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XVIth Congress
International Association of Democratic Lawyer
Commission 5:
Right to Information, Transparency & Protection of Journalists

By: B. K. Pal*

Bharatvarsha (INDIA)-where spiritualism prevails in all walks of life since according to Paul Brunton (1898-1981) a British Philosopher, Mystic, traveler and author of great classic of spiritual travel writings, the "BHAGAVAD- GITA", contains the mental quintessence and successful synthesis of the various systems of religion and philosophy, it offers a unique epitome of the high culture of prehistoric India wherein Lord Krishna's doctrine "My self is the bearer of all existence"; "All this world is pervaded by ME in MY unmanifested form" is the keystone in the entire arch of earliest Indian philosophy which appealed to several "wise men" of Western world- philosophers and scientists, living so many centuries later, including great persons like Tennyson, Thomas, Carlyle and Ralph Waldo Emerson — has enacted "The Freedom of Information Act, 2002" and earlier to it Legislature Assembly of National Capital Territory of Delhi on 9th April 2001 has passed the "Delhi Right to Information Act, 2001", in terms & accordance with Universal Declaration of Human Rights, 1948 and International Covenant on Civil and Political Rights. Relevant Articles of the same reads as follows:-

"Article 19- Everyone has the right to freedom of opinion and expression; this right include freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

"Article 19(2)- Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other of his choice."

Hon'ble Mr. Justice V.R.Krishna Iyer , former Judge of the Supreme Court of India in his book "Freedom of Information" writes "Freedom of expression under Article 19(1) (a) of Constitution has received a dynamic semantic expansion and judicial connotation. It includes the freedom of the media as promotive of the health of our democracy and as conducive of popular feedback shaping the State process. A free Press has always been regarded as a powerful weapon during the struggle for freedom, and after Independence, as an instrument for dissemination of information. *Young India* was Gandhiji's weapon and *National Herald* was founded by Nehru. Giants of the journalistic universe battled with pen in hand for India's *swaraj*. True to this tradition, the first Prime Minister of India, Jawaharlal Nehru stressed " 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"¹

He had said, way back in 1936: "Journalism and journalists play a very important part in the public life in the modern world. In India there is the possibility of suppression of facts either by the government or by private proprietors or at the dictates of advertisers—) am against suppression of news as it would deprive the public of the only means of forming a correct judgment on world events— the press— helps in the information of public opinion."²

A free Press, however, must suffer wholesome restrictions such as are stated in Article 19(2) of the Constitution. You cannot jeopardize Indian sovereignty and integrity, the security of the State, friendly relations with foreign states and public order, decency or morality or breach the laws in relation to contempt of Court, defamation or incitement to offence. Thus a happy balance is struck between freedom of speech and deleterious licence. Of course, the restrictions in Article 19 (2), if read with narrow pedantry, prudery or pettifoggery, may do violence to out larger freedoms and spacious free speech. Radical dissent and fearless exposure cannot be asphyxiated by chauvinist nationalism, priggish orthodoxy and religious fundamentalism. Nor can freedom of expression suffer lock-jaw at the hands of a quasi- fascist Establishment.

Realising that governmental control of the Press may harm its freedom, Mahatma Gandhi brought out the need for reconciliation of freedom and restraint when he observed: "The sole aim of Journalism should be service. The newspaper press is a great power, but just as an unchained torrent of water submerges the whole countryside and devastates crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want to control. It can be profitable only when exercised from within"

In the case of S.P.Gupta v/s UOI³, Justice P. N. Bhagwati held as follow: -

"No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government ... that an open society is a new democratic culture towards which every liberal democracy is moving and our society should be no exception. The concept of open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under article 19(1)(a). Therefore, disclosure of information in regard to the functioning of the government must be the rule, and secrecy an exception, justified only where the strictest requirement of public interest so demands"

In this case Justice V. R. Krishna Iyer has also observed: "The right to express one's thought is meaningless if it is not accompanied by a related right to secure all information on matters of public concern from relevant public authorities. However, to ensure that there is no misinterpretation, there may be no harm in

inserting freedom of information as a specific corollary to Article 19 of the Indian Constitution.”

India's Press Council Act of 1928 (set up in pursuant to the recommendations of first Press Commission in 1966 under the Press Council Act 1965 which was repealed in 1975 reestablished Press Council in 1979) so as to help journalists and preserve Press freedom as “The primary objectives of the Council are to preserve the freedom of the press and to maintain and to improve standards of newspapers and news- agencies. Two of the important functions of the Council, as set out in sub section (2) of section 13 of the act are ‘ to build up a code of conduct for the newspapers, news- agencies and journalists in accordance with high professional standards’, and to ensure on the part of newspapers, news- agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both rights and responsibilities of citizenship’.”

Independence of Media & Journalists is sine qua non for preserving fundamental Right of Freedom of expression as provided under Article 19 (1) (a) Constitution of India. This Right is ought to provide job security as well as security from threats to journalists. The Working Journalists and other Newspaper Employees (condition of service and misc. provision) Act 1955 provides no relief at all in this regard due to which journalists have no job security and thus are also subjected to threats from various quarters against which journalists trade union organizations are repeatedly demanding for providing job security to Journalists and for adequate compensation in case of death while carrying out journalistic assignments.

International federation of journalists (IFJ) has set up the IFJ international safety fund for providing humanitarian and legal assistant to journalist around the world. The IADL should also set up a commission in this regard which can work out comprehensive plan of action to help journalists in coordination with IFJ, and in co-operation with International Court of Justice (ICJ), since the attack on journalists are on increase as is self evident from the following facts: -

1. As per IFJ report 129 journalists and media staff were killed in 2004 including drivers, fixers and translators. Due to accidental causes which takes place in the field.
2. The investigations into killing of journalists are nearly whitewashed exercised.
3. U.S. Military has failed to take responsibility for the deaths of 3 journalists killed on 8th April 2003 when an American tank fired on the Palestinian hotel, where 100 journalists were staying.

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4. In Ukraine authorities have refused to come clean about possible Government complicity in the murder of journalist Gyorgy Gongadze.
5. In Philippines where 13th Journalists were killed in 2004 but no prosecution have taken place so far.
6. In Nepal journalists are not only being harassed and tortured but also the media is being monitored by army personnel.
7. As per The Human Rights Watch World Report 2005 instances of repression let loose to curtail freedom of expression and Press freedom in more than 60 countries have been reported.
8. Malaysian government justifies detention without trial by invoking U.S. operations in Guantanamo Bay.
9. Russia cites Abu Ghraib prison scandal to blame abuses in Chechnya solely on low level soldiers.
10. Cuba claims that the Bush administration has no moral authority to accuse it of human right violations.

In India Official secret act 1923 continues to pose problems to journalists, Earlier POTA has been freely used to detain journalists. Reference is made to the case of R.R. Gopal, Editor of Tamil By weekly Nakkheeran and Subramaniam who were picked up, blind folded, beaten and arrested in connection of alleged murder case as made against them by the state.

The Supreme Court of India upheld POTA and held "journalists and lawyers have no sacrosanct of professional ethics". POTA (Now repealed) stipulated that journalists and lawyers do not enjoy immunity and must reveal information regarding terrorism related offence to the police.

An another law which restricts journalists freedom to report and people's right to know/ information is law relating to contempt of court. In this regard reference is made to initiation of contempt proceeding initiated on 17th November 2003 against journalists of Times of India Deccan Herald, Hindustan Times charged with the contempt of court for reporting of an alleged sex scandal of November 2000 concerning involvement of 3 High Court Judges of Karnataka. The Supreme Court intervened and temporarily suspended proceedings against journalists as initiated.

One also can not ignore the use legislative privileges against Journalists as happened in the case of editor, executive editor, publisher, chief of Burcan and special correspondent of the Hindu, a leading prestigious Chennai based widely

circulated english daily. In this case speaker of Tamil Nadu Assembly passed a resolution ordering the arrest and imprisonment of 6 journalists including a publisher for 15 days for allegedly lowering the prestige of the legislature. The New Indian Express, India Today, The Statesman, the Telegraph, The Times of INDIA AND Tamil Nadu dailies- Dina Mallar and Dina Karan as well as Gujarat Samachar are also reported to be charged with defamation cases initiated by respective legislature of the state concern.

Yet another danger also which newspaper employees are facing is outcome and impact of Foreign Direct Investment (at present 25% in media) in India due to which newspaper employees are loosing employment and it also affects independence of newspapers and journalists who are appointed on contract basis as such are not in a position to cover the events in its entirety.

Recently Hindustan Times Ltd publishing Hindustan Times as well as Hindustan and other magazines has terminated services of 362 employees on the plea of transfer of its printing unit to HT Media limited. It has happened on 3rd October 2004. The Hindustan Employees union has challenged the management's act terming it as an illegal lockout and demanding for revocation of orders terminating services and reinstatement of all the dismissed employees with back wages and consequential benefits.

The other aspects which deserves attention is allegedly reported prevailing practice of bribery in media which erodes not only public faith in the news so reported in media but it also undermines the profession of journalism as a whole. The IFJ consider it to be one of the greatest challenges which media faces today and to meet it the International Public Relation Association has adopted a charter on media Transparency which embodied principles to fight this menace.

What is of prime and utmost importance is to encourage, nourish and develop as well as promote, public oriented development news creating awareness and in place of biased misinformation and disinformation news emanating from media controlled by national and international monopoly houses backed by MNC's. The need of the hour is to build public opinion against such dangerous phenomenon.

Media is an important source of building and moulding public opinion- which is supreme- as even mightiest has to bow sooner or later in front of it. So we have to work for making media more informative, truthful, clean, responsible and healthier so that prevailing negative trends in the society are controlled, nullified and ultimately eradicated.

Media men also have to realize that the freedom is not absolute in itself as it can be exercised and enjoyed only when by exercise of it no one is hurt unjustly and

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wrongly but "Truth and Truth alone and nothing but the whole Truth" is allowed to prevail which is in public interest as well as in the interest of justice, peace and development so that society is developed with Peace and stability.

"Let noble thoughts come to us from every side" So says Rigveda (1-89-1)

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1. V. R Krishna Iyer – Freedom of Information: Prologomenon p-XII
2. Jawaharlal Nehru: "On the role of the Press" in Selected Works, Vol. 7 p. 428
3. 1981 Supp SCC 87

