

Chapter one the press in mauritius media essay



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For the health of democracy, access to information is really essential. In any democracy, citizens have the rights and responsibilities to participate in public matters. Knowledge about a society is obtained through free debates, newspapers, magazines, television and radio. All these are possible when there is a free and independent press.

In all democratic countries, freedom of the press has been a treasured right. Press freedom is a pillar of democracy[1]. Often, the press is referred as the fourth pillar of a country[2]. Such freedom should be free from interference of the state. The preservation of the freedom of the press may be done through constitutional or legal protections.

In the present chapter, the definition and the importance of the press freedom will be analyzed first. Then, the evolution and development of the written and audio-visual press in Mauritius will be examined before considering the constitutional foundation of the freedom of the press of the country.

1. 1 Freedom of Press

1. 1. 1 Definition of freedom of the press

Everywhere in the world, the meaning of press freedom differs. Different countries possess different degrees of freedom of the press[3]. This suggests that freedom of the press is not absolute in the world[4]. In universal terms, defining freedom of the press is difficult. Various definitions to freedom of the press have been attributed by different scholars and in many text books.

Lieberman (1953) defined freedom of the press as the right to serve, without government interference and with police protection, and the most

fundamental right of freedom of information[5]. As for Dennis and Merrill (1996), freedom of the press is the right to communicate ideas, opinions, and information through the printed world without government restraint[6]. For both authors, the “right to share information” and “no government intrusion” is among the main elements of this freedom. For other scholars, free press is an independent adversary[7] performing the function of watchdog preventing the State from aggrandizing and abusing the rights of its citizen. Freedom of the press is not only the right of media; it is the right of the citizens also.

Going back to history, in 1791, freedom of the press was legally guaranteed by the U. S Constitution, “congress shall make no law...abridging the freedom of speech or of the press...” Freedom of the press was recognized by the National Assembly of France in the Article 11 of the Declaration of the Rights of Man and of the Citizen. This freedom was considered to be a fundamental right in Europe and in the United States. In 1948, the United Nations declared it a universal right and adopted Article 19 of the Universal Declaration of Human Rights.

Freedom of the press is derived from the fundamental right of freedom of information. The latter is a “human right and the touchstone of all the freedoms. It implies the right to gather, transmit and publish news anywhere and everywhere without fetters”[8]. The rights to seek and to disseminate information are of particular importance to the press. Along with freedom of information, freedom of expression also plays an essential role in press freedom. In

Hossenbaccus v. Le Mauricien[9], it was held that “ Freedom of expression is fundamental. It is an essential instrument for the advancement of knowledge and must indeed be well guarded to enable the press to fulfil its social obligation to inform the public”. Freedom of expression comprehends the freedom of propagation, publication and circulation of ideas[10]-[11]. Freedom of circulation and distribution of the matter are also included in press freedom. So freedom of expression and freedom of press are intertwined.

1. 1. 2 Importance of Freedom of the Press

Press freedom is considered as the most important freedom by informal writers, jurists and political philosophers[12]. Freedom of the press has always been the most effective instrument for the functioning of a democratic society. It helps in human development and good governance. The role that press freedom plays in our society will determine its importance. An independent media sector acts as watchdog on the government, holding it accountable to the public as well as helping citizen to have a better knowledge on political choices. It focuses on social problems and also provides a public forum, for several voices in public debate.

On behalf of the public, the press serves as a watchdog to avoid government wrongdoings. Government officials are not always accountable and transparent to the people. So the “ fourth estate” investigates in the State’s records to examine and evaluate, and hold the officials accountable for their actions. The press keeps the public officials responsible to the public as they are expected to serve them[13]. In countries like Taiwan, Brunetti and Weder, free press has helped in reducing corruptions[14]. There are eight

purposes that the press should look forward in a democratic society: supervision on the political environment, determined agenda-setting, floors for a responsive and illuminating advocacy, channel for dialog on various range of views, safeguarding the rights of citizen and ensuring they are heard, inducements for people to be involved, respecting the citizens and promoting equality[15]. However, these goals often have to face obstacles.

In a democratic society, the citizens need to be well-informed in order to make and exchange opinions on the actions of government officials and the elected representatives. A central purpose of press freedom is to build up an educated and well-informed electorate[16]that will form opinions on public matters and on their political leaders. Politicians also will have the opportunity to comment on the public's opinion. Thus, everyone will participate in a free political debate which is a core concept of a democratic society[17].

Freedom of the press is important in the way that the “ liberty” of the press is essential in influencing public spirit and this can be used against the ambition of autocratic authority; this is apparent with independent newspapers because they have a tendency to be aware of public discontents and changes. In short, press freedom acts as an “ agency” which controls arbitrary power. A free press can be said to be a market of ideas[18]which helps people to evolve, mobilize and form new ideas in the public area. For the working of democracy, public criticism is fundamental[19].

1. 2 Evolution and Development of the Written and Audio Visual Press in Mauritius

1. 2. 1 Written Press

The history of the printed press in Mauritius can be traced back to 1767 with the first printing materials which Pierre Poivre introduced in the island. One year after, the “ Imprimerie Royale” was created. However, the oldest printing was claimed to be an almanac printed in 1457. Isle de France, now known as Mauritius, was among one of the first colonial countries, which owned a newspaper industry.

On 13th January 1773, Nicolas Lambert issued the first newspaper “ Annonces, Affiches et Avis Divers Pour Les Colonies des Isles de France et Bourbon”. As the chief editor was a Government officer and the newspaper was printed by the Government press, this shows that the issue was barely a free one. The second newspaper started in 1786 under the name “ Journal des Isles de France et de Bourbon” by two young lawyers named Durrans and Brun. This one was absolutely literary compared to the third paper, “ Journal Hebdomadaire de la Colonie”, issued in 1791, which was partly political. On the 5th January 1792, the Colonial Assembly published two weekly papers, one which contained the minutes of its proceedings and its administrative committee. This one was known as “ Journal des Assemblées” and the other one as “ Gazette de Isle de France” which contained public notices, advertisements and the other matters of public interest. The first political paper was “ l’Observateur” which appeared only in 1816.

Nearly one thousand newspapers and magazines have appeared namely “ Annales des Modes des Spectacles et de Littérature Récréatives, Dédiées
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aux Dames”[20]but most of them had a short life-span. There was censor on the press in the colonies at that time. Article XI[21]of the decree of human rights provided that “ La libre communication des pensées et des opinions est l’un des droit les plus précieux de l’homme. Tout citoyen peut donc, parler, écrire, imprimer librement (...)”. This was attempted by the French revolution to put an end to censor. During the English colonization, Adrien D’Epinay was the first one to bring Freedom of the Press to Mauritius. In 1832, He was the first one to use the freedom by publishing “ Le Cérnéen”. It was the oldest French white-owned newspaper and it survived until 1982. Another landmark in the history of the press is the publishing of “ La Sentinelle”. It was founded by Rémy Ollier, a coloured man, in the 1950s. The coloured ownership of the media helped this community in legitimizing their rights in the colonial times. The term coloured changed to the label “ Creole” and in 1920s, a creole family took over “ Le Mauricien”, a white-owned paper which was established in 1908.

As from the 1960s, newspapers like “ Action” and “ L’Express”[22]were introduced and at that time, the Mauritian press modernized and international standards were adopted. Techniques like reports and personal enquiries were brought in. They are nowadays the bedrock of every press whether written, spoken or visual. Between 1832 and 1973 the general format of newspapers was four pages with mostly advertisements. In the local news, there were parliamentary meetings of the Government and of the sole Municipality of the island, Municipality of Port Louis. From this it can be understood that parliamentarians, mayors or politicians were head of the publishing houses. Today, “ L’express” changes to 24 pages as compared to

before it were only 4 pages and for “ Le Mauricien” it is 48 pages as compared to earlier it was 16 pages. They are the daily papers one in the morning and the second in the afternoon. Nowadays we have “ Le Défi Quotidien” which is a daily paper also. There are also a number of weekly papers in Mauritius such as, “ 5 Plus Dimanche”, “ Bollywood Massala”, “ L’Express Dimanche”, “ Le Dimanche/L’Hebdo”, “ Le DéFI Plus”, “ Le Matinal”, “ Samedi Plus”, “ Week End” , “ Star” and “ Sunday Times”.

A number of papers in oriental languages were also published. “ Anjuman Islam Maurice” was the first one which appeared on 1st March 1883 firstly. Mirza Ahmode was the founder and the paper was published in Hindustani and Gujurati. From 1906 to 1914 a weekly paper, “ L’Islamisme” appeared in French, Gujurati, and Urdu. The eminent Indian lawyer, Manilall Maganlal Doctor, launched “ The Hindustani” on 15th March 1909 in English and Gujurati. “ Mauritius Arya Pratika” was edited by Pandit Acshinath Kistoe from 1924 to 1940 and it appeared in English and Hindi. From 1929 to 1973 two papers appeared namely “ Arya Vir” and “ Zamana” with the last one which was launched in 1948. They appeared in English, Hindi, French and Tamil. On 11th August 1932, “ Chinese Daily” was launched and it was the first daily Chinese paper. Then the “ China Times” came in 1953 by Long Siong Ah Keng. Other Chinese language papers were launched; “ Chinese Newspaper” (1953-1975), “ Central Daily News” (1960-1967), “ The Mirror” and “ L’Aurore”.

The evolution of the written press has been noted in terms of availability, varieties, content and style of reporting. With changes like technology, nowadays papers are printed with the use of computers as compared to

before where printing was done in led. As seen above, there was only reporting about news, local and abroad, only. Nowadays, a number of articles have been introduced in the press like editorials on sports, women and children. Concerning accessibility, a wide range of newspapers and magazines are available on the market, locally. Each one differs from each other in order to capture a maximum of readers. Newspapers is said to be our key companion in our everyday life and it will continue to be so.

1. 2. 2 Audio Visual Press

The press is not limited to written only; there is the audio visual press. Audio visual plays a great role in communication. It was on the 9th of August 1927 that Mauritius experienced its first radio broadcasting, which was done by Charles Jollivet. It was then called “ Radio Maurice”. The station was situated in Beau Bassin and later moved to the Plaza Theatre in Rose hill. Music and news were broadcasted for only 2 hours every day.

In 1937, a second station came into existence under the name “ Société des Radiophilles” by Mr P. Adam. It was located at Mr. Adam residence in Forest Side and later transferred to the Town Hall in Curepipe. The station was used to transmit message to the members of the Société mainly. At the beginning of the 2nd World War in 1939, these two stations were controlled by the British Ministry of Defense. Information that was broadcasted was done locally only. By the end of the 2nd World War, another station was set up in Curepipe Town Hall under the aegis of “ Radio France Libre D’Outremers”. This station was merged with “ Société des Radiophilles” and this gave birth to the national broadcasting station as from 1st July 1944 under the name Mauritius Broadcasting Service (MBS). The studio was situated in Plaza, Rose

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Hill until 1946 when the station moved to Pasteur Street, Forest Side. As from 2011, MBC was transferred to Moka.

After the radio, the TV broadcasting was introduced on a pilot basis on the 8th June 1946 as the Mauritius Broadcasting Corporation (MBC). The inaugural broadcast was launched on 8th February 1965 with a transmission of about 3 hours every evening. The MBC was set up in order to build a sense of nationhood and for islanders to welcome independence (that changed in 1968). The first outdoor TV live broadcast was on the royal visit of Princess Alexandra in 1968. Later, in 1973, the process of black and white television occurred. During that year, news editor were engaged to record press conference and other local events. On 7th November 1987, television was welcomed in Rodrigues and the duration of 3 hours changed to 13 hours daily. In the 1990s, the two main channels[23]were implemented.

Liberalisation of broadcast media was done in 2002 and this gave the Mauritian audience the choice between the MBC and three other private radios. Radio One was launched on 13th March 2002, Radio Plus on 13th April 2002 and Top FM on 31st December 2002. The MBC radio now consists of 7 stations; RM1, RM2, Kool FM, Taal FM, World Hit FM, Best FM and Music FM. The MBC has evolved in digital switchover, thematic channel (Knowledge channel, Movie channel, Tourism and Culture channel) and language channel (Marathi, Tamil, Urdu, Telegu and Mandarin). Mauritian audiences nowadays have a variety of information and different coverage and views of the same stories. Throughout history, the Mauritian press has gained a lot and more is expected to come with, the liberalisation of television channels in the forthcoming years.

1. 3 Constitutional Foundation of Freedom of the Press

Mauritius has a written constitution in which certain fundamental rights are guaranteed as specified in Chapter Two of the Constitution. Of these, Section 12 relates to freedom of expression. It would be useful to refer to the text of these causes of section 12 at once:

“(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision...”

Compared to countries like the U. S. A, there is no separate provision guaranteeing the freedom of the press in our constitution. Our supreme court has held in *Duval v The Commissioner of Police*[24]and in *London Satellite Systems Ltd. V State and ors*[25]that freedom of the press needs not to be mentioned separately as it is already in the guarantee of ‘ freedom of expression’. The latter comprehends the freedom of propagation, publication and circulation[26].

The scope of press freedom is circumscribed by the interpretation given by S12 because there is a link between freedom of press and freedom of expression. The arguments for and the limitations upon both freedoms should be compatible. For instance in *Cie de Beau Vallon Ltée v Nilkomol*[27]it was held that “ freedom of expression referred to, (in the <https://assignbuster.com/chapter-one-the-press-in-mauritius-media-essay/>

Constitution), cannot override legally established norms to which it is subordinated and which must be respected: the use of words like “ public order”, “ public morality” and “ rights and freedoms of others”. The same applies to press freedom in the press industry.

Fundamental Rights and Freedoms that are found in our Constitution are modeled on the European Convention for the Protection of Human Rights and Fundamental Freedoms and our Section 12 was borrowed[28]from its Article 10[29]. The rights of privacy and free expression are

treated as fundamental rights having equal status. According to this view, the two rights must be proportionate. One will not inevitably trump the other[30].

Freedom of the Press rests on the same cornerstones as Freedom of Expression. It can be argued that there is simple iteration since protection of freedom of expression is already been catered for in our Constitution. This can give rise to the introduction of a separate press clause in our Constitution. Under Mauritian Law, press freedom gives journalists a right to obtain information from private sources on a voluntary basis only. The press cannot compel citizens to release information about themselves which they are unwilling to disclose. A separate press clause may provide this privilege.

CHAPTER TWO – NEED FOR LIMITATIONS ON FREEDOM OF THE PRESS

2. 0 Introduction

Undoubtedly freedom of the press in a country is partly good and partly bad. Although each citizen in Mauritius or another country holds the power to say

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or express whatever he or she feels, it is preferable for some thoughts or views to be unuttered. In the previous chapter, we explained that the freedom of press is considered as an essential tool for knowledge and exchange of ideas and opinions in a modern democracy. However, a question arises on why should there be any need for supervising this freedom by law?

In this present chapter, we will deal mainly with the need for limitations on freedom of the press and then the abuses of freedom of the press.

Afterwards, the different categories of limitations will be discussed where it will be divided in two main parts namely, prior restraints and post-publication restraints.

2. 1 Abuse of Freedom of the Press

Nowadays, in every conversation, the words “ Press Freedom” are mentioned. It shows how important that freedom is. However, the same significance is not given to the responsibilities linked to it. This makes it liable to be abused. As we know, any institution or freedom if left ungoverned has the tendency to be abused. This created the need for freedom of the press to be controlled.

In 1789, the French Declaration of the Rights of Man in France declared that one of the cherished rights of man is the free exchange of thoughts and views and at the same time mentioned that press freedom is “ subject to responsibility for abuse of this liberty in cases considered by law”[31]. In U. S. A., even if the federal Constitution guarantees freedom of the press to be unrestricted, every citizen should be responsible for the abuse of that

freedom. West Germany's Constitution lays emphasis on what is meant by "abuse" of a freedom and what would be the penalty if there is abuse under the Article 18[32]. For India, abuses are mentioned in clauses (2) and (6) of Article 19.

" A truly free press would be free not just of state intervention but also of market forces and ownership ties and a host of other material bonds"[33]. Many powerful bodies use the press for their private interests in order to make propaganda which can be harmful to the public. In some newspapers we can notice stories which are published just to denigrate someone (like politician). The press become a monopolistic control rather than a free institution. There is abuse of freedom of expression and of speech at the same time.

The main aim of freedom of the press is to offer to the public a wide range of information and if false information is disseminated, this will have a detrimental effect on society. This is often seen where a political party controls a newspaper. This may influence a reader's way of thinking. This contributes to a form of abuse of this freedom. So, the press must check the facts before publishing in order to avoid half-true stories or unbiased information.

2. 2 The Need for Limitations

In this twentieth century, freedom of the press is becoming important for development, democracy and dialog. According to many studies, it has been devised that there is a connection between the three D's and a free press. If ideas cannot be flourished in a free space, societies will not ameliorate

whether in human, social and economic development. However, freedom of the press has been universally accepted that it is not a right without limit, and some classifications of limitations on freedom of press have been devised by almost every liberal government.

Lord Denning stated:

“ The freedom of the press is extolled as one of the great bulwarks of liberty. It is entrenched in the constitutions of the world... It can publish whatever it chooses to publish. But it does so at its own risk... Afterwards, after the publication, if the press has done anything unlawful they can be dealt with by the courts... If they should damage the reputation of innocent people... they may be made liable in damages.... The press is not above the law.[34]“

Just as an individual, the press is also prohibited to conduct any illegal act. The freedom of the press is limited by certain factors. These factors can be internal such as codes of ethics, the power of the editorial and the press councils. As for the external ones, they are public interest, rulings of the court, libel actions, subscriber demands and pressures from powerful groups.

In any given country, the need for limitations on freedom of the press is recognized and the restrictions are derived from its civil and criminal law. Limitations are also derived from formal agreements drafted by governments which concerned human rights. Article 10 of ECHR[35]declared that every freedom is subjected to restrictions and penalties if they are violated and the State can even impose limitations. These limitations are needed in order to avoid crime or disorder. According to Article 29 of UCHR[36]only the limitations imposed by the law will be subjected to everyone in case of

breach of freedom. In Mauritius, the same restrictions that are applied to freedom of expression are also imposed on freedom of the press. So, press freedom is subjected to the limitations set out in section 12 of the Constitution.

Rights and maintenance of order in a country exist due to the State and it's upon the latter to safeguard and implement those rights. Hence when a right or a freedom is being exercised, it should be done in such a manner that it does not cause harm to the State. Freedom of the press can be controlled by the government if it countervails with public interest. In case of war emergency, the State has the power to safeguard itself from any broadcast which may cause obstruction to the nation's defense or the " prosecution of war against a national enemy." [37]

In most countries, it is the court which maintains a balance between the public interest and other competing interests. It should be pointed out that freedom of the press must be reconciled with public security. For example, in U. S. A., the court will poke its nose only when the danger is consequential and clear and present to the public interest. As for India, Article 19 [38] of the Constitution expressed clearly that it is the Court who will strike a balance between any competing public interests.

It is true that in today's world there is no absolute freedom. The press industry has to face various limitations imposed by the State. However, we do ask ourselves to what extent do a journalist have to draw a line when disseminating information? What part of any speech should and should not be covered by the law?

2. 3 Classification of Limitations

2. 3. 1 Prior Restraint

The State may find that some information if disseminated can be harmful to the public or it is too secret to disclose. In those cases, the government has adopted “ Prior Restraint” which means restricting a message before it is published or broadcasted. In other words, there is government intervention before the publication takes place. The Supreme Court of U. S. A. held that prior restraints by definition, has an immediate and unalterable sanction[39].

Prior restraint exists in many forms but the most common one is licensing or censorship. The second most obvious one is judicial injunction or “ gag order”. When censorship is imposed, this means that the publication on a specific matter or even a newspaper is prohibited without “ advance approval of an executive officer”[40]. As compared to the judicial injunction, even with anybody’s approval, the publication of specific matter cannot be executed. If this order is violated, punishments are incurred. There are other restrictions like interdiction of entry into specified area, control over the volume of circulation, control over the sources of information and security for good behaviour from persons disseminating offending publications.

According to landmark cases like *Near v. Minnesota*[41]the Supreme Court cancelled a gag law and considered the doctrine of prior restraint as unconstitutional. The court held that a journalist in a free press has the right to shape the opinions of the public and the interference of the State does not contribute to the phrase “ free press”. However, the government has continued to restrict the publications of some controversial material. In 1971, the Court in *New York Times Co. v. United States*[42]established that

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freedom of the press is nearly free when there is no restraint on publications before disseminating. The State was not able to prove a prior restraint of expression when it tries to prohibit New York Times and Washington Post from publishing a specific matter from a study.

Prior restraints have some ups and down. Surprisingly, the doctrine of prior restraint has never been completely analysed. No comprehensive study