, the State and law cannot wither away because class antagonisms will remain in some form or other. Stalin had to come out with his theory. "The anarchist theory of 'blowing up' the State must not be confused with the Marxian theory of 'breaking up', 'smashing' the bourgeois State machine. Lenin criticised and demolished the anarchist theory, and proposed in its place the theory

of a new State of proletarian dictatorship." His was a pragmatic approach. Stalin asked in 1922 for the intensification of State-power to "finish off the remnants of dying classes and to organise defence against capitalist encirclement, which is as yet far from being, and will not soon be, destroyed." Vyshinsky campaigned in favour of the "Socialist law" which would enforce the stability of the State order and State discipline and multiply the power of socialism, mobilising and directing it against forces hostile to them." The basic structure of the Soviet legal apparatus is, in the words of Andrei Vyshinsky, "to guard, strengthen and develop the social relations and arrangements advantageous to and desired by the ruling class." The theory of capitalist encirclement was brought out to subordinate "the new society's work" to the interests of the Soviet State. When the State looks upon people as subjects, not as citizens, there is a threat to democracy, and the laws start determining duties rather than rights. But the law should really cultivate consciousness of both rights and duties, helpful for the unfoldment of the mission of the citizen.

CHAPTER II

FREEDOM OF INFORMATION

(Public opinion is to grow, it is not to be made. It grows when there is the two-way discussion—the right to speak and the readiness to listen. It is made when there is the one-way propaganda, the right to impose. In a free society, “members establish and re-establish, examine and re-examine, in response to one another, the standards of their behaviour, and their application to concrete issues.” (There should be a continuous enterprise of enquiry and discussion. The two-way process of mutual discourse and mutual response must be actively at work.)

The human standards are variegated. The united front among readers of newspapers or among owners of newspapers is unhelpful for the unfoldment of the democratic order of society. (Information must flow, ideas should also flow freely.) Propaganda is understandable, but distortion and misrepresentation are unwholesome. Distortion of news is the child of bias and prejudice: it is the mother of intolerance and fanaticism. When the Press is one-sided, society stagnates, because the “self-righting” process is put an end to.

Freedom of information is based on two postulates: (1) there is the right to speak and state, and (2) there is the readiness to listen to both sides of the case. Society's ultimate ends are not permanent. They must respond to new forces, new urges, new motivations. This thinking and re-thinking are bound to be deadened if ideas and information are not allowed

to move freely. Ideas are not commodities. When they flow into minds, they give birth to a new synthesis. The emergence of new patterns is possible through the irrigation of many-sided ideas or multi-coloured information. Discussion cannot be vigorous and creative if newspapers show a united front in the presentation of one side of the case. Newspapers in a totalitarian democracy state a case and stab the other side, but newspapers in a liberal democracy are free to argue and state. The clash of opinions gives vigour to society, opens up the floodgate of creative activities. To quote Milton, 'let truth and falsehood grapple.'

Freedom of information is to be valued, because it sets the self-righting process in motion. This self-righting process is the vindication of the doctrine of criticism and self-criticism which impart health and vigour to society. I quote here the opinions of two learned judges of America. Judge Hand stated.

"The newspaper industry served one of the most vital of all general interests: the dissemination of news from as many different sources, and with as many different facets and colors as is possible. That interest is closely akin to, if indeed it is not the same as, the interest protected by the first Amendment; it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection. Too many this is, and always will be, folly, but we have staked upon it our all."

Justice Black said of the first Amendment:

"That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."

It is true that newspapers often find more news in conflicts and clashes than in the arena of agree-

ment. There is a natural tendency to give dramatic twist to disagreements; the accord and harmony are not given prominence. All this shows that man has an instinctive love for animal appetite. Reason does not generally fascinate mankind. But we are to struggle for a conscious society where reason may be more valued than animal instincts. What is unwise and unhealthy must be resisted. Freedom of information does not mean that more importance will be given to stories of conflicts and quarrels. If that is done, it shows that the animal in us is fully awake. That animal has to be repressed.

“There is nothing either good or bad, but thinking makes it so.” Such an absolute standard is not valid for the Government. Some forms of expression are taken to be bad; they have to be repressed for the interests of the community. Man is a curious animal. He has animal appetite; he has social instincts. The social instincts are to be promoted; the commercialisation of animal appetites is to be checked. Thus, man’s tastes have to be refined; the community standards have to be improved. The freedom of information cannot be absolute. Every Government must have a penal code, restrictive action for the removal of gangsters and reckless persons from market place. They have the outward flow of information service and the inward flow of intelligence service. The open discussion is of great value to society, but certain restrictions are preferred in the interests of free society itself.

In the world of today, technological civilisation has broken upon us. It necessitates the growing influence of Government. The Government functions are growing; they are touching upon every sector of national life. This tendency towards collectivism gives justification to Government to intervene in the

name of social welfare and justice, to interfere in the ways of life and thought for the good of the community. The Government must know where to stop, where to curb the zeal of officials, where to control their drive for standardisation of human conduct and thought. Men think differently, they have diverse desires. They may be regulated, but they should not be standardised. Thus, information must not be officially doctored. All facets of information must be there. The Government have developed their propaganda machinery, but they must permit others to canvass their opinions, to hawk support for their points of view and to sell their respective philosophies.

News which concerns people and is associated with people and is of interest to people is valuable to the Press. Mr. Walter Lippmann, a votary of liberal democracy, tries to distinguish the people as voters from The People as a community of the entire living population, with their predecessors and successors. In his view, there is no warrant to assume that the opinions of the People as voters express the interests of The People as a historic community. The opinions of voters in elections are not true judgments of the vital interests of the community. First, voters are not more than a fraction of the total population. Secondly, they represent their local and parochial interests. Thirdly, they do not understand the complicated issues of the pluralised society. To quote the words of Mr. Lippmann, "because of the discrepancy between the People as voters and The People as the corporate nation, the voters have no title to consider themselves the proprietors of the commonwealth and to claim that their interests are identical with the public interest." His conclusion is that The People as a corporate body are the true owners of the sovereign power, but The People, as an aggregate of

voters have diverse, conflicting self-centred interests and opinions.

Mr. Lippmann's thesis is this. Voters are ordinarily prisoners of their peculiar, localised and self-regarding opinions. Their opinions need to be confronted by the views of the Executive defending and promoting the public interest. In the accommodation reached between the two views lies practical public policy. The hint is clear that the People as voters and the Executive need not run on the same track or in parallel lines; they must agree to discover the public interest. For, "the public interest is mixed with, and is often at odds with, their private and special interest." This is a very interesting thesis indeed. The People as voters have to be massaged, placated and appeased, but they have also to be led, informed and educated. The devitalisation of the governing power takes place when the processes of following and leading voters' opinions are not simultaneously pursued. The real problem is to strike the balance. The legislator is not a mere errand boy of voters.

Liberal democracy cannot work, if we go in for "elective despotism". If powers are concentrated in the hands of one or many, despotism appears on the scene. The interests of liberal democracy demand that the powers of government should be "so divided and balanced among several bodies of magistracy, as that no one would transcend their legal limits, without being effectually checked and restrained by others." The base of the free Press has to be widened, so that the mansion of elected despotism is not strengthened. If we do not want to create conditions for elected despotism, we must struggle for an impartial judiciary and a free Press.

The disquieting feature of the present age is its intellectual and emotional squalor. They say that

this is the period of "herd melodies and herd judgments". Thus, the dialectician is in the shade, and the sophist is in the forefront. Stephen Spender rightly argues that the larger and larger areas of life are becoming paralysed by conformity (The conformist creates conditions for elected despotism) (And in the scheme of elected despotism, men of small talents and tall claims come into the forefront.) They say that a talented person tends to be a non-conformist. He is a misfit. The conformist wants to be fed by propaganda, not by differing views and competing ideologies. He loves the single track mind. (The yellow Press and the regimented Press are not qualitatively different | Sensationalism with emphasis on ~~morbid~~ tastes is the heart of the yellow Press; the hymn of hatred against opinions, critical of official opinions, is the governing trait of the regimented Press. The mind that loves crude sensationalism or vulgar conformism is the enemy of democracy. It crowds out the creative artist and the talented individual, it narrows down openings and facilities for growth. It asks men to exist, not to co-exist; to dogmatise, not to synthetise, to create vested interests, not to throw out impediments to the movement of ideas and actions. The philosophies of the sophist, the conformist, the revolutionary who believes in inhuman means for superhuman ends menace the existence of the free Press, free debate, and free formation of public opinion. If the enemy is to be exterminated, and not to be reformed, the techniques of coercion, violence, execution and suppression begin. And that is the death-knell of liberalism. (For better or worse, the Press is today one of the major factors in determining the level of the civilisation in which it operates. Freedom of the Press means freedom to turn that level up or down.) (Originally, freedom of speech concerned

individuals. Now, freedom of press affects the mental diet of the entire population, qualifies the soundness of all democratic processes of thought. It is entangled with other forms of liberty.

{Where men cannot freely convey their thoughts to one another, no other liberty is secure} Where freedom of expression is present, the germ of a free society exists {Mr. Nehru in his message to the International Press Institute Conference at Tokyo in March 1956 asked for "full and impartial news" in this "swiftly changing world,} where events follow each other in quick succession and crisis succeeds crisis"} But he realised that {"it is no easy matter to give impartial news when purveyors of news themselves hold strong opinions"} But "an attempt has to be made." He did not ask for "sensational news" which "attracts attention for a day and is forgotten the next day" He emphasised that "our major interest is to know how the countries of Asia are advancing and making good, what their successes are and their failures { We can all learn from each other and try to help each other} This type of news is particularly lacking at present." Mr. Nehru hinted at the difficulty of purveying "full and impartial news" The subjective school has a philosophy of its own. Man is not a kind of moss or a fungus or a cauliflower. Man possesses a subjective life. Man attains existence when he is what he purposes to be. {The Existentialist says that man is responsible for himself. When man chooses himself, he wants to choose for all men} Thus, subjectivism includes the freedom of the individual and the social conscience of the individual It is natural that man wants to choose the better, but nothing is better unless it is better for all. According to Bertrand Russell, the disinterested search for truth is the object of a philosopher, and all preconceptions

must be examined. There should be no limits upon the pursuit of truth. It may be argued that the philosophy of subjectivism does not lead to scientific truthfulness which means the habit of basing our beliefs upon observations and inferences as impersonal and as much divested of local and temperamental bias as is possible for human beings. But Bergson emphasised the primacy of intuition and instinct over intellect and "urged direct contact with life and the surging aspects of experience as the alternative to the dry, geometrizing, discursive techniques of science." To quote Bergson, "you must take things by storm; you must thrust intelligence outside itself by an act of will." When the intellect undertakes the study of life, it necessarily treats the living like the inert. "All the philosophies tell us, in their different languages, that science is right to treat the living as the inert." But the line of demarcation between the inert and the living must be traced. In discussing human affairs we shall not judge if they are true or false, but we are to find out if they are better or worse from the angle of social welfare. The subjective test looks to psychology, the objective test to logic only. Every individual has his own faith, own taste, his own stream of tendency. All this gives push and direction to his thought and action. He cannot escape his inherited instincts, traditional beliefs, acquired convictions which influence his outlook on life, and his conception of social needs determines his choice. "We may try to see things as objectively as we please. None the less, we can never see them with any eye except our own."

There are two points to be noted in the objective presentation of news, viz (1) man can hardly come out of the shell of his personal experiences; (2) man's beliefs and opinions are insensibly products of their

companionship with their fellow men. The two forces determine the sub-conscious loyalties of the individual—personal experiences, and the traditions of the group to which he belongs. It is said that “we are ever and always listening to the still small voice of the herd, and are ever ready to defend and justify its instructions and warnings, and accept them as the mature results of our own reasoning.” Man has certain sub-conscious loyalties; he has his individual dislikes and prepossessions, influenced by his personal experiences and the traditions of the herd to which he belongs. Thus, the personal bias and the subjective reason cannot be eliminated. True, a journalist is to present facts objectively and to make comments without any bias. But the ideal of absolute objectivity can hardly be attained. The objectivity is said to be unenlightened when it is not in harmony with the aspirations, convictions and philosophies of men and women of the time. It is often said that the spirit of the age is not to be defiled. But “the spirit of the age, as it is revealed to each of us, is too often only the spirit of the group in which the accidents of birth or education or occupation or fellowship have given us a place.”

Man draws sustenance from the environments. The environments change, and man's desires, feelings and motivations also change. The old faith is brought in touch with new influences and environments, and “a process of unconscious cerebration” takes place, giving birth ultimately to a new faith. Thus, the spirit of the age changes and steadily affects our eccentricities. The process of testing and retesting is going on continuously, and man moves forward through the thick mist of subjective reason, through the process of emergent evolution, rejecting the dross and seeking to retain what is pure and fine.

The Press must not falter to judge. Judging is a function of life. The vulgar mind judges with complete confidence in its infallibility. Social order is neither eternal nor divine. It should be the instrument of happiness. It should carry the consent of people at every stage. Here, the Press has to play a vital role. The judging public are free when facts are placed before them; they are unfree if they are fed by distortions. In a modern society, facts are placed by the Press. The Press is a fact-gathering agency. There is thus a close connection between liberty and news. "If there is prepared for me evidence which has been distilled through the filter of a special interest, the distortion may become so complete as to make a rational judgment impossible."

The Press has to function as an independent fact-finding agency. They say that news should be presented "accurately" and views "fairly." To dramatise the effect we often say that the objectivity in the presentation of news and views is the scientific method. Propaganda is bad, because it has to be based on distortions. And if distortions are effective, they give an environment which is unhelpful for rational judgment. Political scientists point out that in the laboratory of physical science, the objective process is pursued, and in physical disease, the treatment has to be largely independent of both doctor and patient. But in social disease, the will of both doctor and patient is a decisive factor in diagnosis and cure. It is difficult to be scientific (or objective) about cause and effect in human affairs. We cannot jump clear of our emotions and prejudices. "The postulates of any social theory are, in fact, value judgments born of the experience of the individual thinker who makes them." The thinker's personal experiences lead to the assumptions upon which his work is based. His assumptions

are coloured by his view of society. The personal equation "affects our selection of postulates, upon which our conclusions depend." I cannot, therefore, remain indifferent to the following incisive observations of Professor Laski:

"The facts, that is, come to us so coloured by the environment of which we are a part that the objectivity we largely secure in chemistry or physics is unattainable in the world of affairs. The bias of personal equation may be a matter of degree, but it is always there. And it is there the more because the world of affairs is a seamless web in which we can never, as in the realm of science, isolate the factors in such a fashion as to make cause and effect a pure or absolute relation."

Men think differently who live differently. Men are also prisoners of their experiences, men are moved more by the ends they approve, less by facts; men unconsciously seek to identify their personal insights with scientific truths. Propaganda is unwholesome, because it accentuates distortions. It also provokes men and women by upsetting the balance of facts and truths. Accordingly, the subsidised Press and the obliging Press are reprehensible. The essential point is that the Press must be an independent agency. Cold neutrality may not be possible, but cool thinking and independent assessment are vital for democracy. I do not, however, suggest that journalists should deplore, with Oscar Wilde, "the decay of lying." With Oscar Wilde, "the only form of lying that is absolutely beyond reproach is lying in Art." He rebuked lying, well known in Fleet Street. Artists paint what they see; journalists paint things that concern the public. Art may be sterile if it worships only facts. But in journalism we require devotion to facts which are not biased or tainted or dead.

It is not my purpose to criticise the biased action of the State or to defend the tainted news of the Press. My emphasis is on the independence of the fact-finding agencies and the cultivation of open minds. Fact-finding agencies have to be disinterested and impartial, as far as possible, but the vital point is their independence. Let us not accept the theory of undiluted objectivity or subjectivity. In the presentation of news and views we cannot miss the emphasis on the interests that newspapers seek to serve. There are, however, obvious checks on the distortion of news by newspapers. The first is that readers do not believe the newspapers if they lie. The second is that the room for outrageous propaganda is narrowed by the forces of competition in the newspaper industry. The third is the growth of professional spirit among journalists which discards the technique of one-sided presentation of news. When we say that newspapers should aim at objective news, it means this that no news should be "killed." The Press should be a forum of open discussion, not a pulpit for propaganda purpose. The news not only states, but it also argues. It has different facets. If the Press presents both sides of the shield, we should call it fair and accurate presentation. The emphasis on certain news, according to the interests represented by newspapers, is inevitable. But the Press can function creatively only when it is independent of the Government. Hence, the vital postulate is that free enterprise in the production of newspapers is a pre-requisite of a free Press. The British Royal Commission on the Press (1947-49) recorded the following findings.

¶ "To forbid any individual or group of individuals to publish a newspaper would, in our view, be an unwarrantable interference with the liberty of the individual and the freedom of the Press, and we see no

reason to think that newspapers attached to the interests of political parties, trade unions, or other organisations would be better newspapers, or have greater regard for truth and fairness than newspapers published by private undertaking."

Those who are uneasy about the free enterprise in the production of newspapers and ask for much too governmental interference in the production and regulation of newspapers do not understand the role of the free Press in a free society. Human society is so complex and tangled that facts cannot be read, in all their implications, by the second rate, the dull, the incurious, the routiner. Thus, journalism should not be placed in the hands of the dull and the second-rate. They should avoid colourful and sweeping generalisations. They have to be creative. It has to be recognised that the mind of the modern man is a mixture of reason and unreason. To quote a rhetorical expression, we have the animal and the divine in us. There are blind emotions, desires and instincts; there are also the techniques of logic and consistency. Rational behaviour consists in or depends on a balance between the two. The Press is starving from the lack among journalists of a wider interest in knowledge, of a greater emphasis on the balance between blind emotions and social desires. New life is necessary to literature; a higher synthesis is necessary to politics. Balance and proportion are necessary to journalism. A journalist is not to align with or belong to political or religious orthodoxies; his task is to generate a distaste for partisan and captive minds and to foster receptivity and sensitiveness to creative trends and urges. Today, we Pressmen are more assertive and aggressive but not always more creative and open-minded.

The Soviet case is that news is not to enlighten

the mind; it is to equip for action. The journalist Kuzmichev denounces the notion of objectivity:

“All dissertations on objective and complete information are liberal hypocrisy. The aim of information does not consist in commercialising news but in educating the great mass of workers, in organising them under the exclusive direction of the Party for clearly defined tasks. This aim will never be attained by objective reports of events. Liberty, objectivity of the Press, these are fictions. Information is the means of class struggle, not a mirror to reflect events objectively.”

The Soviet allows no freedom to err—that is, freedom to get away from Soviet ideology! And even in the assessment of Soviet ideology, the official view has to be accepted. The position thus comes to this: the Soviet rulers do not permit the Press to differ, to criticise; the Press is to accept the official policies and to sell them; it is to activate the nation for the pursuit of official policies; it will provide no space for the other point of view.

Thus, objectivity and detachment are not the virtues of the Soviet Press. It is true that absolute objectivity is an illusion. I agree with Alexander Ivanovich Herzen, a Russian thinker of the nineteenth century, that “nobody has ever said anything worth saying unless he was deeply and passionately partial.” The Press cannot possibly be absolutely impartial. It must state a case; it must plunge into a particular stream of life. Human lives and relationships are too complex for standard formulae and neat solutions. But we cannot broaden the road to solutions, if both sides of the case are not presented! (The Press is to educate, inform and enlighten, not to force people to see selective facts through powerful microscopes.) The absolute objectivity is not healthy: the right to

differ and to err has to be acknowledged. The goal of life is life itself, and the life is tasteless if diversities are standardised into a dead uniformity. Life can be lived intensely only when experimental attitudes are not shut out. The safeguarding of the freedom of information forms part of the struggle for the rights of man. The announced purpose of the United Nations is "to practise tolerance and to live together in peace with one another as good neighbours." The free flow of information is the basis of the free flow of understanding. If the one does not know the other, the one cannot understand the other. Good neighbourliness demands that people should not be fed by distorted facts. Even amidst distortions of facts, the facilities for free formation of opinion on the basis of unrestricted access to the sources of views must exist. The U. N. General Assembly, therefore, stated that "freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated."

The Universal Declaration of Human Rights, as adopted by the U. N. General Assembly on December 10, 1948, contained the following Article:

"Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

This declaration of the freedom to seek, receive and impart information and ideas "through any media and regardless of frontiers," has the authority of the opinion of the U. N. It was the first occasion on which the organised community of nations had made a declaration on human rights and fundamental freedoms. In the U. N. Conference on freedom of information, two competing points of view struggled for

recognition. The one view is that truth must be told without prejudice and knowledge spread without malicious intent. The objective of the Press is to facilitate the solution of the economic social and humanitarian problems of the world through the interchange of information bearing on such problems. The other view is that along with the development of freedom of information, there must be an effective campaign against the organs of the Press and information which are inciting the peoples to war and aggression. The majority view which won acceptance in the U. N. Conference on Freedom of Information was this: (a) the freedom of information is a sacred right for every human being, (b) the responsibility for exercising the freedom should be left primarily in the hands of those professionally engaged in the information field, rather than be enforced by law or governmental action.

It is risky to define by law the functions of the Press. The Press should not be as to work for a particular scheme of things. It should create conditions for a free debate, so that opinion may be freely formed. It is not for the Government to dictate what is good for the Press. People should be free to choose their philosophy from the variety of views presented to them. And people's freedom of choice is restricted if information does not freely flow. The convention on the international transmission of news and the right of correction, as adopted by the U. N. General Assembly on May 13, 1949 is based on the need of free flow of information. Its preamble states that the contracting States desire to implement the right of their peoples to be fully and reliably informed and to improve understanding between their peoples through the free flow of information and opinion. The convention was concluded, because it was found that there was the danger to the maintenance of friendly rela-

tions between peoples arising from the publication of inaccurate and distorted reports. The contracting States agreed to facilitate the freest possible movement of correspondents in the performance of their functions. They shall not impose restrictions which discriminate against correspondents with respect to entry into, residence in, travel through or egress from territories. And correspondents of other contracting States, legally admitted into their territories, shall not be expelled on account of any lawful exercise of their right to collect and report news material. The contracting State shall, to the extent compatible with its national security, permit and facilitate access to news for all correspondents of the other contracting States, shall accord the right to them to transmit news material from each territory on the same basis, applicable to all users of such facilities.

The convention recognises that the professional responsibility of correspondents and information agencies require them to report facts without discrimination and in their proper context. If false or distorted news despatches are published, the customary practice of publishing corrections should be followed. It is the inherent right of every national State to make and enforce laws and regulations for the protection of national security and public order and prohibiting news material which is blasphemous or contrary to public morals and decency. The convention makes the following provision:

“No contracting State shall, however, impose censorship in peace time on news material leaving its territory except on grounds of national defence.”

In time of war or any other public emergency, the contracting State may take measures derogating from its obligations under the convention to the extent strictly limited by the exigencies of the situation.

{ It is heartening to find that the U.N. Conference on Freedom of Information asked for the free flow of information so that international understanding might not be hindered by biased, prejudiced and distorted facts. } The consumption of adulterated news is not healthy for the growth of an individual or of a nation.

News is not to be tainted, adulterated or distorted. { Free flow of news does not mean the free flow of tainted news. } On the facile plea of controlling the distortion of facts, } it is argued that the functions of the Press should be defined, and the responsibility for exercising those functions should be in the hands of Government. They say that the Press should struggle for peace and security, work for democratic principles, fight against fascism and war and cooperate in solving problems. All this sounds very well, and all these functions are sought to be enforced by law or governmental action. { But any such definition of the functions of the Press or any enforced implementation of such functions by law would create fetters for the free Press. } First, Government would interpret functions in their own way and restrict freedom of the Press to eliminate threats to the ruling power. } Secondly, Government should not be given the right to dictate what is good or what is bad. { The power to enforce functions would lead to the destruction of the freedom of presenting the different views to people. No freedom is absolute. } { Government should be permitted to prevent the abuse of freedom. } But the responsibility of enforcing the functions of the Press should be exercised by professional bodies. It is not for Government to decide on the desirable activities of the Press. { The function of the Press is not to advocate, but to release forces for the free formation of public opinion. } The Government or the

ruling party has made its choice. It is anxious to state its case in its own way. The task of the Press is to help people in making their choice. And as no choice is final and valid for all time to come, the Press will continue to present all sides of the case. Hence, free flow of news is the breath of a free Press. But the Government are interested in facts of their own liking, in news-material which is helpful to the official policies. Thus, the Press ceases to be a free Press, if it is asked to move on the track, carefully laid by law and governmental action. It is the tendency of the ruling party to lean on propaganda news, on official versions. The Press is to provide for competing facts.

The United Nations Educational, Scientific and Cultural Organisation is under constitutional obligation to promote the free flow of information. It is to recommend such international agreements as may be necessary to promote the free flow of ideas by word and image. The basic purpose of the U.N.E.S.C.O. is to help the people in a truer and more perfect knowledge of each other's lives. The pattern of U.N.E.S.C.O.'s work for the free flow of information has been cast on the following lines—broadening the scope of international agreements; achieving new dispensations for the free flow of information in co-operation with other agencies; producing publications to create a climate of opinion favourable to the adoption of co-operative international measures.

The U.N.E.S.C.O. turned to the matter of reducing tariff and trade obstacles to the circulation of materials which are the carriers of ideas. Its aim is also to make it easier and cheaper for information to circulate from country to country, whether it be in the form of a newspaper despatched through the post or a press despatch sent by cable or a radio broadcast

intended for listeners abroad. U.N.E.S.C.O's manual, *Trade Barriers to Knowledge*, is a study of the regulations affecting international trade in educational, scientific and cultural materials. Ratification of Agreement on the Importation of Educational, Scientific and Cultural Materials has been commended to Governments by the Economic and Social Council, the Council of Europe, the World Federation of United Nations Association, the International Federation of Newspaper Publishers and a host of other international bodies. The publication, *Transmitting World News* by Francis Williams has evoked attention to the problems involved in the international transmission of press messages.

The U.N.E.S.C.O has not stopped there. The newsman has a role in society. The training of a newsman is also the concern of the U.N.E.S.C.O as an educational agency. Those who man and operate information media are educators, but they themselves need specialised education. The U.N.E.S.C.O. is launching a programme of action designed to assist the development of journalistic training. An international meeting of 30 experts from 22 countries met at Paris in April 1956. The general problems of professional training and recent trends in journalistic instruction were examined. We are told that "in seeking to promote professional training for journalism, U.N.E.S.C.O does not in any way intend to replace or supplant existing facilities. The aim is rather to assist in the further developments of facilities already available and to be instrumental in the creation of such new or additional ones as it would otherwise be difficult if not impossible to secure". The U.N.E.S.C.O.'s fundamental objective in the matter is to widen the scope of professional training where it exists, to promote instruction in journalism

irrespective of methods, which should be adapted to the particular traditions and requirements of the countries concerned, and to develop the teaching of subjects essential for conveying comprehensive international information. Specific recommendations are yet to be finalised. The resolution of the 20th Congress of the Communist Party of the Soviet Union on the report of the Central Committee of the C. P. S. U., adopted on February 24, 1956, stressed the following point:

“For the Communist education of the working people and of the young generation, it is the obligation of the Communist Party to make full and active use of all the means of ideological education, propaganda, agitation, Press, radio, cultural educational bodies and establishments, science, literature and art.”

The Leninist thesis is this that “all nations will arrive at socialism—this is inevitable, but not all will do so in exactly the same way, each will contribute something of its own in one or another form of democracy, one or another variety of the dictatorship of the proletariat, one or another rate at which socialist transformation will be effected in the various aspects of social life” It is also the Lenin thesis that the ruling classes do not surrender power voluntarily. The Soviet Communist Party’s governing thesis is this that the victory of socialism in other countries is possible, because socialism has triumphed in the Soviet Union and also because it is winning victories in the People’s Democracies “The triumph of revolutionary Marxism-Leninism, and the consistent and resolute struggle against the ideology of reformism, opportunism, is the necessary condition for this victory”

This affords the key to the understanding of the Soviet propaganda. The tasks before the Soviet Union are not only to explain the theory of Marxism-

Leninism but also to contribute to its translation into life, and to wage unremitting struggle against manifestation of bourgeois ideology. Thus, the Soviet Press, Radio, Cultural bodies, scientific institutes, Literary Establishments, all will be utilised for the growth of communist consciousness among citizens and for the withering away of dogmatism and talmudism, alien to the spirit of Marxism-Leninism.

Public opinion, it is recognised by social scientists, is the ultimate power in social affairs. It may be caused by force or by persuasion. It is kept up by propaganda. In a liberal democracy, steps in the production of opinion are taken by persuasion. There is also the propaganda machinery for the maintenance of a particular belief. But there are competing beliefs. Various creeds are allowed to struggle for ascendancy. The role of the Press is thus an enlightened and a creative one, the education of public opinion and the forging of a higher synthesis. But the Soviet ideal of propaganda is to utilise all political and social agencies for the set purpose of serving Marxism-Leninism. No rival ideology is to be permitted, no rival party for the criticism of official opinions and policies is to be tolerated. The Press is to be a broker of the ruling party in the sale of the Government point of view. A newspaper or the bulletin of Government cannot serve society; it may serve men in power. The monolithic State cannot promote creative social consciousness; it can encourage only fanaticism and orthodoxy. Bertrand Russell in a social analysis of Power made out the following points: (1) Power over opinion tends to coalescence and concentration; (2) those who possess power are likely to become too flagrantly indifferent to the interests of the common man; (3) new Luther will appear and challenge the authority; (4) when only one doctrine is officially al-

lowed, men get no practice in thinking or in weighing alternatives; only a great wave of passionate revolt can dethrone orthodoxy; (5) [it is impossible for] technique to remain long progressive without science, or for (science to flourish where there is no freedom for thought]

[Bertrand Russell observed: "When all opposing propaganda is forbidden, rulers are likely to think that they can cause anything to be believed, and so to become over-weening and careless. Lies need competition if they are to retain their vigour." A nation of united fanatics succeeds most in an emergency. But an attitude of abject obedience is inimical to intelligence. A fanatical creed as a source of power inspires great efforts, but ultimately it produces boredom, weariness and scepticism. Power is dependent upon organisation and propaganda. [Democracy does not hate propaganda, rather it needs] propaganda for the maintenance of its vigour. But men must be asked not to accept a doctrine, but to choose a doctrine. Thus, "opposing propaganda" is not to be forbidden, competition is not to be ruled out. There must be freedom of propaganda.]

[Propaganda is not bad, it is essential to free society. There should be the freedom of propaganda. This asks for the tolerant spirit, there must be "competition among propagandas"] The purpose of propaganda is not to cause a particular opinion to be dogmatically believed, but to promote judgment, rational doubt and the power of weighing opposing conditions. It is not uniformity of propaganda that is socially desirable. The revolutionary who thinks that the millennium will be reached when all men embrace his creed may be progressive in the present, but conservative in the future. A perfect state of things is to be reached, and when reached, it is to be preserved unchanged.

Those who hold this view shrink from no degree of violence in seeking the perfect stage or in preventing its collapse. They are really terrorists in opposition, persecutors in Government. It is very necessary that everybody should hear all sides of every question. —

The monopoly in propaganda is bad. If the logic is followed, the country needs newspapers in which all points of view are represented, not one-sided news-bulletins encouraging the dogmatism of readers. There is the Fabian thesis, underlined by Bertrand Russell and Professor Laski, that "When a community is in fundamental agreement as to its form of government, free discussion is possible, but where such agreement does not exist, propaganda is felt to be a prelude to the use of force." Thus, the form of Government is very significant. {For free discussion, a stable governmental framework is necessary} But a stable government may be the engine of tyranny} The solution is possible when every point of view gets a chance for its acceptance. Thus, the freedom of propaganda should be pursued in a way which discourages the uniformity or the monopoly of propaganda}

The uniformity and monopoly of propaganda arrest the development of the creative forces of history. They say that history repeats itself. It is difficult to believe that each nation goes through an identical cycle, and that it can return to its original situation through influx of forces. History moves not in circles, not in straight lines, but in spirals. The view of Oswald Spengler that civilisations, when they are born, grow and decay according to a constantly recurring pattern is hardly acceptable. Toynbee's rhythm of civilisation is much more attractive. There is the up and down movement. And the up and down movement is determined by the process of challenge and response. The breakdown occurs, when there is the

failure to answer a particular challenge. And the core of the breakdown lies in the failure of the creative minority to bring up sufficient creative force in order to meet the challenge of the moment. When civilisation does not create, it no longer lives. And the course of history is the resultant of a process of challenge and response. In the ultimate analysis, the test of decay is the loss of creative power. The failure to devise an adequate response to a challenge springs from the loss of creative capacity. And this decline in creative activity is inevitable if there is no competition of propaganda and if there is no flow of free trade in ideas through newspapers. There is no predestination in history. Recovery is possible at any moment, even after the breakdown. Toynebee says:

“There is nothing to prevent our Western civilisation from following historical precedent, if it chooses, by committing social suicide. But we are not doomed to make history repeat itself; it is open to us through our own efforts, to give history, in our case, some new and unprecedented turn. As human beings, we are endowed with this freedom of choice, and we cannot shuffle off our responsibility upon the shoulders of God or nature. We must shoulder it ourselves.”

The New York Times of April 26, 1956 carried the following news-item:

“Richard W. Slocum, President of the American Newspaper Publishers' Association, charged that Federal, State and local Government officials were interfering with the freedom of the Press. He said that they did so by withholding information that the public were entitled to have.

Free access to public information is essential to a free Press. As Mr. Slocum put the position, “we are

the active trustees of that right, and we intend to continue vigilant and vigorous in its assertion, for Government agencies tend to act like clams. There are molluses of this variety in Government from the high echelons in the federal establishment to the lower levels of local authority."

[No newspaper wants to harm "national security," but many public officials have "an outsized sense of what is important to national security."

Criticising the recent seizure and padlocking of the New York Daily Worker, Mr. Slocum stated: "The Press should let it be known that it will fight any singling out intended as harassment or interference with the public right to a free Press."

He wanted the Press to meet its obligation of full, fair, objective and unbiased reporting of the Presidential campaign. There is the right of the Editor to express his opinions, but the newspaper should be accurate, adequate and objective in reporting in its news columns. If information can be falsified, the fountain for the free formation of judgments is dried up. Where facts are not known, Government have to be carried on by propaganda. There can be no Government by consent, if information is prejudiced and tainted. Mr Gaitskell, leader of the British Labour Party, correctly stated the position, when he observed: "The function of the Press was not merely one of providing facts and allowing the expressions of opinion. The free Press is today bound up with the actual revival, maintenance and success of democracy".

The All-India Newspaper Editors' Conference at the 12th annual session at Calcutta in January 1956 adopted the following resolutions.

1 "The A.I.N.E.C. views with disquiet the increasing tendency to canalise news in such a way

as to discourage access to sources of information to reporters under the system organised by the Press Information Bureau of the Government of India and the State publicity directorates. The A.I.N.E.C. considers free access to sources of news as an essential element of freedom of the Press and that the official Publicity organisations at the Centre and in the States, while fulfilling their duty of making the fullest information available to the Press on all governmental activities, should take every precaution to ensure that news is not regimented and access to its sources is not restricted or denied."

2 "The A.I.N.E.C. takes a serious view of the persistent complaints of victimisation of newspapers for their political views in the shape of stoppage of advertisements or other discriminatory practices indulged in by some State Governments. The A.I.N.E.C. deems that it is its duty to recall to the attention of the State Governments the solemn promise given to the A.I.N.E.C. in 1947 by the late Sardar Vallabhbhai Patel, Deputy Prime Minister and the first Home and Information Minister of independent India, that Government advertisements would be distributed to newspapers purely on a commercial basis and not on the basis of patronage. The A.I.N.E.C. reiterates that free and fearless expression of views and presentation of news by the Press are essential for the successful working of democracy in this country, and it is of the view that victimisation or favoured treatment is prejudicial to the development of a free and healthy Press."

The fifth General Assembly of the International Press Institute at its sitting at Zurich on May 31, 1956, adopted the following resolution:

"The General Assembly requests the Secretariat to watch and to study these new forms of danger to

Press freedom from among economic interests, pressure groups, trade unions and political parties as closely as attacks coming from the public authorities and to report on them regularly.' /

Thus, dangers to the freedom of information may come from various quarters under different camouflages. I am quoting the resolution, adopted unanimously by the Bengal Press Advisory Committee at its meeting, on the 13th of March, 1956 which carries the evidence of the pressure of Opposition political parties at Calcutta on the regimentation of news. The resolution reads as follows:

{ 'The B.P.A.C. is deeply concerned to note that in the present agitation for and against the proposed union of West Bengal and Bihar, from time to time attempts are being made by certain parties opposing the union to coerce the newspapers into following a particular line of policy by whipping up public excitement. The B.P.A.C. has already expressed its grave anxiety over this regrettable trend in the present agitation and in a resolution adopted on the 15th February 1956 had requested the parties concerned to desist from such attempts which cannot but injure the democratic set-up in our State and society. - The B.P.A.C. notes with regret that such attempts to coerce the Press have not yet been abandoned. }

{ The B.P.A.C. is of the opinion that in conformity with the tradition of democratic countries, the Press should be left absolutely free to formulate its own policy and conduct itself accordingly. It should be noted in this connection that the B.P.A.C. had to put up repeated fights against successive Governments for the sake of the sacred cause and succeeded in having this principle established. }

The B.P.A.C. hopes that in the interest of democracy, freedom of the Press and decency in public

life, the parties concerned would desist from any attempt to coerce the Press. If attempts are made from any quarters to coerce any newspaper or newspapers, the B.P.A.C. resolves that the entire Press shall unitedly stand by the newspaper or newspapers concerned and take all necessary measures to meet the threat."

I agree with the Indian Press Commission that it is difficult to define yellow journalism. They say that malicious and wilful misrepresentation of facts, the lurid exposure of personal lives, unrelated to public interest, obscene and abusive writings and reports, all these come under the category of yellow journalism. Yellow journalism is a social evil; it degrades public taste, it debases the professional standards of journalists.

Yellow journalism does not grow in a vacuum. It is related to social forces. It is to be noted that we have the Press we deserve. With degraded public taste, with morbid curiosity among readers, with the craze for offensive sensationalism, with the growing reputation of public men found involved in yellow conduct, yellow journalism carves out a smug corner in the Press camp. But the Press in India has fought gallantly against vulgarity, indecency and obscenity. The Indian Press Commission was happy with the performances of the Press in this matter, and they made the following observations:

"Well-established newspapers have, on the whole, maintained a high standard of journalism. We are glad to state that they have avoided cheap sensationalism and unwarranted intrusion into private lives. Objectionable features have been noticed in a small section of the Press."

The Indian Press is not free from shortcomings, but it has bright features too. And the Indian Press

Commission was firmly of the opinion that "the country possesses a number of newspapers of which any country may be proud."

{The responsibility of the Press is great, because the Press is both an industry and a public service. It is the main source of information and discussion; it is also an agency for the political education of the public. It is bad journalism if we do not seek to inform and enlighten; it is worse journalism if we propose to debase public taste and corrupt public opinion by partisan and prejudiced facts and writings. Critics say that if a newspaper does not reflect the "prejudices" of the public, it will find no buyers. Newspapers often show their readiness to woo the reader, not to enlighten him. True, newspaper is a commercial enterprise, and it may try to woo the reader. But it does not perform its public service by catering to the prejudices of the public. It must inform; it must widen the horizon of readers. Journalism and politics should have the same angle. The Press is not purely a commercial enterprise, and as such it does not exist for ministering to the prejudices of readers. Politics consists not merely in election victory, and accordingly, it is not only to woo the electorate but also to educate its "masters." Journalism is yellow, when it is absolutely commercial; politics is yellow, when its sole purpose is to win electoral victories.

The Press is interested in the public activities of public leaders and public servants. {The guiding principle is that the Press should take up issues which are associated with public interests/ "The private life should be walled off". I agree with the classic observations of M. de Serres:

"The private life of public servants belongs to them only; their public life belongs to everyone. It

is the right, it is often the obligation of every citizen to reproach them publicly for the faults they commit when exercising their duties."

But there are limitations in a parliamentary democracy. The scheme of a parliamentary democracy is this that Ministers are responsible to the public and that public servants are responsible to the Minister concerned. The faults of public servants have to be shared by the Ministry. So far as the public are concerned, Ministers are to be criticised for the lapses of their departments. India is sticking to the principles and traditions of a parliamentary democracy. The Press should foster such traditions. The tendency to criticise public servants and to appreciate Ministers is not helpful for the growth of parliamentary democracy. Whenever and wherever yellow conduct is condoned, the threat to democracy becomes real. Scandals cease to be scandalous when they are faced and enquired into; they are more scandalous when they are hushed up or connived at. The role of the Press is that of eternal vigilance; it should not spare its own lapses too. Yellow journalism is a symptom: the disease is yellow instinct and yellow conduct. Critics may say: of what avail is to preach against yellow journalism when communal admiration goes to the man who "succeeds" by his yellow conduct and when he is allowed to function in a defective social environment? We should deprecate all forms of vulgarity—vulgarity of taste, vulgarity of behaviour, and vulgarity of heart and mind.

CHAPTER III

PRESS LAWS OF INDIA

Students of jurisprudence know that the expression, Rule of Law, has a technical meaning. It consists not merely in universal laws of justice but also in State-made laws. According to Professor Dicey, the rule of law has a definite connotation. First, it means the supremacy or predominance of law as opposed to the influence of arbitrary power. Secondly, it means equality before law or the equal subjection of all classes to the ordinary laws of the land, administered by the law courts. Thirdly, the law of the Constitution is not the source but the consequence of the rights of individuals, as defined and enforced by the courts.

We often talk loudly and emotionally about the supremacy of law. But from a purely formal angle, law is the will of the State. The law may be unwise, mistaken or wrong, but the State being sovereign, it can enforce its laws. The power of the State is expanding. Those who prize the liberal tradition argue that law must not be divorced from justice. There can be no absolute standards of justice. Law must correspond with the desires of people. But there is the bewildering variety of desires, and the desires of all citizens cannot be satisfied in an equal measure. State-action follows from the desires of those who are in charge of the coercive apparatus of the State. And it is not surprising that the action of the State is often biased. In the ultimate analysis, law is also biased. This may help the revival of the old doctrine that justice is the rule of the stronger. The supremacy of law must not be understood in a formal way.

It must connote that the law must limit the authority of the State, that law must be interpreted by an impartial Tribunal, that law must answer the growing requirements of social welfare and that there must be external conditions for the free change in the body of men controlling the coercive power of the State.

The expression, liberty of the subject, has a two-fold meaning. First, there must be a limit to the power of the State to interfere with the person and property of the subject. Secondly, there must be a limit to the freedom of the subject in relation with his fellow subjects. Law exists for the setting of the limits. Law is the command of the sovereign power what every one must do or must forbear to do. It sets the rules of civil conduct; it limits the authority of the State power.

Freedom means the presence of conditions for social good. Unlimited power, either of the individual or of the State, must go. And the amputation of the State power is possible with the growth of an independent judiciary. Unlimited power is poisonous to those who exercise it, to those over whom it is exercised; and to society for whose manifest interests it is exercised. Hence, it is argued that the liberal tradition can be preserved in the social service State of the twentieth century, if the supremacy of the judiciary is acknowledged. The supremacy of law which carries the will of the State means the supremacy of the legislature. And the supremacy of the legislature leads to the supremacy of the Executive. The nursing of an impartial judiciary is the way out of the dominance of the Executive.

The nature, extent and technique of judicial control are important in a planned society. Three basic points are to be taken due note of. First, in a planned society, there is the concentration of eco-

conomic power in the Executive. Secondly, the legislature vests judicial power in the administrative agencies. Thirdly, the legislative, administrative and judicial functions overlap and supplement each other at many points. The rule of law excludes the existence of arbitrariness, and of wide discretionary authority on the part of Government. This, however, amounts to the over-simplification of the problem in a complex, planned society. There can be no rigid demarcation of the borderlines of the legislature, the judiciary and the executive. And the modern tendency is to help the dominance of the Executive. The rule of law has to halt the dominance of the Executive. Accordingly, the aid of the doctrine of judicial review is called for. Three things have to be guaranteed: (a) the system of review by courts; (b) the power of the court to restrain a special Tribunal from exceeding its jurisdiction should not be taken away; (c) the court must interpret laws impartially and fill up loopholes with due weight to considerations of social welfare, so that the conflict between individual right and social interest is reduced.

DOCTRINE OF JUDICIAL REVIEW

The judge-made law is a reality. It is undoubtedly subordinate to the law that is made by legislators. The Constitution over-rides a statute; the statute over-rides the law of judges, but it has to be consistent with the Constitution. But the Judge has his own elbow-room. As Justice Cardozo states, there are gaps to be filled; there are doubts and ambiguities to be cleared; there are hardships and wrongs to be mitigated. "The judge as the interpreter for the community of its sense of law and order must supply omissions, correct uncertainties and harmonise results

with justice through a method of free decision." There are many points which do not occur to the legislature, and the Judge is to take note of the new points, the new desires. The statute is often fragmentary; it is occasionally ill-considered; it is also found to be out of tune with new aspirations. The judge can kindle new light in the law. Accordingly, the judge's interpretation is the source of law. Law is what the judges declare. Statutes, precedents, the opinions of experts, customs and morality are the sources of the law. The statute is ostensible law; real law is found in the judgment of a court. The judge is limited, however, by certain jural principles. True, precedents are not the ultimate sources of law, but they are the living forces of law. "Every judgment has a generative power. It begets in its own image. Every precedent has a directive force for future cases of the same or similar nature." All judgments do not survive; those that cannot prove their worth are forgotten. But the rules and principles of case laws are treated as "working hypotheses" which are continually retested in the courts of law. If any judgment yields a result which is felt to be unjust, it is eventually reformulated. Every new case is an experiment, but a case law which gives articulate expression to the social sense of justice is accepted in the laboratories of the law. The judge is to see that his judgment is impartial and that it does not savour of prejudice or favour or even arbitrary whim or fitfulness. The point of view, urged by Mr. Justice Holmes that "Judges are more likely to hate at sight any analysis to which they are unaccustomed, and which disturbs repose of mind than to fall in love with novelties" cannot, however, be completely brushed aside.

The task of the judge is difficult. He cannot get

at the absolute truth. Nothing is absolute. And for every tendency, there is a counter-tendency. Moreover, there is no dogma which is not questionable, no creed which stands for all times. In this perpetual flux, the judge can look back to precedents for the underlying principle and must then determine the path of development of the principle. 'All cases do not unfold principles. Justice Holmes told us that "the life of the law has not been logic; it has been experience." But when experience is silent, logic has to be accepted. Referring to the judicial process, Justice Cardozo stated the case: "We go forward with our logic, with our analogies, with our philosophies, till we reach a certain point. At first, we have no trouble with the paths; they follow the same lines. Then they begin to diverge, and we must make a choice between them. History or custom or social utility or some compelling sentiment of justice or sometimes perhaps a semi-intuitive apprehension of the pervading spirit of our law must come to the rescue of the anxious judge, and tell him where to go."

Judges legislate, but they do so only interstitially, as Justice Holmes said. In the social service State of the twentieth century, it is argued that the final cause of law is the welfare of society. Social welfare is a broad term. But in the modern science of law, the emphasis is on the functional attitude, Justice and general utility are said to be the objectives of our judges. Mr. Justice Holmes thought that "the judges themselves have failed adequately to recognise their duty of weighing considerations of social advantage." But the duty is inevitable, and "the result of the often proclaimed judicial aversion to deal with such considerations is simply to leave the very ground and foundation of judgments inarticulate, and often unconscious."

In interpreting the Constitution, the judges cannot forget that the Constitution "states not rules for the passing hour but principles for an expanding future." The interpretation cannot remain the same forever, if the judge is allowed to enquire not what the legislature willed when the law was passed but what it would have willed if it had known our present conditions. The Constitution can answer the needs of the new conditions if the judges take note of the changing exigencies of the hour. But difficulties creep in when judges substitute their ideas of reason and justice for those of the men and women whom they serve. Justice Cardozo argues the case for an objective standard. The judge must put aside his estimate of political and legislative values; he should ascertain in an objective spirit what is best in the circumstances before him. Social values change, and the judge's subjective vision is not the way out. Thus a judicial judgment should be a judgment of objective right, and not subjective opinion. It will be a verdict in consonance with the social needs, not a mere personal fiat. The trouble is bound to arise when the judge's notions of right and wrong differ from those of the community. Should the judge follow his own notions or the notions of the community? The distinction between the subjective and the objective notions becomes shadowy when it is accepted that the perception of objective right takes the colour of the subjective mind. The personal and the general mind and will are inseparably united. There is a constant interaction between what is without and what is within; the subjective mind is definitely influenced by objectified beliefs.

Justice O. W. Holmes in interpreting the Constitution broadly adhered to the following principles:

(1) "Whatever the consequences, we must accept the plain meaning of plain words".

(2) "Constitutions are intended to preserve practical and substantial rights, not to maintain theories."

(3) "While the courts must exercise a judgment of their own, it by no means is that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view as well as for possible peculiar conditions which this court can know but imperfectly, if at all. Otherwise, a constitution, instead of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economic opinions".

(4) "It is a sufficient answer to say that you cannot carry a constitution out with mathematical nicety to logical extremes. If you could, we never should have heard of the police power."

(5) "The provisions of the constitution are not mathematical formulas having their essence in their form: they are organic living institutions. Their significance is vital, not formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth "

(6) "A word is not a crystal, transparent and unchanged; it is the skein of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used."

Professor Laski tried to throw us on the lap of an uncomfortable situation when he argued that law and justice were not interchangeable terms. I quote his

words. "What the courts do day by day is to apply rules the object of which is to protect the interests of the existing order. The maxims they invent, the principles they discover, are those which will satisfy the requirements of the dominant class in the society in which they function. In a bourgeois State you will get bourgeois justice; in a communist State you will get communist justice. Law, seeking order as its highest end, attains that order by satisfying the requirements of the stronger part of society."

This generalisation is hasty. It does not take note of the changes of the search for compromises going on in a democratic set-up. There is no "general judicial somnolence." The experiments with novelties are found in judicial pronouncements in the democratic order of society. There are judges who move with the times, with new experiments. They are not captives of the Executive. It may be argued that many judges prefer "judicial somnolence", but there are others who are missionaries for new ideas, who seek to find in law an instrument for the service of people, not of their control only. He is a bad judge who is a "fanatic for innovation", but he is a worse judge who is insensible to the changing ideals of social justice, consistent with social stability and security.

The Anglo-American legal system is characteristically judicial, but the continental system is characteristically administrative. The real foe of absolutism is law, and law has to be applied impartially by an independent judiciary. If justice is administered by judicial specialists, it is judicial justice; if by the legislature, it is legislative justice; if by the executive, it is executive justice. Legislative justice is bound to be susceptible to the influence of passion and prejudice, and it is likely to be disfigured by party

politics. Executive justice, not checked by law applied by an independent judiciary, means "a hierarchy of superman administrative officials who ex-officio know what is good for us better than we know ourselves." Judicial justice may be slow in responding to changes in the environment in which it must operate, but "with respect both to the law-declaring and to the law-deciding function, it combines the possibilities of certainty and of flexibility better than any other form of administering justice." To quote Roscoe Pound, "judicial justice has always proved the surest agency of enforcing the law in case of opposition." The judicial process may not, at all times and in all places, conform absolutely and in all respects to an ideal situation, but the theory of the impossibility of justice according to law is the concomitant of the movement towards absolute government. Law presupposes a life measured by reason, it basically means the legal order measured by reason, the body of authoritative rules or patterns of decision, developed by reason and the judicial process, carried on by applying a reasoned technique to experiences. It is the lawful use of law which is important, and that can be guaranteed only through the judicial process. The duty of the judge is to act independent of all external pressures. He has in his keeping the enforcement of rights and the protection of liberties. He is, therefore, to act independently and impartially. The judge is to find what the law is. The reasons of State need not influence their judgment. But he cannot remain indifferent to certain consequences, political and social. Lord Mansfield was emotional when he had expressed the duty of a judge in John Wilkes' case with the following observations:

"We are to say what we take the law to be: if we do not speak our real opinions, we prevaricate with God

and our own consciences. I will not avoid doing what I think is right. I will not do that which my conscience tells me is wrong.”

This idealistic state of mind is hardly found. In sober analysis, the judge is an instrument of the State-power. He is an official of the State to resolve controversies. He has to find what the law is; he has to determine its relation to the particular case which is before the judge. The formalist emphasises the independence of the judiciary. But the realist finds that precedents, tradition, the zeal for uniformity, a common conception of the ends of the law limit the range of the independence of the judge. It is agreed that the State-power in any given society will be exercised for the enforcement of the particular conception of the common welfare, acceptable to men in power. The Government are there to guard certain basic postulates. The conception of common welfare is coloured by the basic foundations of the State philosophy. It is the analysis of Professor Laski that (1) the function of the judge is to reach a conclusion which must square with the end the State is seeking to pursue, (2) the judiciary must move along the high-road the State is there to fight for, and (3) the judge cannot or does not run away from the limitations of his freedom as an instrument of the State-purpose.

Students of contemporary thought are aware that Mr. Nehru, India's Prime Minister, is powerfully influenced by the British Fabian school of thought. The implications of Professor Laski's analysis are that courts must not function as the third branch of the legislature and that judges are not to vary and modify the accepted public policy through their judicial decisions. Mr. Nehru accepted the following propositions:

- (1) “Within limits, no judge and no supreme

court will be allowed to constitute themselves into a third chamber. No supreme court and no judiciary will sit in judgment over the sovereign will of parliament which represents the will of the entire community."

(2) "The legislature must be supreme and must not be interfered with by the courts of law in measures of social reform."

In other words, the judiciary must not hinder measures of social reform, wished for by the party in power. It may, however, be argued that in a modern State where Government mean the party in power, the sovereignty of Parliament may be utilised as a cover for the extension of the powers of the Executive. True, the judge is not an ideal instrument for revolutionary changes. First, the inarticulate major premises of the judiciary are resistant to new ideas. Secondly, the judge is conservative by legal training and tradition, where precedents play a great part in the reaching of his conclusions. Thirdly, the judge does not run counter to the permanent purpose any State embodies. The State-power is determined by the class-relationship of the ruling party, and the judge is free to give decisions, unfavourable to the ruling party, but he does not seek to alter the basic ends of the State, which are to be enforced by the Government. Fourthly, the judge in reaching his decision is more free when the minor premisses of the established political system are concerned, but on major issues he weighs considerations of social benefit to the advantage of the party in power. To quote Professor Laski, "at bottom, the judicial function is a political one. It seeks to protect the State-purpose from invasion. It is bound, from its nature, to look to the past rather than to the future; its members cannot prepare the ground for new forms of social orga-

nisation which depart at all radically from the central tradition." Hence, Mr. Nehru stressed: "When a transition takes place, the social system, including the system of law, has to undergo changes. Conceptions, which had seemed basic to us, must thus undergo changes."

Thus, in a modern State, three postulates have to be underlined. First, law has to be continually adapted to new situations. Secondly, law is politics, and the system of law puts "the supreme coercive power of the State behind the fundamental premisses of the regime of which it is the expression." Thirdly, there should be a greater emphasis on the impartiality of the judiciary than on its formal independence. And impartiality means that the judge must hear both sides with patience and understanding and that he will rise above considerations of personal conviction and private feeling in reaching his decisions.

I know that the Supreme Court of the United States is fighting a great battle in seeking to give a form and colour to the American nation. It is not a mere tribunal to resolve controversies; it interprets and gives direction to public policy. This is a battle against Executive despotism, a battle which must enthuse all lovers of democracy. There are no eternal truths; there are no final ethics and no final social philosophies. In that event, all wisdom should not reside in the Executive. The rigid sovereignty of the legislature is not basically democratic. The doctrine of judicial review is thus a valued democratic principle. There is no case for imposing any system as final. The Executive must not also think that its philosophy is final, it should remain receptive to judicial interpretations. This is the basic principle of political justice. The room for experiments is

widened if the Executive does not remain deaf to judicial findings.

Democracy lays emphasis on the freedom of the individual. This means that each individual should be allowed to develop his own personality to the full. But the freedom of the individual is subject to two main restrictions: (a) the individual owes a duty to the society of which he forms a part; (b) restrictions are to be forged to enable every one to develop his personality. Democracy has thus to strike a balance, to assist the performance of duties by each man and to widen the base of society for the grant of opportunities for self-expression and self-development to every citizen. Democracy shows success when the personal freedom and social security are nicely balanced. With this personal freedom, the freedom of the Press is bound up. And legitimate restrictions on the freedom of the individual are also valid in respect of the freedom of the Press. The question is, however, intriguing when the interests of society conflict with those of the individual. The chase for a balance, for a compromise, for a higher synthesis is inevitable and eternal.

Democracy also demands an independent and impartial judiciary. The judges shall have to do justice according to the laws and customs of the country without fear or favour, affection or ill will. The judge is, more or less, secure from fear of removal. He is to hold the scales between man and man, between man and the State.

Sir Alfred Denning, a great British judge, in his Hamlyn lectures of 1949 found much merit in the jury system. In his analysis, "time and time again the jury has been found to be our safeguard not only against harsh laws, but also against political prejudice and legal formalism." The success of the jury trial is ensured if there is mutual confidence between

the judge and the jury. The jury stands between the accused and his oppressors. In England, the jury system has succeeded because of "the temperament of the people, their sane good sense, which is not to be swayed unduly by emotion or prejudice." It cannot work successfully in countries where men and women are easily moved to rage, pity or hatred. The jury system proved a failure in France. They say that the jury system suits the temperament of the British people.

There are two competing schools of thought on the functions of Courts of law. In a democracy, we regard them as "standing between the individual and the State, protecting the individual from any interference with his freedom which is not justified by the law." But the Soviet conception is this that courts of law exist to carry out the State policy. As Lenin has put the position, "the tribunal is the instrument of the proletariat and the working classes". The Soviet judge "must not aim solely at legal logic, he must always bear in mind that the law is nothing but the expression of party policy; in practice, this means that the Soviet judge, in case of any conflict between the law and the general party line, must unhesitatingly reject a strict application of the law, to which we have seen that he is not, after all, strictly bound, in order to give absolute obedience to the party directions which represent for him the supreme law." This was quoted by Sir Alfred Denning from Vyshnisky's work on Penal Procedure to emphasise the British mode of trial which states that "whenever there is a doubt, the scale goes down in favour of the accused." The end of the legal doctrine in Russia is threefold, viz, (1) the crushing of counter-revolutionary resistance; (2) the freeing of workers from the impact of capitalist habits; (3) the building up of a

social outlook, helpful for the principles of communist society. But in a democracy, the rule of law operates. It means that no man will suffer for any conduct, not definitely forbidden by law, and every man's legal rights and liabilities are determined by the courts of law. A judge in a democratic State is concerned with seeing that the law is strictly carried out. Law should, however, correspond with public opinion. And "the rule of a party cannot be permanently identified with the authority of the nation or with the dictates of patriotism."

Professor Laski whose favourite thesis is that at bottom, the judicial function is a political one is not surprised at the Soviet system of law. Soviet justice is "untidy" according to Professor Laski, but it has, in his view, achieved "beneficent results." I am quoting Professor Laski to show that he was opposing the basic postulates of Sir Alfred Denning. Professor Laski stated: "The Soviet system of law does what the English system does; it puts the supreme coercive power of the State behind the fundamental premises of the regime of which it is the expression. The effective difference between the two systems is less, I believe, in their inherent nature than in the fact that, partly for historical reasons, our fundamental premises are much less explored and much more inarticulate than are those of the Soviet regime. An English judge will reach his appointed purpose much less directly and much more elaborately than a Russian judge in similar circumstances."

Professor Laski went further and stated that "if it would be difficult for a counter-revolutionary to prove his innocence in Russia, it would, equally, be difficult for a communist to prove his innocence of a quasi-political offence in most European countries and in the United States." It is a harsh verdict and

a broken truth. Sir Alfred Denning was, in fact, criticising the Laski thesis, when he had pointed out the following features:

(a) The British rules of evidence and procedure make it sure that no man shall be found guilty, unless his guilt is proved beyond reasonable doubt.

(b) The Crown Proceedings Act 1947 which makes the Government department in Britain liable to be sued for their breaches of contract and for the wrongs of their servants seeks to keep the balance between the individual and the State

(c) The social revolution of today has placed positive duties on the State and charged the agencies of the State with the efficient working of social services.

(d) The principle which British Courts value is that when powers are given for the furtherance of the public interest, the judges will not allow them to be used oppressively or unreasonably.

(e) In Soviet Russia, the People's Courts form the base of the judicial system. It is a significant institutional experiment. The judge of a People's court is elected, but, in fact, the judge is nominated by the party in power. He is to perform his task to the satisfaction of the Party. He can be recalled at any time with the Ministry's approval.

(f) The Executive in Britain could not deprive a man of his personal freedom except when the law permitted.

Sir Alfred Denning positively stated: "The balance has gone all wrong in Russia and her satellite countries. The scales have descended so heavily in favour of the duty of the individual towards the State that it has been forgotten that he has any rights. The State has become identified with the Party in power; with the result that the tribunals have simply

become the instruments for enforcing the will of the party in power."

That is not so in a democracy where the court of law is independent of the executive. To prevent the abuse of power by the Executive is the most sacred task before courts of law in a democracy. The concept of the positive State has emerged in the twentieth century. In a positive State, the real rulers are the administrators. The modern State is typified by the administrator. The functions of administrators are increasing. The court of law must control the new powers of the Executive. Professor Laski is not anxious for the preventing of the use of powers by the Executive; nor is he worried by the high cost to society inherent in the centralisation of powers in the hands of State officials. I cordially agree with the view that "properly exercised the new powers of the Executive lead to the welfare state; but abused they lead to the totalitarian state." It is the sacred duty of the court to see that powers must be exercised by the Executive genuinely in the public interest. "It is not the use of powers, but the misuse of them, which the courts will intervene to prevent." In a democracy, it is not for the courts to say how powers should be exercised, so long as they are not abused. In Soviet Russia, the ruling party maps out the lines for the exercise of powers, and the courts are there not to prevent the abuse but to ensure the use of powers according to Party dictates. Professor Laski was not mindful that courts in Britain and in Soviet Russia had existed for differing purposes, viz, British courts intervene to prevent the abuse of powers by the Executive, and the Soviet Courts weigh the scale in favour of the Executive under all circumstances.

The doctrine of judicial review is essential for the freedom of the Press. Two things are to be noted.

First, violence and freedom do not go together. Secondly, there can hardly be any merit in Executive justice. Whenever the Executive is clothed with extraordinary power outside the normal process of law, it has been abused. Thus, we should be critical of the technique of transferring the operation of justice to the Executive. The Executive commits follies when it tastes extraordinary powers and is not checked by criticisms. "The winged words of criticism scatter, only too often, the seeds of peace."

Steps are, therefore, to be taken to ensure impartial interpretation of laws by the judiciary. Judicial appointments should be made from men who hold balanced views and who are fit by training and experience to keep the scales even. And they should be held during good behaviour. No judge should be removed unless he is corrupt or physically unfit. Judges are not to be chosen by popular election. In that event, they come with established biases and prejudices. The Executive must not choose judges as a form of political reward. Nor should the Executive lean on men of its own outlook in the appointments to the Bench. The procedure of rewarding retired judges through political appointments is politically offensive. It tends to demoralise the judiciary. All these steps are necessary for the building up of an impartial judiciary. In a positive State, the emphasis on the formal independence of the judiciary is not necessary. The accent should be on impartiality. And impartiality can be obtained if the judiciary is not influenced by the major premisses of the Executive in weighing the scales of justice.

In a modern State, we cannot avoid the administrative law. The growth of delegated legislation is inevitable. Executive justice will be an alias for injustice, unless there are ample safeguards. The

essential safeguards are: (a) The administrative tribunals should be composed of men, independent of the Executive; (b) there should be an appeal to an independent superior court. The warnings given by Sir Alfred Denning are not to be treated lightly. First, administrative tribunals should not become instruments for enforcing the will of the party in power. Secondly, there should be the provision for the right of appeal on a point of law to a superior court. The Tribunals will then apply the law, laid down by the Superior Court and not by the Government. The stream of freedom is not "to perish in the bogs and sands of departmental decisions." Tribunals and courts, both must maintain the rule of law. The right of appeal to a superior court will stop Tribunals from looking at the case through the spectacles of the Government department.

LAWS IN INDIA

The Constitution of India has not followed rigidly either the doctrine of legislative supremacy or the doctrine of judicial supremacy. In England, Parliament is supreme. The omnipotence of Parliament over the common law is absolute, even against common right and reason. "The actual and practical security for English liberty against legislative tyranny is the power of a free public opinion represented by the Commons." In America, the Supreme Court assumes the power to declare any law unconstitutional on the ground of its not being in "due process of law", an expression to be found in the Fifth Amendment (1791) of the U.S. Constitution and the Fourteenth Amendment (1868) which related to State Constitutions. The U.S. Supreme

Court did not define precisely the expression, due process of law, but it argued that there were certain immutable principles of justice which inhered in the very idea of free government. The word "due" knows no fixed definition, and anything which was not reasonable according to the judges of the Supreme Court was not "due". The Supreme Court applied the doctrine of due process to procedure and to substantive law. The anomalies resulting from the nebulous import of the word "due" were narrowed down by the doctrine of police power which embraced regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety.

In India, the position of the judiciary is "somewhere in between the courts in England and the United States". The Constitution of India rejected the uncertain and shifting doctrine of due process of law. It recognises the limited supremacy of the Court over the legislative authority. The American due process of law can thrive and work where the legislature is subordinate to the judiciary in the sense that the latter can sit in judgment over and review all acts of the legislature.

Under the Constitution of India, the position is this. Article 246 gives exclusive power to Parliament to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule, and it gives exclusive power to the State legislatures to make laws with respect to any of the matters specified in List II of the Seventh Schedule. It also gives concurrent power to Parliament and State legislatures to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule. Residuary powers of legislation are vested in Parliament under

Article 248. Under Article 245 (1) the legislative power is made subject to the provisions of the Constitution of India. There are two principal limitations on the legislative power of Parliament, viz (a) the law must be within the legislative competence of Parliament, as prescribed by Article 246, (b) such law must be subject to the provisions of the constitution and must not take away or abridge the rights, conferred by Part III, entitled Fundamental Rights. The courts in India are to decide whether Parliament has transgressed the aforesaid limitations on its legislative power.

Article 13 (1) declares that all existing laws in so far as they are inconsistent with Fundamental Rights (that is, provisions of Part III) shall, to the extent of such inconsistency, be void. This Article will have no retrospective effect; it is wholly prospective in its operation. It does not make the existing laws, inconsistent with the fundamental rights, void ab initio for all purposes; they are void only to the extent they come into conflict with the fundamental rights. To quote the words of Mr. Justice S. R. Das of the Supreme Court, "Article 13 (1) can not be read as obliterating the entire operation of the inconsistent laws, or to wipe them out altogether from the statute book. It only has the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution."

Chief Justice J. Kania, at the inaugural sitting of the Supreme Court of India on January 28, 1950, took the view that "it is not the function of the Court to supervise or correct the laws passed by the legislature as an overriding authority." Its function and

duty are to point out the lacunae or loopholes. If a clear provision of law exists, it has to administer the law and not to make one. The court has to co-operate with the legislature. To quote the words of Chief Justice Kania, "The duty of interpreting the written Constitution with an enlightened liberality falls on the Supreme Court. The Supreme Court will declare and interpret the law of the land. The work will be done in no spirit of formal or barren legalism. It will be our endeavour to interpret the Constitution, not as a rigid body, but as a living organism, having within itself the force and power of self-government. We trust that in doing so, we shall allow the constitutional usages and conventions recognised in all civilised independent countries to be respected. The Supreme Court, however, under the colour of interpretation, cannot alter or amend the law."

The Chief Justice Kania pointed out that with the establishment of the Supreme Court in India, the Privy Council decisions would cease to have compelling binding force, although they would be entitled to great respect, and the decisions of the U.S. Supreme Court and the jurisprudence of America would be "more relied upon for our decisions than they have hitherto been done."

Thus, in free India with an independent judiciary, the judges of India will look more to the principles of law, laid down by the U.S. Supreme Court. This is a significant shift in the emphasis on our judicial pronouncements.

Article 32 makes the Supreme Court the protector and guarantor of fundamental rights. And the Supreme Court cannot, "consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights." No similar provision is found in the

constitution of the United States. The doctrine of judicial review is upheld in the Constitution of India. The following features are to be noted:

(1) Article 32 guarantees the right to move the Supreme Court for directions or orders or writs for the purpose of enforcing the Fundamental Rights, included in Part III. The power of the Supreme Court to issue the writs can be suspended for the period during which the proclamation of emergency is in operation (Article 359). In peace time, it cannot be suspended by legislation or by anything short of the amendment of the Constitution. Article 32 gives very wide discretion to the Supreme Court in the matter of framing writs to suit the exigencies of particular cases, and "the application of the petitioner cannot be thrown out simply on the ground that the proper writ has not been prayed for." Dr Justice B. K. Mukherjee of the Supreme Court of India stated the position : "Any body who complains of infraction of any of the fundamental rights, guaranteed by the Constitution, is at liberty to move the Supreme Court for the enforcement of such rights, and this court has been given the power to make orders and issue directions or writs similar in nature to the prerogative writs of English law, as might be considered appropriate in particular cases."

(2) Article 226 gives the power to every High Court to issue writs for the enforcement of rights conferred by Part III and for any other purpose. Under Article 227, every High Court shall have superintendence over all courts and tribunals under its jurisdiction. The general power of superintendence involves the duty to keep subordinate courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.

(3) Article 19(1) enumerates seven rights for all

citizens, but each of these rights is liable to be curtailed by laws made or to be made by the State to the extent mentioned in clauses (2) to (6) of Article 19. The clauses (2) to (6) save the power of the State to make laws imposing reasonable restrictions on the rights enumerated in Article 19. The Court will ascertain whether any law has transgressed the limitations of clauses (2) to (6). The court will have to uphold the law, whether it likes the law or not, if the law has not overstepped the constitutional limitations. There is the scope of the application of the intellectual yardstick of the court to the interpretation of "reasonable restrictions," used in clauses (2) to (6) in Article 19. It is argued that the American doctrine of judicial review is introduced in the Indian Constitution by asking the court to determine whether the "restriction" is reasonable, under clauses (2) to (6) of Article 19. The court in India is entitled to test the reasonableness of the restrictions from the substantive and the procedural standpoints. There are no fixed standards of reasonableness, and to that extent, the judges may be guided by their subjective approach in the matter of harmonising individual rights with collective interests. The doctrine of judicial review is limited, as such review is not permissible with regard to laws, relating to deprivation of life and personal liberty. The precise and definite expression of the intention of the legislature has been preferred by the Constitution to the variable standards of the judiciary in matters of deprivation of life and personal liberty.

(4) The Supreme Court of India has held that sub-clauses (2) to (6) of Article 19 have put a limit on the fundamental rights of a citizen. Articles 21 and 22 have put a limit on the power of the State given under Article 246 read with legislative lists. Under the Indian Constitution, life and personal liberty are

balanced by restrictions on the rights of citizens as laid down in Article 19 and by checks put upon the State by Articles 21 and 22. The proper test for determining the validity of an enactment under which a person is sought to be deprived of his life and personal liberty has to be found not in Article 19, but in Articles 20 to 22. The essence of personal liberty is the freedom from physical restraint or coercion, and it is not covered by Article 19(1)(d). Mr. S. R. Das of the Supreme Court made the following observations in *A. K. Gopalan V. The State of Madras 1950*:

“Our Constitution is a compromise between parliamentary supremacy of England and the supremacy of the Supreme Court of the United States. A procedure laid down by the legislature may offend against the Court’s sense of justice and fair play and a sentence provided by the legislature may outrage the Court’s notions of penology, but that is a wholly irrelevant consideration. The court may construe and interpret the constitution and ascertain its true meaning, but once that is done, the Court cannot question its wisdom or policy. The Constitution is supreme. The Court must take the Constitution as it finds it, even if it does not accord with its preconceived notions of what an ideal Constitution should be. Our protection against legislative tyranny, if any, lies in the ultimate analysis in a free and intelligent public opinion which must eventually assert itself.”

Besides Article 32, there is Article 136 whereunder the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any case or matter passed or made by any court or tribunal in India. The relevant Articles of the Constitution dealing with the appellate jurisdiction of the Supreme Court are Articles 132 to 136. The Supreme Court made the

scope of Article 136 clear, when it stated in *Pritam Singh V. The State 1950*:

“The Supreme Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.”

The Press laws of India have to be understood in the perspective of the chapter on Fundamental Rights, forming Part III of the Constitution of India. By Article 13(1) all laws in force in the territory of India, immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. Under Article 13(2), the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. Thus the position is this: (a) all laws in operation in India on the day the Constitution came into force, unless otherwise saved, shall be automatically void to the extent they are inconsistent with the chapter on Fundamental Rights; (b) as regards future legislation, the Fundamental Rights in Part III shall have to be respected, and unless otherwise saved by the provisions of the Constitution, they will be void to the extent they contravene the provisions of Part III. The term, Law, in Article 13 includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law.

The chapter on Fundamental Rights relates to Right to Equality (found in Articles 14 to 18), Right to Freedom (in Articles 19 to 22), Right against Exploitation (in Articles 23 and 24), Right to Freedom

of Religion (in Articles 25 to 26) and Educational Rights (in Articles 29 and 30), Right to Property (in Article 31) and Right to Constitutional Remedies (in Articles 32 to 35). Article 32 shows that the Supreme Court can be moved to grant a suitable relief, mentioned in Article 32(2), only in respect of the Fundamental Rights. Part III of Fundamental Rights curtails the powers of the legislature and the executive, and the right to enforce the Fundamental Rights by a direct application to the Supreme Court is removed from the legislative control.

Article 19(1) (a) provides that all citizens shall have the right to freedom of speech and expression. Article 19(2) provides that nothing in sub-clause (a) of clause (1) shall prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said clause in the interests of 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. Article 21 provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law."

Clause (2) of Article 19 specifies the limits up to which the abridgment of the right contained in 19(1) (a) may be permitted. The true understanding of Article 19(1) (a), subject to clause (2), and of Article 21 is necessary for the understanding of the orbit of Press freedom, permitted under the Constitution of India. In the case, *A. K. Gopalan V. The State of Madras, 1950*, the Supreme Court considered Articles 19 and 21 of the Constitution of India for the first time. The Chief Justice Kania recorded the following interpretations of Articles 19 and 21:

(1) If there is legislation directly attempting to

control a citizen's freedom of speech or expression, the question of the application of Article 19 will arise, but it will not arise if there is no direct reference to the freedom of speech. The result of the operation of any legislation on the freedom of speech or expression will not invite Article 19.

(2) Clause (2) of Article 19 emphasises that while the individual citizen has a free right of speech or expression, he cannot be permitted to use the same to the detriment of a similar right in another citizen or to the detriment of the State.

(3) There is no conflict between Articles 19 and 21. The contents and subject-matters of Articles 19 and 21 are not the same. In respect of each of the rights specified in sub-clauses of Article 19(1), specific limitations in respect of each are provided, while the expression, personal liberty, in Article 21 is generally curtailed by the expression, procedure established by law. Article 21 does not purport to cover all aspects of liberty or of personal liberty. In that Article only certain phases of liberty are dealt with. Personal liberty would primarily mean liberty of the physical body. But rights under Article 19(1) are rights which accompany the freedom or liberty of the person. Article 19 gives the rights specified therein only to the citizens of India, while Article 21 is applicable to all persons.

(4) The expression "law" in Article 21 must mean enacted law. The expression "procedure established by law" must mean procedure prescribed by the law of the State. The word "law" should not mean rules of natural justice. The Constitution cannot be read as laying down a vague standard which is inevitable if law is to mean rules of natural justice. The Indian Constitution deliberately avoided the "due process" clause of the American Constitution.

The expression "due process of law," as interpreted by the U. S. Supreme Court means "reasonable law according to the view of the majority of the judges of the Supreme Court at a particular time holding office." There is no justification to give the meaning of "jus" to law in Article 21. "The deliberate omission of the word "due" from Article 21 lends strength to the contention that the justiciable aspect of "law", that is, to consider whether it is reasonable or not by the Court, does not form part of the Indian Constitution. The omission of the word "due," the limitation imposed by the word "procedure" and the insertion of the word "established" bring out more clearly the idea of legislative prescription in the expression used in Article 21. By adopting the phrase "procedure established by law" the Constitution gave the legislature the final word to determine the law."

(5) In accordance with British jurisprudence, no member of the Executive can interfere with the liberty or property of a British subject except when he can support the legality of his act before a court of Justice, and a guilty man must be released if due forms of laws have not been followed. It is arguable that in the whole set-up of Part III of the Indian Constitution, these principles remain guaranteed by Article 21.

(6) Article 22(1) and (2) prescribe limitations on the right given by Article 21. The arrest and detention contemplated by Article 22(1) and (2), although they infringe the personal liberty of the individual, will be legal. Article 21 has to be read as supplemented by Article 22. To the extent the procedure is prescribed by Article 22 the same is to be observed; otherwise Article 21 will apply. Article 22 envisages legislation in respect of preventive detention in nor-

mal times. "If the legislature prescribes a procedure by a validly enacted law and such procedure in the case of preventive detention does not come in conflict with the express provisions of Part III or Article 22(4) to (7), the Preventive Detention Act must be held valid notwithstanding that the Court may not fully approve of the procedure prescribed under such Act."

(7) Bearing in mind the provisions of Article 22, read with Article 246 and schedule VII, List I, Entry 9 and List III, Entry 3, it is clear that Parliament is empowered to enact a law of preventive detention (a) for reasons connected with defence, (b) for reasons connected with foreign affairs, (c) for reasons connected with the security of India, and (under List III), (d) for reasons connected with the security of a State; (e) for reasons connected with the maintenance of public order, or (f) for reasons connected with the maintenance of supplies and services essential to the community.

Mr Justice Fazl-Ali of the Supreme Court in the dissenting judgment in *A. K. Gopalan V. The State of Madras* came to the following findings:

(a) The freedom of movement is, in the last analysis, the essence of personal liberty. Preventive detention amounts to a complete deprivation of the right guaranteed by Article 19(d). It cannot be said that Articles 19, 20, 21 and 22 do not to some extent overlap each other. Preventive detention which is dealt with in Article 22 amounts to deprivation of personal liberty which is referred to in Article 21 and is a violation of the right of freedom of movement dealt with in Article 19(1) (d). The addition of the word "personal" before "liberty" in Article 21 cannot change the meaning of the words used in Article 19. The juristic conception that personal liberty and

freedom of movement cannot be the same thing is the correct and true conception.

(b) The word "law" used in Article 21 does not mean only State-made law. It does not exclude certain fundamental principles of justice which inhere in every civilised system of law. The words "procedure established by law" must include the four principles set up in Professor Willis' book on Constitutional Law, viz, notice, opportunity to be heard, an impartial^s tribunal and orderly course of procedure. These are the essentials of "due process," approved by the U. S Supreme Court. —

The Supreme Court of India does not accept the position that the word "law" in Article 21 should signify the immutable and universal principles of natural justice and that the expression "procedure established by law" means the same thing as the phrase, "due process of law" in the American Constitution. The judges of the Supreme Court of India argued that the framers of the Indian Constitution had deliberately avoided the expression, due process of law, so that subtle and elusive criteria were not implied in the judicial interpretation of the Constitution. As Mr Justice Patanjali Sastri observed: "By laying emphasis on the word "due." interpreting "law" as the fundamental principles of natural justice and giving the words "liberty" and "property" their widest meaning, the American judges have made the due process clause into a general restriction on all legislative powers. And when that power was threatened with prostration by the excesses of due process, the equally vague and expansive doctrine of "police power," that is, the power of Government to regulate private rights in public interest, was evolved to counteract such excesses. All this has been criticised as introducing great uncertainty in the state of law in

that country, for no one could be sure how due process of law would affect a particular enactment."

The Supreme Court of India did not like the vague contours of "due process," particularly when the Indian Constitution, in contrast to the American Constitution, was a detailed one, providing in detail the legislative powers of Parliament and State Legislatures. It is said that framers of the American Constitution wanted to provide "a starting point", and that they had no mind "to work out a final scheme". The architects of 1787 built only the basement. Their descendants have kept on adding walls and windows, wings and gables, pillars and porches to make a rambling structure which is not yet finished." The framers of the Indian Constitution had no such objective.

It will be wrong to conclude that the Constituent Assembly of India rejected the doctrine of judicial supremacy when it rejected the phrase, "due process of law". The Court in India is to search for the objective intent of the legislature primarily in the words used in the enactment.

Civil rights of a person are divided into two classes, viz, the rights attached to the person (*jus personarum*) and the rights to things, that is property (*jus rerum*). The freedom of life and the freedom of the person are the rights attached to the person. These are personal liberties. Liberty is the creation of law; it is the right of doing things permitted by law. It is dependent on wholesome restraints. "That man is free who is protected from injury". Thus, liberty is regulated freedom. Restraints on liberty are welcome for greater social interests. Restraints are wholesome when they ensure the greater liberty of the rest of members of society; liberty has to be safeguarded against executive, legislative and judicial usurpa-

tion of powers. The Constitution of India has guaranteed some of the rights under Article 19(1), but it has put restraints on them by clauses (2) to (6); it has put checks on the State's legislative powers by Articles 21 and 22; it has by providing for preventive detention recognised that individual liberty may be subordinated to the larger social interests.

It is recognised that the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority essential to the safety, health, peace, general order and morals of the community. Thus, the Constitution has to strike a balance between individual liberty and social control. Article 19 uses the expression "freedom" and mentions the several forms and aspects of it which are secured to individuals, together with the limitations that could be placed upon them in the interests of society, and the group of Articles 20 to 22 lay down the restrictions that are to be placed on State control where an individual is sought to be deprived of his life or personal liberty. It is, however, to be noted that preventive detention is an integral part of the Constitution of India. Preventive detention is not a punitive measure; it is a precautionary measure. The justification of such detention is suspicion or reasonable probability and not criminal conviction. The object is not to punish a man for having done anything contrary to law but to prevent him from doing a wrong thing. The use of such emergency power during peace time is unfortunate. But it was retained in the Constitution to answer the given historical necessities. Before the Constitution came into being, there were Security Acts in different provinces which had sanctioned preventive detention. The principle of Security Acts was considered helpful, and it found place in Article 22. Clauses (1) and

(2) of Article 22 lay down the procedure that has to be followed when a man is arrested. They guarantee four things: (a) right to be informed regarding grounds of arrest; (b) right to consult, and to be defended by, a legal practitioner of his choice; (c) right to be produced before a Magistrate within 24 hours; (d) freedom from detention beyond the said period except by order of the Magistrate. These are valuable rights, and they are very much similar to the requirements of the procedural due process of law, as enumerated by Willis. But clause (3) of Article 22 provides that none of the procedures laid down in clauses (1) and (2) shall apply to an enemy alien or to a person who is arrested or detained under any law providing for preventive detention. Clauses (4), (5), (6) and (7) of Article 22 relate to preventive detention. "If some procedure is provided as envisaged by Article 21 and the compulsory requirements of Article 22 are obeyed and carried out, nobody can, under the Constitution of India, complain of the law providing for preventive detention."

Article 14 of the Constitution of India corresponds to the equal protection clause of the Fourteenth Amendment of the Constitution of the United States which declares that "no State shall deny to any person within its jurisdiction the equal protection of the laws." The guarantee of the equal protection of laws, as summed up by Professor Willis, means this, first, it forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. Secondly, it requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed. Similarity, not identity of treatment, is enough. Thirdly, if any state of facts can reasonably be conceived to

sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis.

The point is this that there are no set rules for the determination of reasonable classification. It is a matter for judicial determination. And in determining the question of reasonableness, the court is to see that there is no discrimination and that compelling public interests are involved. The U.S. Supreme Court maintains that "the equal protection of laws is a pledge of the protection of equal laws" and that subjection to equal laws means applying alike to all in the same situation. The Supreme Court of India (in *Chiranjit Lal Chowdhuri V. The Union of India* and others 1950) accepted the following postulates: (a) the law cannot be held to be unconstitutional under Article 14 if it is not discriminating in its character; (b) it would be bad law if it arbitrarily selects one individual or a class of individuals, one corporation or a class of corporations and visits a penalty upon them which is not imposed upon others guilty of like delinquency; (c) the legislature has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection, but the classification should never be arbitrary. The presumption is that discriminations, if any, are based upon adequate grounds, as the legislature is supposed to be receptive to the needs of its own people, but the Court steps in if the classification is made without any substantial basis. "A strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way." The judicial decisions of the U.S. Supreme

Court in regard to the equal protection clause influenced the Supreme Court of India in interpreting Article 14, and Justice S. R. Das of the Supreme Court of India observed: "It does not mean that every law must have universal application, for all persons are not, by nature, attainment or circumstances, in the same position. The varying needs of different classes of persons often require separate treatment. The State has the power to classify persons for legislative purposes. The classification may be on different bases. It may be geographical or according to objects or occupations or the like. If law deals equally with all of a certain well-defined class it is not obnoxious, and it is not open to the charge of a denial of equal protection on the ground that it has no application to other persons, for the class for whom the law has been made is different from other persons, and, therefore, there is no discrimination amongst equals. It is plain that every classification is in some degree likely to produce some inequality, but mere production of inequality is not by itself enough. The inequality produced, in order to encounter the challenge of the Constitution, must be actually and palpably unreasonable and arbitrary." The Court is to see that palpable arbitrariness does not take place.

India is passing through a period of transition in which judicial officers are not fully separated from the executive. The Chief Minister of Uttar Pradesh, Mr. Sampuranand, who has the reputation of being a top intellectual of the Congress Party of India argued on the following lines in his inaugural address at the fourth annual conference of the U.P. Judicial Officers Association at Lucknow on March 14, 1956, that (1) judicial officers had occupied a unique position since they were connected both with the judiciary and the executive; (2) it was only pro-

per in the present period of transition, and in a free country different officers and departments could not work in separate watertight compartments; (3) the socio-economic set-up of the country was changing rapidly whereas laws could not be changed so rapidly, and as such judicial officers had to interpret the laws in the context of social changes and (4) the officers dispensing justice should have security of tenure, and it was not proper to keep them on the temporary cadre for any length of time. Mr. Justice A. N. Mulla of Allahabad High Court in his presidential address at the U P. Judicial Officers' Conference placed the other side of the case which was not in support of Mr. Sampuranand's point of view. Mr. Justice Mulla contended that so long as judicial officers were under the administrative control of the executive officers, they could not attain full stature as judicial officers. The following observations of Mr. Justice Mulla are to be noted:

“Under the criminal procedure code, a case is transferred from a court the moment it appears that one of the parties has a reasonable apprehension that the other party can influence the mind of the presiding officer. In more than 75 p.c. of the cases which come up before you the State is a party. The District Magistrate who exercises administrative control over you is also the sanctioning authority in some of these cases. In your day to day work you are confronted not with the conception of the State in the abstract but in the concrete form of the District Magistrate: whose executive outlook is seldom capable of looking on your work from the judicial angle alone. Can it be honestly maintained that under this set up you can administer justice fairly and impartially? There may be a few moral giants amongst you, but the greater number are bound to succumb to this pressure sooner

than later. If the State really wants independent and honest judicial officer, this pressure must be removed as soon as possible. A strongly entrenched executive, unless it has long democratic tradition behind it, does not care to play the game according to the rules. It breaks the rules with impunity because it can select its own umpires who are not only on its pay-role but who watch its frowns and smiles before giving their decisions. It is for the State and the people to realise that the plant of justice cannot grow in such a polluted atmosphere."

The observations of Mr. Justice Mulla angered many of the advocates of the U.P. Congress Ministry, although the principle of separation of the judiciary from the executive is proclaimed in the Directive Principles of the Constitution of India.

The Supreme Court does not, when hearing appeals under Article 136, sit as a court of further appeal on facts and does not interfere with the findings given on a consideration of the evidence, unless they are perverse or based on no evidence.

Articles 32 and 226 of the Constitution of India are noteworthy. The powers of the Supreme Court as well as of all the High Courts in India extend to the issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. The writs can be availed of to adjudicate on the validity of judicial acts. Under Article 226, the High Courts in India are placed in somewhat the same position as the court of King's Bench in England. The expression "judicial acts" includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons

obliged to exercise such functions. The control exercised through Article 226 over judicial or quasi-judicial Tribunals or bodies is not in an appellate but supervisory capacity. The Supreme Court stated as follows in *Veerappa Pillai V. Raman and Raman Ltd, 1952* on the powers of the High Court under Article 226:

“Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate Tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.”

In other words, writs do not lie in order to bring up an order or decision for the re-hearing of the issue raised in the proceedings. They exist “to correct error of law when revealed on the face of an order or decision or irregularity or absence or excess of jurisdiction when shown.”

It is a recognised principle that the liberty of the Press is no greater and no less than the liberty of every subject. The journalist should not occupy a special position in the eyes of law, although his function is a valuable and a special one. The Press moulds public opinion; it is meant to serve the public. The journalist occupies a privileged position, so far as the service of the public is concerned. But his

special position does not give him a better grade of citizenship rights. Democracy does not encourage any monopoly rights in the eyes of law.

The journalist is no better and no worse than an ordinary citizen. The well-known observations of Lord Shaw in the Judicial Committee of the Privy Council (in *Arnold V. The King Emperor of India*, 1914) have won general acceptance:

“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 his 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.”

There is another point of view. The journalist, on account of the peculiarity of his occupation, has to disseminate knowledge, to publish matters relating to current news, to satisfy public curiosity and to enlighten the public. The court is asked to take an indulgent view; the Government are asked to widen facilities for the work of the journalist. Because, the function of the Press is to serve the public. The Court of Law is unable to make a distinction between the citizen and the journalist, unless there are special laws in favour of the Press. There are special laws curbing the rights of the Press, but special laws favouring the Press are not asked for in a democratic set-up

There are certain idealistic considerations operating in a democratic set-up. First, it is the liberty of the Press that is guaranteed, not the licentious-

ness. It is the right to speak the truth, not to pamper a depraved public appetite or taste. Secondly, according to C. P. Scott, "neither in what the newspaper gives nor in what it does not give nor in the mode of presentation must the unclouded face of truth suffer wrong. Comment is free, facts are sacred. Propaganda so called by this means is hateful. The voice of opponents no less than friends has a right to be heard. It is well to be frank; it is even better to be fair."

These idealistic considerations set up absolute standards. In a modern State, it is often difficult to conform to them. The peculiarities of the profession of journalism are there. First, the newspaper is not to run ahead of events, but it is to cover the news of any major occurrence. The lack of news is also false news. Secondly, it is not possible for a newspaper to publish only things which are true.

Speculative reports or intelligent surmises are permitted. The newspaper is to see that its reports or comments do not constitute a breach of trust or amount to deceit or defamation. Thirdly, the journalist has to use discretion. In the exercise of discretion, he is not to be guided by malice. But if his reports and comments are coloured, biting and subjective, there is no help. Fourthly, in certain cases, the Press must have the plea of justification that it published reports and comments in good faith and in the public interest.

Lord Chief Justice Cockburn stated correctly the position (in Seymour V. Butterworth, 1862):

"Those who fill a public position must not be too thin-skinned in reference to comments made upon them. It would often happen that observations would be made upon public men, which they knew from the bottom of their hearts were undeserved and

unjust; yet they must bear with them and submit to be misunderstood for a time, because all knew that the criticism of the Press was the best certainty for the proper discharge of public duties."

The point which is sought to be underlined is this that any deviation from the idealistic canon of journalism does not amount to the abuse of the liberty of the Press. Vituperation is bad, primarily because it panders to the yellow instincts of the reader; irresponsibility is undesirable, because it perverts the reader's taste; inaccuracy is unfortunate, but it has to be tolerated in certain given conditions. In a profession where the room for discretion is to be wide and large, any narrow legalistic approach or absolute idealistic consideration is not helpful for the assessment of the role of the free Press. I am not quarrelling with the significant observations of the American Commission on freedom of the Press: "The Press must know that its faults and errors have ceased to be private vagaries and have become public dangers. Its inadequacies menace the balance of public opinion. It has lost the common and ancient human liberty to be deficient in its functions or to offer half-truth for the whole". But realistically speaking, the Press must have institutional discretions and institutional safeguards.

A Commission of Enquiry, with Mr Justice P. B. Mukherjee of Calcutta High Court as the only member was appointed to enquire into the allegations of obstruction to and interference with the activities of working journalists during the agitation in Calcutta over the enhancement of tram fare in 1953. There were allegations of assault on and arrest of Press Reporters and Press Photographers.

The Commissioner of Police, Calcutta, prohibited under Section 144 of the Code of Criminal Proce-

ture any assembly of five or more persons within the town and suburbs of Calcutta or doing any act which was likely to cause breach of peace within the said town and suburbs of Calcutta. There were attempts to hold a banned meeting on the maidan. Press reporters and photographers formed a group and went to the maidan to cover the news of the meeting. Mr. Mukherjee in his report to the Government of West Bengal recorded the following opinion:

(1) The Press has a right to go and watch attempts to hold a banned meeting and the police action to disperse such banned meeting, but Pressmen have to obey Section 144 Cr. P.C. without forming a group of more than five in one place. Pressmen are "not entitled in law to commit a breach of the law by forming an assembly of more than five persons which is the very essence of the prohibition, contained in the order under Section 144 Cr. P. C." The law does not recognise any privilege for the journalist.

(2) Section 188 of the Indian Penal Code makes it an offence for any person disobeying order duly promulgated by a public servant. In the Explanation to Section 188, it is sufficient if the offender's disobedience produces or is likely to produce harm.

(3) The policeman, even in plain cloth, can arrest for disobedience to the law. The right to arrest does not depend on the uniform. No citizen has a right to interrogate, prevent or obstruct a policeman from arresting a person. Pressmen are not exempt from the operation of Section 186 (which refers to the obstruction of public servant in the discharge of his public functions) or Section 188 (which refers to disobedience to the order of a public servant).

Mr. Mukherjee put the position as follows: "The liberty of the Press does not give liberty to the journalist to break an order under Section 144 Cr.

P. C. or to interfere with policemen on duty. If the policeman is arresting a person wrongly, it is for that person or for any other to complain about his illegal arrest before the Magistrate or a court of law. It is not for his colleagues or his fellow citizens to prevent the discharge of the duties by a policeman, however ill-conceived the action of a policeman might be, and constitute themselves to be the judges on the spot as to whether a person is liable to be arrested or not. Liberty of the Press does not mean immunity to Press Reporters from the operation of the ordinary laws of the land."

There is no specific mention of the freedom of the Press in the Fundamental Rights of the Constitution of India. But the freedom of speech and expression, as guaranteed in Article 19 (1) (a) includes the liberty to propagate one's own views and the right to print matters, borrowed from someone else. The freedom of "expression" includes the freedom of publication. The Supreme Court of India holds that "there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is secured by freedom of circulation. Liberty of circulation is an essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value." If there is freedom of communication, there must be freedom from censorship in the guarantee of freedom of expression. In the Constitution of India, there is no mention of the right to secrecy of correspondence. It may be urged that the secrecy of correspondence is included in the freedom of expression. If this is so, interception and interruption of postal articles, telephonic messages etc., shall be justifiable only if such interference is reasonably necessary under clause 2 of Article 19 of the Constitution of India.

The following laws, affecting the Press in India, are to be noted :

(1) *Indian Telegraph Act*

The Indian Telegraph Act enables Government or any officer, especially authorised by Government, on the occurrence of any public emergency or in the interests of public safety to take temporary possession of any telegraph, established, maintained or worked by any person licensed under the Act and to order that any message or class of messages from any person or class of persons or relating to any particular subject brought for transmission by or transmitted or received by any telegraph shall not be transmitted or shall be intercepted or detained or shall be disclosed to Government or the officer specially authorised. In case of doubt as to the existence of public emergency or whether the act done is in the interest of the public, a certificate of Government shall be conclusive proof on that point.

The Act in effect contemplates the imposition of censorship on dissemination of news even during peace time under certain conditions. The Press Laws Enquiry Committee, 1948 agreed that the Government should continue to have the power of telegraphic interception, provided the orders of the Minister in charge are invariably obtained, that delegations of this power should be the exception rather than the rule, that delegations should be for a specified and short period and not general and that clear instructions should be issued by Government to the specially authorised officers in order to ensure that these powers are not abused. The Committee recommended that provision should be made in Section 5 of the Indian Telegraph Act that orders passed by specially authorised officers of Government

should be reported to the Government in order to enable the responsible Minister to judge the proper exercise of the powers and the orders passed in individual cases. These recommendations were supported by the Indian Press Commission (1952-54). The Press Commission pointed out that Section 26 (1) of the Indian Post Offices Act 1898 was on a par with Section 5 (1) of the Indian Telegraph Act.

The Indian Press Commission made the following observations on the Sea Customs Act 1878:

“In so far as the Sea Custom Act prohibits dissemination of news, otherwise than in relation to an emergency or public safety, it appears not to be in consonance with the freedom of the Press or Article 19(2) of the Constitution Sections 181A to 181C authorise detention and further disposal of any package suspected to contain any newspaper or any document the publication of which is punishable under Section 124A, Indian Penal Code. This Section, as it stands, appears to us to be inconsistent with the freedom of the Press and to be ultra vires of the Constitution”.

(2) *Section 144 Cr. P. C.*

Section 144 of the Criminal Procedure Code gives power to the Magistrate to issue orders in urgent cases of apprehended danger, if such Magistrate considers that such direction is likely to prevent injury to any person, lawfully employed, or a disturbance of the public tranquility, or a riot or an affray. This section is occasionally applied to newspapers. And pre-censorship orders are passed on newspapers under this section. The Indian Press Commission made the following observation: “We cannot say that in so far as it enables Government to act where there is likelihood of disturbance of public

tranquility or a riot or an affray, the Section is inconsistent with the freedom of the Press or Article 19(2) of the Constitution". But it quoted with approval the following remarks of the Press Laws Enquiry Committee:

"We share the doubts expressed by witnesses regarding the propriety of the application of this Section to newspapers, and feel that it was not the intention of the framers of the Code that this Section should be applied to the Press. We would, therefore, recommend that instructions should be issued by Government to Magistrates that orders in respect of newspapers should not be passed under this Section. If Government consider it necessary to have powers for issue of temporary orders to newspapers in urgent cases of apprehended danger, Government may promote separate legislation or seek an amendment of section 144 for the purpose."

There is no special privilege attached to journalists. The freedom of the journalist is an ordinary part of the freedom of the subject, The Privy Council put the position of the journalist tersely when it stated in *Arnold V. King Emperor* (1914): "The responsibilities which attach to his 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 assertion, his criticism or his comments is as wide as, and no wider than, that of any other subject."

But, as pointed out by Blackstone, the liberty of the Press consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matters when published. It is of the utmost importance that there should be no previous restraint upon publications. The following observations of the U. S. Supreme Court are worthy of

notice: "The fact that the liberty of the Press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the Press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege." It is acknowledged that previous restraint on newspapers is bad, but subsequent punishment for abuses of power is necessary. The function of the Press is to inform, and the information is to be uncensored, if citizens are to be properly informed.

The Constitution of India guarantees freedom of the Press, but there is no specific prohibition in Article 19 of the Constitution against censorship of the Press even in time of peace. Under Article 19(2) of the Constitution, reasonable restrictions on the freedom of thought and expression can be imposed in the interests of the security of the State, public order etc. Censorship of the Press is not objected to in time of war. Any censorship in the interests of the authority of the State may be justified on political grounds, but it threatens the freedom of the Press. The Supreme Court of India does not justify censorship, unless the security of the State is threatened. Any activity prejudicial to public safety or the maintenance of public order should not justify censorship. The Supreme Court of India observed in *Brij Bhushan V. State of Delhi (1950)*: "There can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the Press which is an essential part of the freedom of speech and expression declared by Article 19(1) (a)." It did not justify censorship, unless the restriction was imposed solely in the interest of "security of the State." The original provision of Article 19(2) did

not provide that reasonable restrictions could be imposed in the interest of "public order." This was introduced by the Constitution (first Amendment) Act, 1951. The safeguard lies in the fact that the Court is to interpret if restrictions are reasonable. This is a new door for intervention by the judiciary.

(3) *Official Secrets Act*

The Indian Official Secrets Act, 1923 is modelled on the British Official Secrets Act. It is recognised that highly secret information relating to the vital interests of the State must not be allowed to be disclosed. The Press Laws Enquiry Committee, 1948 stressed the following points: (a) State secrets should be guarded; (b) Government must be the sole judge in defining State secrets; (c) the Act was to be administered in the larger interests of Government and the public. Any circular or note or instruction should not become a prohibited secret, because it is marked "secret" or "confidential." The Press case is this that it should have the right to publish confidential information if the publication is in the interests of the public. But two limitations are gladly accepted by the Press, viz, the Press is not anxious to publish information likely to be useful to the enemy in times of war, and it should not publish confidential Government information which may imperil public safety. The Press Commission noted that the Official Secrets Act was administered in an "eminently reasonable way." Statistics showed that there was only one prosecution during 1931 to 1946 throughout the whole of India while a foreign Government was in power.

(4) *Law of Defamation*

The Press exercises tremendous influence. The publicity caused by the publication of reports or com-

ments in a newspaper aggravates the seriousness of Press offence. The Press may bring honour to some and pillory to others. It should, therefore, exercise restraint. Defamation is an injury to a man's reputation. Defamation is the generic term, of which libel and slander are species. [The Press must observe certain codes of conduct, viz, private life of a person must not be invaded, and he who wants to avoid public attention should not be exposed to public view.] Defamation may be done by general statements of defamatory nature or by concrete cases. In general, Press defamation may be defined as "a statement which, considering the circumstances of the publication, arouses in reasonable people the impression of a defamation."

Under 19(2) of the Constitution of India, the fundamental right of freedom of speech and expression can be curtailed by the imposition of reasonable restrictions in relation, *inter alia*, to contempt of court, defamation or incitement to an offence. The criminal law relating to defamation is found in section 499 of the Indian Penal Code. The civil law relating to defamation is still uncodified. In England, defamation is mainly a civil offence. It becomes a criminal offence if libel falls within the category of seditious libel. The framers of the Indian Penal Code acknowledged that "between the offence of defaming and the offence of provoking a breach of peace, there is a distinction as broad as that which separates theft and murder. Defamatory imputations of the worst kind may have no tendency to cause acts of violence." They stated that "the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of unfavourable sentiments of his fellow creatures and those inconveniences

to which a person who is the object of such unfavourable sentiments is exposed." The Indian Press Commission rejected the suggestion that the offence of criminal defamation should be confined to cases where there was an apprehension that a breach of the peace would be caused. It did not accept the argument that the basis of criminal law was the responsibility. Moreover, civil litigation involves costly paraphernalia.

Under Section 499 of the Indian Penal Code, an offence of defamation is committed "when a person makes an imputation concerning another person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of the other person." There are ten exceptions, catalogued in Section 499 of the I. P. C. :

(1) It is not defamation to impute anything which is true concerning any person, if it be for the public good; (2) it is not defamation to express in good faith any opinion respecting the conduct of a public servant in the discharge of his public functions; (3) it is not defamation to express in good faith any opinion respecting the conduct of any person touching any public question; (4) it is not defamation to publish a substantially true report of the proceedings of a court of justice; (5) it is not defamation to express in good faith any opinion respecting the merits of any case which has been decided by a court of justice; (6) it is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public; (7) it is not defamation in a person having over another any authority to pass in good faith any censure in the conduct of that other in matters to which such lawful authority relates; (8) it is not defamation to prefer in good faith an accusa-

tion against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation; (9) it is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good; (10) it is not defamation to convey a caution in good faith to one person against another, provided such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Every person has a reputation. It is immaterial if the reputation of the person defamed is high or low. The law does not contemplate, as the Patna High Court holds, that any person's reputation is so low that it cannot fall lower by the publication of fresh defamatory matter relating to him. The Indian Press Commission accepted this view of the Patna High Court. The Patna High Court in *D. Shastri Vs. K. B. Sahay* (1953) pointed out that "there is a basic distinction between the fact in issue in a civil action for libel and slander and the fact in issue in a criminal prosecution under Section 500 of the Penal Code, as in a civil action what the plaintiff seeks to do is to compensate himself for loss of his reputation in terms of money. The quantum of damage, therefore, must differ from case to case and according to the status of the plaintiff. It is not so in a criminal prosecution. In a criminal prosecution what really matters is the mens rea of the accused person."

Section 198 of the Criminal Procedure Code, 1898 provides that no court shall take cognisance of an offence of defamation, except upon a complaint made by some person aggrieved by such offence. In other words, it is only the aggrieved party that can set the

law in motion. The Indian Press Commission argued that there should be a special procedure in the case of defamation of a public servant in the discharge of his public duties. Section 198B was inserted by the *Amending Act of 1955*, and it provided that "when any offence of defamation is alleged to have been committed against the President or the Vice-President or the Governor or Rajpramukh of a State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a court of session may take cognisance of such offence, without the accused being committed to it for trial upon a complaint in writing made by the Public Prosecutor."

The strangest part of the amendment was that the "Minister" was included in the category of public servants in Section 198B of the Cr. P. C. In a parliamentary democracy, any special procedure for the Minister in respect of the offence of defamation is not called for. A Minister is a servant of the public, but he is not a "public servant". He is responsible to the legislature. His public activities are meant to be criticised, and he can defend his conduct publicly. If he is aggrieved, he should come forward to set the law in motion.

The Indian Press Commission wanted to give protection to newspapers in exposing administrative scandals, and it suggested that the law of defamation in India should be amended on the lines of the English Defamation Act of 1952 which gives protection to a person in respect of unintentional defamation.

(5) *Working Journalist Act.*

In pursuance of the recommendations of the Indian Press Commission, the Government of India

have adopted two measures, one for the appointment of a Press Registrar and the other for the regulation of certain conditions of service of working journalists. The Press Registrar shall maintain a Register of newspapers. The publisher of every newspaper shall furnish to the Press Registrar such returns, statistics and other information as the Press Registrar may from time to time require. The Press Registrar shall, for the purpose of the collection of any information relating to a newspaper under the Press and Registration of Books Act, have access to any relevant record or document relating to the newspaper in the possession of the publisher thereof and may enter at any reasonable time any premises where he believes such record or document to be and may inspect or take copies of the relevant records or documents or ask any question necessary for obtaining any information required to be furnished under the Act. The Press Registrar shall prepare an annual report containing a summary of the information obtained by him in respect of newspapers in India and giving an account of the working of such newspapers.

The Working Journalists (conditions of service) and Miscellaneous Provisions Act, 1955 provides that the provisions of the Industrial Disputes Act, 1947 shall apply in relation to working journalists. The Act statutorily guarantees Provident Fund and gratuity. It governs the hours of work and the period of leave and also the period of notice in relation to the retrenchment of a working journalist. It also provides that the provision of the Industrial Employment (Standing Orders) Act, 1946 shall apply to every newspaper establishment wherein twenty or more newspaper employees are employed. The Act provides for the appointment of a Wage Board to fix rates of wages in respect of working journalists. The Act,

however, makes the provision that no newspaper employee is precluded from entering into an agreement with an employer for granting him rights and privileges in respect of any matters which are more favourable to him than those to which he would be entitled under the Working Journalist Act.

The main points to be noted are these that working journalists are workmen under the Working Journalists Act and that the provisions of the Industrial Disputes Act, 1947 shall apply to working journalists. The Industrial Disputes Act contemplates the settlement of disputes between employers and employees through Boards of Conciliation or Courts of Enquiry or Industrial Tribunals. When conciliation efforts fail, Industrial Tribunals are brought into being. The question was discussed if the Industrial Tribunal was a court of law or not. The minority judgment of Mr. Justice B. K. Mukherjee of the Supreme Court of India in *Bharat Bank Ltd., V. Employees of Bharat Bank, 1950* (with which Mr. Justice Patanjali Sastri agreed) was indeed a striking one. The minority view was that an Industrial Tribunal formed under the Industrial Disputes Act was not a judicial tribunal and that its determination was not a judicial determination. The object of the Industrial Disputes Act is to make provisions for investigation and settlement of industrial disputes. The word "settlement" indicates the search for a compromise between the interests of disputing parties. The Act provides three classes of authorities for the powers and duties of investigation and settlement of industrial disputes, viz. Boards of Conciliation, Courts of Enquiry and Industrial Tribunals. Section II lays down that any enquiry or investigation by a Board, Court of Enquiry or Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the

Indian Penal Code. First, the same powers are conferred on the three classes of authorities without any distinction. Secondly, the proceedings before those authorities could be deemed to be judicial proceedings only for certain specified purposes. The powers of the Industrial Tribunal are undoubtedly wider than those of the Board of Conciliation and Court of Enquiry. But the Industrial Tribunal can make no final pronouncement which "would proprio vigore be binding on, and create rights and obligations between the parties." Under Section 15, the Industrial Tribunal has to submit its award to the appropriate Government, and on the receipt of such an award, the appropriate Government shall declare the award to be binding. When Government itself is a party to the dispute, it may consider it inexpedient on public grounds to give effect to the award either in whole or in part. And in such cases, Government will lay the award for consideration before the Provincial or Central Legislative Assembly as the case may be, and the Legislative Assembly may by its resolution confirm, modify or reject the award. The Government is to declare the award binding; it will specify the date when the award would come into force; it will also fix the period during which it would remain binding, and this period shall not exceed one year. The Tribunal has the trappings of a court, but when the award is subject to the contingency of being modified or rejected by the legislature, it cannot be regarded as a final or binding decision "which is of the essence of a judicial proceeding." Mr. Justice Mukherjee concluded as follows: It is not and could not be suggested that the Industrial Tribunal is a Tribunal which exercises judicial functions when the dispute is only between private employers, and their workmen, and it ceases to be such when the employer is the Government itself."

Mr Justice Mukherjee further held the view that the Tribunal was not bound by the rigid rules of law. It can confer rights and privileges on either party which it considers reasonable and proper, even though they may not be within the terms of the existing agreement. "It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. The process it employs is more akin to administrative than to judicial function."

The following tests which distinguish a judicial body from a quasi-judicial or administrative body were laid down by Mr Justice Mukherjee: (1) the decision must create rights and impose obligations; it should be enforceable under the ordinary law of the land; the determination by its own force and without the aid or instrumentality of any other authority or power must affect the rights and obligations of parties, (2) the judicial body decides controversies according to law, while the quasi-judicial body or administrative body is not bound to follow the law for its decision; the judicial body has got to apply to the fact found the law of the land which is fixed and uniform, but the quasi-judicial body may give its decision on principles of administrative policy or convenience or what appears to be just and proper in the circumstances of a particular case

The minority view presented by Mr. Justice Mukherjee with the endorsement of Mr. Justice Patanjali Sastri was that Article 136 of the Constitution of India did not contemplate a determination given by the Industrial Tribunal. But where the Tribunal assumes jurisdiction under a mistaken

view of law or refuses to exercise jurisdiction properly by adoption of extraneous or irrelevant considerations or violates the principles of natural justice, the proper and adequate remedy would be writs of certiorari or prohibition.

The majority view, presented by the Chief Justice Kania (with the concurrence of Mr. Justice Fazl Ali and Mr. Justice Mahajan) was this that the functions and duties of the Industrial Tribunal were very much like those of a body discharging judicial functions, although it was not a court in the technical sense of the word. And accordingly, the Industrial Tribunal cannot be excluded from the scope of Article 136. And under Article 136, the Supreme Court, as underlined by Mr. Justice Mahajan, is not to substitute its decision for the determination of the Tribunal. "All that the court when it entertains an appeal would do is to quash the award and direct the Tribunal to proceed within the powers conferred on it and approach the adjudication of the dispute according to principles of natural justice."

The securing of living wages to workers is conducive to the general interests of the public. Article 43 of the Constitution which is one of the Directive Principles of State Policy urges the State to secure a living wage to workers. Individual employers may find it difficult to carry on the business on the basis of the minimum wages fixed under an Act. But that cannot be a reason for the striking down of the law as unreasonable. The Supreme Court held that the restrictions, though they interfered to some extent with the freedom of trade or business guaranteed under Article (19) (1) (g) of the Constitution were reasonable and, being imposed in the interests of the general public, were protected by the terms of clause

(6) of Article 19. (Vide *Bijay Cotton Mills Ltd., V. The State of Ajmer*, 1954).

(6) *Law of Sedition*

(2). The word, sedition, does not occur in Article 19. It has been avoided deliberately. It does not occur in Section 124A of the Indian Penal Code. It is found as a marginal note to Section 124A. Section 124A relates to sedition, and a statutory definition of sedition is found therein. The scope of section 124A is very wide. To bring or the attempt to bring into hatred or contempt, and to excite or the attempt to excite, disaffection towards the Government established by law comes under the scope of sedition.

Basically, sedition is an offence against public tranquility. There are two classes of offences against public tranquility—offences accompanied by violence and disorders, and offences which tend to cause violence and disorders. The normal interpretation is that sedition must cover only grave offences. The Chief Justice Maurice Gwyer of the Federal Court of India laid down the test in 1942 in *Niharendu Dutt Mazumdar V. The King* that “acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency.” The Federal Court sought to establish that public disorder or the reasonable anticipation or likelihood of public disorder was the gist of the offence of sedition. The Federal Court sought to turn the tide of the Privy Council decision, affirmed in *Tilak’s case* to the effect that the offence of sedition consisted in exciting or attempting to excite in others certain bad feelings towards Government and not in exciting or attempting to excite mutiny or rebellion or any sort of actual disturbance, great or small. The Federal Court

found the danger if the word, disaffection, as used in Section 124A of the I. P. C. would mean mere absence of affection or bad feeling towards the State, whether it had any connection with violence or not. The Federal Court sought to confine sedition to practices which were calculated to disturb the tranquility of the State and to lead ignorant persons to subvert the Government. The Privy Council did not accept the decision of Chief Justice Gwyer of the Federal Court of India in King Emperor V. Sadhesiv Narayan Bhalariae, and they added: "In England there is no statutory definition of sedition; its meaning and content have been laid down in many decisions, but these decisions are not relevant when you have a statutory definition of that which is termed sedition."

Section 124A of I. P. C. is not in tune with Article 19(2) of the Constitution of India. The Supreme Court in Romesh Thappar V. The State of Madras, 1950 held as follows: "We are of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that Section 9 (of the Madras Maintenance of Public Order Act, 1949) which authorises imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorised restrictions under Clause (2) of Article 19 and is therefore void and unconstitutional."

The Indian Penal Code determines the orbit and ambit of "disaffection". It frowns upon criticisms of Government without incitement to any offence.

But Article 19(2) does not discourage criticisms; it encourages restrictions in the interests of public order. Public order and public safety are allied matters. The reasonable interpretation is that restrictions are to be welcomed to deal with serious cases of public disorder. It will be a wrong angle if insignificant breaches of law are dealt with by a piece of special legislation. The ordinary cases are provided for by the Penal Code and other existing laws. It is often true that there are no definite boundaries to distinguish insignificant breaches of law from serious cases of disorders. But Article 19(2) is to be used primarily to cover offences against public tranquility.

The Indian Press Commission made the following significant observations:

“In our opinion, in so far as the Section (that is, Section 124A of the I. P. C.) penalises mere exciting or attempting to excite feeling of hatred, contempt or disaffection towards Government without exciting or attempting to excite disturbance of public order, it is ultra vires of the Constitution even under amended Article 19(2) of the Constitution.” It is also opposed to the concept of the freedom of the Press. In a democracy, changes are brought about by expressing dissatisfaction with its doings and mobilising public opinion hostile to the Government in power. The Press Commission recommended the repeal of Section 124A of the I. P. C.

(7) *Contempt of Court*

The policy of efficient justice is to be balanced against the liberty of the Press. Press attacks on a judge are discouraged; they are taken to be interferences with the course of justice. Free Press values

efficient justice. The judge can do his work well if he is not distracted by controversy. When the Press attacks private citizens or public servants, their legal remedy is to sue for libel. But when a judge is attacked, he wields the powerful weapon of contempt of court.

There is the power of summary punishment for contempt. But the issue involved is that the judge determines whether he himself is wronged and imposes penalty as he pleases. It is bad for the same person to be the accuser and the judge. The test for a contempt case is "the character of the act done and its direct tendency to prevent and obstruct the discharge of judicial duty." The Press attacks must be more than adverse comments. There is no case for contempt of court on the slight adverse reference to a judge.

The interests of the free Press demand that no person shall be the judge in his own cause and that the attack upon the judge to constitute contempt should be real obstruction, not mere criticism. Chief Justice Taft raised two issues: first, the delicacy there is in the judge's deciding whether an attack upon his judicial action is mere criticism or real obstruction and the possibility that impulse may incline his view to personal vindication are manifest. Secondly, where conditions do not make it impracticable, a judge called upon to act in a case of contempt by personal attack upon him may properly ask that one of his fellow judges take his place.

Comments on pending cases are to be discouraged. Contempt proceedings are justified to avert disrespect for the judiciary and to curb interferences with the administration of justice. It is argued that judges are to be shielded and that comments on pending cases are to be restricted. The right to speak one's

mind is thus abridged. But this abridgment is not seriously resented in the interests of free judicial institutions and traditions. The rights of the individual cannot be guaranteed if there is no impartial interpretation of laws and administration of justice. The Press accepts restrictions, because the judges must be left free to work impartially and independently. There is a school of thought which thinks that "judges as persons or courts as institutions are entitled to no greater immunity from criticism than other persons or institutions." The discussion must be unfettered except by laws of libel, by self-restraint and by good taste. But judges are human beings; they have frailties; they are likely to be influenced or distracted by criticisms. Thus, contempt proceedings serve definite social purposes. The judges must not be sensitive to mere adverse comments. Weak characters, easily disturbed by Press comments ought not to be judges for society's sake.

There is a point of view which is not to be ignored. The people have a right to know how its judicial and executive officers perform their duty. Thus, there is a case for the publicity of the acts and doings of court officials in order to keep the stream of justice unpolluted. Justice Taft rightly argues that if the publication criticises the judge or court after the matter with which the criticism has to do has been finally adjudicated and the proceedings are ended so that the carrying out of the court's judgment cannot be thereby obstructed, the publication is not contempt and cannot be summarily punished by the court, however false, malicious or unjust it may be. The remedy of the judge as an individual is by action or prosecution for libel.

The contempt of court arises when there is the scandalising of the court itself or when there are

offending comments or publications which tend to hinder or obstruct or interfere with the due course of administration of justice by the Court. Newspapers should not make comments or publish matters to affect the minds of the judge and to deflect them from the strict performance of their duties. The Supreme Court of India underlined two points:

(1) It is not necessary in a contempt case that there should be an actual interference with the course of administration of justice, but it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law.

(2) The summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the court and thereby affording protection to public interest in the purity of administration of justice.

Regarding contempt proceedings, the Supreme Court observed as follows (in re. Hiralal Dixit and two others, 1954):

“This is certainly an extraordinary power which must be sparingly exercised, but where the public interest demands it, the Court will not shrink from exercising it and imposing punishment even by way of imprisonment, in cases where a mere fine may not be adequate. People must know that they cannot with impunity hinder or obstruct or attempt to hinder or obstruct the due course of administration of justice ”

The contempt jurisdiction should be exercised with scrupulous care, “to be exercised only when the case is clear and beyond reasonable doubt.” It ought to be used as seldom as possible, and “almost entirely

with reference to the interests of justice." In *Rex V. Editor of the New Statesman* (1928) Lord Chief Justice Hewart of England stated that the contempt procedure might be applied in two classes of cases:

(1) When the judicial impartiality of a particular judge is called into question;

(2) where criticisms are made which tend to undermine public confidence in the judiciary as a whole.

Contempt is forbidden and punished, because interference with judicial proceedings is bad. The power of the judge is growing with the enlargement of the province of legislation. In a modern State, the scrutiny of and comment upon judicial findings cannot be avoided. The judge should be secure, so that his independence may be assured. But he need not be above just comment by the citizen-body. The interference with justice arises if there is the interruption of a court proceeding or comment upon a case while it is under discussion. But the judge is "given over to criticism" when the decision has been reached and effect is given to the findings of the court. In a democracy, there cannot be a moratorium on criticisms of judicial decisions when welfare legislation is increasing. The judicial decisions are to be examined, analysed and weighed for the formation of public opinion. The judges have their political biases. Professor Laski who was critical of the given class-structure of the judges in England canvassed the view that public confidence in the judiciary was undermined not so much by the comment in the Press as by the habit which led to the comment." There may be suspicion about judicial impartiality or the impartiality of particular judges. Comments should be permitted. Judges may use the ordinary machinery of

the law of libel. It may look odd. But its oddness is minimised when it is remembered that the conduct of the court is not always impartial, that judges are fallible human beings and that judges are often guided by their political faiths and environmental traditions. The contempt procedure is to be resorted to when the thing done is of such a nature "as to require the arbitrary and summary interference of the Court in order to enable justice to be duly and properly administered."

Professor Laski in arguing the case for changes in contempt proceedings stated his case with the following observations: "while the privilege of Parliament would leave its members free to speak strongly upon matters concerning the judiciary, all other persons who, even from the highest motives, may choose to criticise the courts, find the scales heavily weighed against them. For, there is an inevitable corporate interest in the judiciary which makes it difficult for them to act independently and impartially in cases of this kind."

These are critical words. But it is true that the form is bad when the judge is a combination of prosecutor, jury and court, whereas the accused in a contempt case has no adequate opportunity of self-defence. The suggestions that the trial should be in the form of an ordinary process for libel, that provision should be made for a right of appeal and that there should be a right in the Executive to pardon call for attention.

The law of contempt qua Press publication may be placed under the following heads:

(a) to scandalise the court or to offend against the dignity of the judge;

(b) to comment on the proceedings of a pending criminal case or a civil suit reflecting on the judge,

the jury, the parties, the witnesses or counsel appearing in the case;

(c) to publish any matter affecting the proceedings of a pending case, having a tendency to prejudice the public for or against a party before the case is finally heard;

(d) to criticise a judge in a way, calculated to obstruct or interfere with the administration of justice or due administration of law.

The contempt jurisdiction of the Supreme Court and of the High Courts of India is recognised by Articles 129 and 215 of the Constitution of India. The common law of England in the matter of the offence of contempt of court was introduced in India. The power to commit for contempt is the inherent jurisdiction of the High Court. Section 228 of the Indian Penal Code provides for regular trial and punishment of the offence of offering any insult or causing any interruption to a public servant, while such public servant is sitting in any stage of a judicial proceeding. This specific offence relating to the contempt of inferior courts does not oust the jurisdiction of the High Court in contempt offences of other description.

The Contempt of Courts Act of 1952 replaces the Act of 1926. The Act of 1952 empowers the High Court to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction and whether the person alleged to be guilty of the contempt is within or outside such limits.

It is difficult to define the contempt of court. The hampering of the due administration of law and the interference with the course of justice may cover

anything that tends to curtail or impair the freedom, independence and impartiality of the "limbs of the judicial proceedings." Contempt consists generally in scandalising the court, abusing parties concerned in cases before the court, and prejudicing mankind against the persons before the cause is heard and lowering the dignity of the court in the eyes of the public. The High Court deals with the proceedings for contempt in a summary way, but the contemner is to be given a fair and reasonable opportunity to defend himself. The peculiar features are: the summary procedure for contempt of court; the judge who is the party injured is the prosecutor and is the judge. This extreme right should be exercised when no other pertinent remedy can be found.

The judge is not infallible; he is not always above private prejudices; he may be sensitive too. When a judge is personally attacked, he should not look upon it as a contempt matter. He is to see if the attacks interfere with the administration of justice and if he has no other remedy except the extreme measure of contempt proceedings. It should not be enough that there is a technical contempt of court. The star chamber procedure, transferred to ordinary courts, has to be exercised with the greatest caution. The summary power of punishing for contempt should be used sparingly and in serious cases. The public have the right to argue that a judicial act is contrary to law or against the public good. The public criticisms should not be resented. But if there is a calculated affront or an insult or interference with judicial administration, the case is different. The Privy Council stated the position that "if a judge is defamed in such a way as not to affect the administration of justice, he has the ordinary remedies for defamation if he should feel impelled to use

them." (Debi Prasad Shara V. King Emperor L. R. 70 Indian Appeals).

Sir John Beaumont, Chief Justice of Bombay observed as follows in Government Pleader, Bombay, V. Tulsidas Subhanrao Jadhav, 1938:

"It is in the public interest that confidence should exist in Courts of Justice, and if an attack is made upon a judge who is not in a position to answer the attack, the authority and prestige of the judge tends to be lowered in the estimation of the public, and that is contrary to the interests of the public. At the same time, one has to recognise that in the long run the degree of confidence reposed in the judiciary will depend on the character of judicial work, and confidence cannot be for long artificially engendered by the simple process of stifling criticism. It has been laid down many times and by the highest tribunals that judges are not immune from criticism and that fair and reasonable criticism of a case which is finished is not objectionable."

The Indian Press Commission, 1954 examined a number of cases against the editors of newspapers for contempt, and it found that the jurisdiction was not unduly and arbitrarily exercised. I do not like to hazard any opinion on this finding of the Press Commission. The point is this that the possibilities of abuse are there. The Indian Press is thankful to the following observations of the Indian Supreme Court: "It is not the practice of the Supreme Court to issue a rule for contempt of court except in very grave and serious cases and it is never over-sensitive to public criticism, but when there is a danger of grave mischief being done in the matter of administration of justice, the animadversion will not be ignored and viewed with placid equanimity"

The rules of obligation, so far as the Press is

concerned, are: (1) comments on pending cases are not to be made so as to prejudice the trial; (2) the publication of proceedings before a court of law must be fair and accurate and without malice. Any inadequate and inartistic report of the proceedings in court does not justify contempt proceedings unless there is deliberate misunderstanding and suppression of facts in the report.

(8) *Contempt of Legislature*

Article 105 of the Constitution of India provides that (1) there shall be freedom of speech in Parliament; (2) no member of Parliament shall be liable to any proceedings in any court in respect of anything said by him in Parliament; (3) no person shall be liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings; (4) in other respects, the powers, privileges and immunities of each House of Parliament or of the members and the Committees of each House shall be those of the House of Commons of the Parliament of Britain, until they are defined by the Indian Parliament by law. The privileges contained in Article 105 are extended to the person who has the right to speak in either House of Parliament, even though he may not be a member of the House. Similar powers, privileges and immunities of State Legislatures and their members are given by Article 194 of the Constitution of India.

Newspapers are free in publishing authorised reports. But with regard to unauthorised reports, the question of breach of privilege may arise. In Great Britain, the publication of Parliamentary proceedings constitutes a breach of privilege, but each House waives its privilege if Press reports are accurate and fair. But if they are wilfully mis-

leading or incorrect, the question of breach of privileges arises. There are no written legal provisions in Britain covering this point.

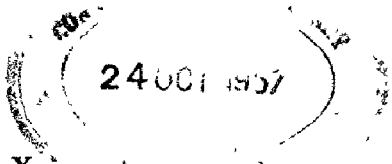
The right of the newspapers to publish the speeches delivered in Parliament (without the apprehension of law suits arising out of their contents) derives its validity from the freedom of speech in Parliament. Speeches are made in Parliament, so that they may be heard by people outside Parliament. They can be so heard if they are published in the Press. In a parliamentary system of Government, Parliament is a forum for the political education of the electorate, for the canvassing of political opinions of members. Speeches are made not merely to influence the opinion of Government but also the course of public opinion. Parliament is not a mere law-making body; it is a political platform so that the public may know how their representatives are behaving. All these are essential in a parliamentary system. The collective responsibility of the Ministry, the responsibility of the Ministry to the Legislature, and the responsibility of the legislature to the new desires, new feelings, new emotions of the public, all these underline the need for the publication of proceedings of Parliament in newspapers. The right of the newspapers to publish reports of parliamentary proceedings is a necessary attribute to the free functioning of parliamentary democracy. The case for the right of newspapers to publish speeches in Parliament without fear of action is strong in a democratic set-up.

It is said that reckless speeches are made in Parliament, and their publication does not deserve privilege. The guardian of the House is the Speaker. There are rules of the House which regulate the nature of speeches. If offensive remarks or false

statements are there, they must be corrected in the House. The public can know their representatives in Parliament, when their speeches are published. If turbulent speeches have to be edited, the public do not get the correct picture. The accurate reports of parliamentary meetings should be declared privileged. Nothing should be published from malice; nothing should be published which affects national security. Subject to these restrictions, newspapers should be free to publish parliamentary proceedings except those portions which are expunged or objected to by the Speaker. And such reports should remain safe from judicial encroachments. If they contain a defamation, he who uttered it should be made liable. And as the speech in Parliament is privileged, the newspaper that printed it should not be made liable. The newspaper is entitled to claim the extension of privilege to accurate reports of parliamentary meetings.

The present position is not happy for newspapers in India. The technical ground for proceedings against newspapers is that to publish the report at all is a breach of privileges. Misleading or incorrect accounts of debates often invite the wrath of the House or the curses of individual members. The Press Laws Enquiry Committee in its report in 1948 to the Government of India stated that "in our view, the privilege attached to speeches in the legislature cannot be passed automatically to newspaper reports of such speeches" and that "this is a matter for determination by the legislature concerned."

In England, parliamentary privilege is enjoyed by each House collectively as a constituent part of the High Court of Parliament and by members of each House individually without which they could not discharge their functions. In India, the legislatures enjoy the powers, privileges and immunities



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