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MEDIA, PARLIAMENTARY PRIVILEGES, CONTEMPT OF COURT, AND THE RIGHT TO ADVERTISEMENT: A CRITICAL ANALYSIS

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I. Introduction

The interplay between the media and the State in India is controlled by intricate maze of constitutional rights, legislative provisions and judge-made doctrine. This relationship is characterized by two analytically distinct, but practically interconnected issues: the restraints that parliamentary privileges place on media coverage of legislative affairs, and the restraints that the judiciary wields by the law of contempt to ensure that the administration of justice is not prejudiced by the publicity it receives. These restrictions coincide with what has been termed the judicially recognised right to commercial speech that has made Article 19(1)(a) of the Constitution apply to the freedom to advertise.¹

This essay takes a critical look at these three overlapping doctrines the interface between parliamentary privileges and press freedom, the law of contempt of court in the context of the media, and the right to advertise which is protected by the constitution to determine the legal framework of the rights and duties of the media.

II. Media and Parliamentary Privileges

2.1 Constitutional Basis of Parliamentary Privileges

In India, parliamentary privileges are granted by the main article 105 of the Constitution,² which gives the members of Parliament immunity against legal actions concerning anything spoken or any vote taken in Parliament, and prevents inquiry by a court into proceedings of Parliament. There are also collective powers of the House such as the authority to keep strangers out of its business, and to impose contempt penalties. These privileges are in conflict to the freedom of the media to report which is guaranteed by Article 19(1)(a).

In *MSM Sharma v. Sri Krishna Sinha* (1959),³ the landmark ruling made it clear that the legislature had the power to punish upon breach of privilege, and that no court should question

¹The Constitution of India art. 19(1)(a) (1950).

²The Constitution of India art. 105 (1950); M.P. Jain, *Indian Constitutional Law* 1178 (8th ed., LexisNexis 2018).

³*MSM Sharma v. Sri Krishna Sinha*, AIR 1959 SC 395 (India).

whether the acts that one is punished on actually was a breach of privilege. This immunization of legislative privilege against judicial inquiry imposes a very heavy burden on the media, which can be found in contempt of the House because of publication of reports of omitted proceedings or statements that purportedly bring the legislature into disrepute.

2.2 Media Reporting and Legislative Proceedings

Qualified privilege is granted by the common law to the publication of fair and true reports of parliamentary proceedings and is specifically upheld by Article 105(2) of the Constitution.⁴ This, however, is limited to the publication of expunged parts of debates, speeches delivered out of the House by members who claim to have given a summary of their speeches, or reports of proceedings of committees whose proceedings are excluded by the direction of the Speaker. Article 105(1) recognises freedom of speech within Parliament as an absolute privilege.⁵ Supreme Court in *Tej Kiran Jain v. N. Sanjiva Reddy* (1970)⁶ confirmed that this immunity applies to the media in terms of reporting such speeches without liability on defamation. However, the legislature has the authority to call editors and journalists before the privilege committee and to commit them to breach of privilege⁷ a power which has been controversial on a number of occasions and has been disparaged by commentators as inconsistent with a democratic devotion to press freedom.

III. Media and Contempt of Court

3.1 Definition and Classification

In India, contempt of court is regulated by the Contempt of Courts Act 1971 which defines civil contempt as wilful disobedience to a judgment or order of a court,⁸ and criminal contempt by the publication of any matter that scandalises or is likely to scandalise the authority of a court, or that prejudices or interferes with judicial proceedings, or otherwise interferes with the administration of justice.⁹ The category that is the most directly applicable in the case of the media is criminal contempt by publication, which includes sub judice comment, sensational reportage of trials, and direct imputations of judicial corruption.

⁴The Constitution of India art. 105(2) (1950).

⁵The Constitution of India art. 105(1) (1950); D.D. Basu, *Commentary on the Constitution of India* vol. 4, 5024 (9th ed., LexisNexis 2015).

⁶*Tej Kiran Jain v. N. Sanjiva Reddy*, (1970) 2 SCC 272 (India). The Court held that members of Parliament enjoy absolute immunity for speeches made in the House and reported by the media.

⁷*In re Powers, Privileges and Immunities of State Legislatures (Searchlight case)*, AIR 1965 SC 745 (India).

⁸Contempt of Courts Act § 2(a) (1971) (India).

⁹Contempt of Courts Act §§ 2(b), 2(c) (1971) (India).

3.2 Sub Judice Rule and Trial by Media

Sub judice rule is a rule that does not allow publication of material that poses a real danger of prejudice to the fair trial of ongoing proceedings. The Supreme Court has made it clear numerous times that freedom of speech under Article 19(1)(a) does not protect the media against contempt liability when the publications are likely to interfere with the course of justice. In *Sahara India Real Estate Corp. v. SEBI* (2012),¹⁰ the Supreme Court acknowledged the doctrine of postponement orders, and said that courts had an inherent jurisdiction to issue postponement orders in order to prevent the unfairness of material being published that would otherwise result in the denial of fair trial rights, despite no explicit statutory authorisation.

Issue of trial by media has earned much judicial attention. In *Prashant Bhushan* (2021),¹¹ the Supreme Court upheld its previous decisions that contempt jurisdiction should be used with care and will not be pursued when the comment, despite its critical nature, does not actually have a propensity to hinder justice. The court in all cases has to strike a balance between the basic right of free expression and the constitutional demand of an independent judiciary.¹²

3.3 Scandalising the Court and the Defence of Truth

Scandalising the court that is, making statements that are calculated to destroy social faith in the government of justice has been identified in India along the British lines.¹³ *Naresh Mirajkar v. State of Maharashtra* (1967)¹⁴ the Supreme Court decided that an order of a court directing a newspaper not to publish evidence taken in camera was a justifiable restriction to the freedom of speech and could be justified in the interests of the administration of justice.

In 2006, a major change was made to the 1971 Act when truth was added as a defence to criminal contempt,¹⁵ with the prerequisite that the publication must have been made in good faith and in the public interest. This amendment represents a calculated liberalisation of the contempt regime, in that a free and responsible press needs to be in a position to report on judicial impropriety and maladministration without the threat of a contempt prosecution provided it does so in a responsible and in the public interest way.

¹⁰*Sahara India Real Estate Corp. Ltd. v. Securities and Exchange Board of India*, (2012) 10 SCC 603, ¶¶ 14–16 (India) (Sathasivam, J.).

¹¹Re: *Suo Motu Contempt Petition (Criminal) No. 1 of 2021 (Prashant Bhushan case)*, (2021) 1 SCC 745 (India); *Indirect Tax Practitioners' Ass'n v. R.K. Jain*, (2010) 8 SCC 281 (India).

¹²In *re Harijai Singh*, AIR 1997 SC 73 (India). The Court emphasized that truth could be raised as a defence only if it served the public interest.

¹³*Attorney General v. BBC*, [1981] AC 303 (HL) (UK); *R v. Gray*, [1900] 2 QB 36 (UK) (contempt by publications 'scandalising the court').

¹⁴*Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1, ¶ 26 (India) (Gajendragadkar, C.J.).

¹⁵Contempt of Courts Act § 13(a), as amended by Contempt of Courts (Amendment) Act (2006) (India).

IV. Right to Advertisement

4.1 Commercial Speech as Fundamental Right

Advertisement right has been judicially realised in India as part of the freedom of speech and expression as contained in Article 19(1)(a) of the Constitution.¹⁶ In its previous rulings, the Supreme Court had considered commercial speech to be beyond the scope of protection of Article 19(1)(a) on the ground that advertising was a trading or business practice and not an expression. Such a limited view was predetermined by the American constitutional doctrine prior to the *Virginia Pharmacy* cases.¹⁷

The seminal status of an Indian law case was in *Romesh Thappar v. State of Madras* (1950)¹⁸ whereby the Supreme Court declared the freedom of expression to encompass the right to propagate ideas a necessary right to distribute and publish. This expansive understanding of expression laid the groundwork to the further expansion of the liberty of commercial and advertising speech.

4.2 Tata Press and the Extension of Article 19(1)(a)

Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. (1995)¹⁹ landmark ruling was a turning point in the Indian law on commercial speech. The Supreme Court decided categorically that commercial speech which includes advertising is subject to the protection of Article 19(1)(a), on the basis that the right to communicate is not only the right of the speaker, but the right of the recipient, as well, who is the receiver of the information. The Court said that a telephone directory is a type of speech, which conveys information of great public value and that its publication should not be monopolised by a State enterprise.

The Court also noted that advertising plays a valuable social role of spreading information on products and services and that prohibition of advertisements by the State impacts negatively on the freedom of expression of the producer and the right of the consumer to know.²⁰ This argument was inspired by the American commercial speech jurisprudence and helped to firmly hold the right to advertise within the text of the constitution.²¹

¹⁶The Constitution of India art. 19(1)(a) (1950).

¹⁷*Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).

¹⁸*Romesh Thappar v. State of Madras*, AIR 1950 SC 124 (India); *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129 (India).

¹⁹*Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*, (1995) 5 SCC 139, ¶¶ 17–19 (India) (Kuldeep Singh, J.).

²⁰*Id.* at ¶ 21; see also *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).

²¹*Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 SCC 641, ¶ 40 (India) (Venkataramiah, J.). The Court struck down the levy of customs duty on newsprint as an unconstitutional restriction on the freedom of the press.

4.3 The Right to Advertise is Limited

The freedom of advertising is not absolute and it is subject to the justifiable limitations that could be taken under Article 19(2)²² and this includes the limitation on the basis of decency, morality, public order and the sovereignty and integrity of India. The political and executive branches have placed a lot of regulatory restriction in the advertisement especially in financial services, Pharmaceuticals, tobacco and alcohol and political advertisement. The *Bennett Coleman* case (1973)²³ brought out the significant principle that even the indirect limitation on the press like newsprint quotas are liable to constitutional scrutiny under Article 19(1)(a) provided they have the practical effect of limiting the freedom of expression.

Content standards to print and electronic advertising are imposed by the Press Council Act 1978 and Cable Television Networks (Regulation) Act 1995 respectively.²⁴ The Drugs and Magic Remedies (Objectionable Advertisements) Act 1954, which was upheld by the Supreme Court in *Hamdard Dawakhana v. Union of India* (1960),²⁵ does bar the misleading medical advertisement, but is otherwise a legitimate exercise of the legislature in enacting reasonable restraint over commercial speech.

V. Conclusion

The legal system under which the media functions in India is typified by a constructive and uncomfortable relationship between the principle of a free press, and the other constitutional values of parliamentary sovereignty, judicial independence, and consumer safety. The parliamentary privileges have continued to be an important, though seldom exercised, restriction on the press. Even though the law of contempt was amended in 2006, it still limits the freedom of the media to comment on the proceeding that are pending. The emergence of commercial speech as a fundamental right has led to a more vigorous jurisprudence of the freedom of advertising, despite the continuing extensive regulatory controls.

The history of development of these doctrines is indicative of the continuing attempts by the Indian judiciary, to balance constitutional guarantees of free expression with the institutional interests of Parliament and the courts. It does not just take a democratic legal order that is mature to have a formal protection of the freedom of press but a principled and consistent

²²The Constitution of India art. 19(2) (1950).

²³*Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 106, ¶¶ 23–25 (India) (Mathew, J.). The Court held that Newsprint Policy restrictions on page limits violated the freedom of expression of newspapers.

²⁴Press Council Act § 13 (1978) (India); Cable Television Networks (Regulation) Act § 6 (1995) (India).

²⁵*Hamdard Dawakhana v. Union of India*, AIR 1960 SC 554 (India). The Court upheld restrictions on misleading medical advertisements under the Drugs and Magic Remedies (Objectionable Advertisements) Act (1954) as reasonable restrictions under art. 19(2).

judicial approach to the resolution of these competing values.

With respect to parliamentary privileges, the uneasy equilibrium between Article 105 and Article 19(1)(a) remains an unresolved constitutional tension. The legislative immunity accorded to parliamentary proceedings serves a vital democratic function: it shields deliberative processes from external intimidation and ensures that elected representatives may speak freely in the discharge of their representative duties. However, when the legislature invokes its privilege jurisdiction to punish reporters and editors for the publication of content that the House deems offensive, the exercise of this power raises serious questions about proportionality and compatibility with a constitutional culture that values press freedom. The MSM Sharma line of authority, which effectively insulates privilege determinations from judicial scrutiny, leaves the media without an adequate remedy when privilege is deployed in a manner that is retaliatory or suppressive rather than genuinely protective of legislative integrity. A more mature constitutional jurisprudence one that subjects the exercise of privilege jurisdiction to at least minimal proportionality review by the courts would more faithfully reflect the co-equal status of free expression and parliamentary sovereignty within the constitutional order.

The contempt jurisdiction similarly occupies contested terrain. The 2006 amendment introducing truth as a defence to criminal contempt was a significant liberalisation, but it did not resolve all the tensions between judicial authority and press freedom. The category of “scandalising the court” remains particularly problematic: it is inherently vague, susceptible to overbroad interpretation, and potentially capable of chilling legitimate criticism of the judicial process. While the Supreme Court has, in more recent decisions, counselled restraint in the invocation of contempt powers acknowledging that robust public criticism of judicial conduct is a feature rather than a defect of a democratic polity the residual threat of contempt proceedings continues to operate as a structural deterrent to investigative journalism in the legal domain. A legislative reconsideration of the scope of criminal contempt, with a view to confining the scandalising category to conduct that poses a demonstrably serious and imminent risk to the administration of justice, would strengthen the constitutional fabric without materially undermining judicial authority. The experience of jurisdictions such as England, where the Law Commission has recommended significant narrowing of the scandalising offence, offers instructive comparative guidance.

The constitutional recognition of commercial speech as a protected right under Article 19(1)(a), established most clearly in *Tata Press* (1995), represents a principled extension of free expression doctrine to the domain of commercial information. This development reflects a

broader judicial understanding that the consumer's right to receive information is an integral component of expressive freedom, and that the State's power to regulate advertising must be exercised within the constraints imposed by constitutional proportionality. The Bennett Coleman principle, which requires courts to scrutinise even indirect restrictions on press freedom, has proved a powerful doctrinal tool in this context. However, the right to advertise is not unlimited, and the regulatory framework governing sectors such as pharmaceuticals, financial products, tobacco, and alcohol continues to impose significant constraints on commercial speech. The challenge for the courts in the coming years will be to develop a more coherent analytical framework for assessing the constitutionality of advertising restrictions one that goes beyond the blunt categorisation of restrictions as either "reasonable" or "unreasonable" under Article 19(2) and instead applies a structured proportionality analysis that weighs the importance of the regulatory objective against the degree of interference with expressive freedom.

Viewed in its totality, the legal framework governing the Indian media reflects a constitutional architecture in which multiple fundamental rights and institutional interests compete for priority, and in which the resolution of this competition falls ultimately to the judiciary. The courts have, on the whole, discharged this responsibility with intellectual seriousness and doctrinal care, developing principles that protect the press from arbitrary state action while preserving the legitimate authority of Parliament and the judiciary to regulate conduct that genuinely threatens their institutional functions. The trajectory of the jurisprudence examined in this essay from the early privilege cases through the evolution of contempt doctrine and the constitutionalisation of commercial speech suggests that Indian law is moving, albeit unevenly, towards a more robust and principled protection of press freedom. The consolidation of this trend will require not only continued judicial vigilance but also legislative initiative: a comprehensive review of the Contempt of Courts Act, a clearer statutory framework for the limits of parliamentary privilege over media publication, and an updated regulatory architecture for advertising that reflects the constitutional status of commercial expression. Only through such a comprehensive and multi-institutional effort can India fully realise the potential of Article 19(1)(a) as the constitutional guardian of a free, responsible, and vigorous press.

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