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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E   B L A C K  
L E G A L

# **IMPACT OF MEDIA ON FREE SPEECH LAWS, EVALUATING THE BALANCE BETWEEN FREEDOM OF EXPRESSIONS AND SOCIETY**

AUTHORED BY - JYOTHI SHARMA

## **ABSTRACT**

Media freedom can be very crucial in democratic countries, ensuring the diverse viewpoints, and the citizens to access and share information without censorship or undue interference. To protect and promote media freedom, many countries have established a legal framework that outlines media organizations, journalists, and individuals. In this paper the researcher will evaluate the balance between the freedom of expression and harmful content.

## **INTRODUCTION**

Allowed framework for media freedom typically encompasses various laws, regulations, and constitutional provisions that safeguard the rights that are expression, freedom, speech press, and access and right. These provisions are designed to prevent government control or manipulation of the media and to foster climates. One crucial aspect of the legal framework is the freedom of expression and fundamental safety for life. Another important element of media freedom is the protection of users & their important thing to be protected which sources. Confidential things gather information and expose wrongdoing. The legal framework should establish safeguards to ensure the confidentiality of sources, allowing journalists to carry out their investigative work without fear of exposing their sources to reprisals. Additionally, the legal framework should outline the responsibilities and ethical standards for media organizations and journalists. This may include guidelines on accuracy, fairness, and impartiality in reporting, as well as provisions against bad speech , defamation, violence. To uphold media freedom, the legal framework should also establish an independent and impartial judiciary. This ensures that disputes concerning media

rights and freedoms are resolved fairly and without undue political influence. Moreover, mechanisms for redress and appeal should be in place to address any infringements on media freedom and to provide effective remedies for affected individuals or organizations. The legal framework for media freedom may vary across countries due to different legal systems, cultural contexts, and political environments. Some countries have specific laws dedicated to media regulation, while others incorporate media freedom within broader constitutional sayings. “Legal framework for media freedom encompasses a range of laws, regulations, and constitutional provisions that safeguard the rights and responsibilities of media organizations, journalists, and individuals.”<sup>1</sup>

## **PRESSURE FROM LAW ENFORCEMENT AGENCIES AND COURT TO REVEAL SOURCES**

Press and freedom are considered fundamental principles to play in ensuring that the administration remains accountable and transparent. However, journalists in India are facing increasing pressure from law enforcement agencies and courts to reveal their sources, which is threatening to the country. This paper will explore the issue of pressure on journalists to reveal their sources, its impact on press freedom. In India, the freedom of expression, right protected through grundnorm . However, laws by country also provide limits also that limits are which is not good for country and for dangerous to it . Journalists India have often found themselves in a difficult position, where they have equality of sources. Issue of source protection has become more pressing in recent years, with law enforcement agencies and courts increasingly demanding that journalists reveal their sources. The rise of digital technology easy for journalists to access info, but it has also made it easier for the government to track down sources<sup>2</sup>

In a recent ruling, a Delhi Court stated that journalists can be compelled to reveal their foundations to examining organizations if such disclosure is crucial to the investigation. The Chief Metropolitan Magistrate rejected a closure report filed by the CBI, as they had not pursued the investigation further after an initial report was leaked. The case involved a preliminary enquiry

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<sup>1</sup> media as legal framework available at <https://www.legalserviceindia.com/legal/article-558-media-as-a-legal-framework-an-analysis.html> (visited on June 2 2024)

<sup>2</sup> Freedom of the press important in democracy available at <https://www.humanrightscareers.com/issues/why-is-freedom-of-the-press-important-in-a-democracy/> ( visited on June 2 2024)



conducted by the CBI regarding a family related to yadav mulaym singh. . A news article titled "CBI may admit Mulayam was framed." was published by the Times of India, a day before the final hearing before the Supreme Court. The CBI filed an FIR “against unknown persons for fabricating a report to defame the agency, and defamation cases were also filed against the newspaper and news channels.”

The court held that journalists cannot refuse to reveal their sources based on the final report, and the investigating agency can request disclosure if it is vital to the investigation. The court also mentioned that the CBI has the authority, under IPC and CrPC (section 91), to require individuals with relevant information to participate in the investigation. Inquiry which was held later was needed for the satisfaction of sources which are connected by forged documents and that are related with journalists. The court emphasized the need for the CBI to investigate how the culprits gained power to catch and indulge in documents which are official in nature, including examining involvement of insiders by CBI. On January 5th, the Bengaluru Police took action against G. Mahantesh, the founder and editor of The File news portal. This action was in response to the publication of an e-office file noting from the Karnataka Education Department by The File. The Bengaluru Cybercrime Police specifically requested Mahantesh to disclose the source of the document upon which the story was based. Additionally, they demanded information regarding the source's identity, including their name, address, and ID card details. This information was reported by Editorial.<sup>3</sup>

In the case of “*Jai Parkash Aggarwal vs Vishambhar Dutt Sharma*”<sup>4</sup> the High Court that is Delhi”. made a significant ruling regarding the disclosure of sources by the press. The court said that it does not possess any total privilege to withhold the source of information on which a news item is based. However, it also emphasized that journalists are neither completely immune nor obligated to reveal their sources. Before the ordering it must carefully consider whether doing so is just and does not go against the public interest. The Supreme Court also addressed journalistic bases in a case in October 2021. CJI, NV Ramana, a bench noted safeguarding sources of information is a crucial aspect of press freedom. They emphasized that the order recognized the significance of

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<sup>3</sup> Editorial, “Can journalists be forced to reveal their source? Bengaluru police notice” newslaundry, 11 Jan, 2023

<sup>4</sup> 30 (1986) DLT 21,

preserving the anonymity of reporting bases to assure them . In the context of Pegasus software snooping incident, the court expressed concern about its potential chilling effect on journalism. It stated that this observation should not be considered as mere commentary since it was an essential part of the final decision. The court decided to establish a technical committee to investigate the alleged use of Pegasus on specific individuals, including journalists critical of the central government.

### **IMPACT ON PRESS FREEDOM:**

Force by which is given to persons working under press or related to this work for expressing their view about how they collect and from where they are collecting things in our nation. Creates a pro and an impact on investigative journalism which undermines the capacity of them. They are unable to protect their sources, they may be unwilling to publish stories that are in the public interest, for fear of retribution. The demand for source disclosure also has a broader impact on the media's ability to operate independently. If journalists are seen as being too close to their sources, it can damage their credibility and reputation, and ultimately, their ability to function as watchdogs of democracy.<sup>5</sup>

### **Challenges faced by Journalists:**

Journalists in India face several sources. First, there is a lack of clear legal protections for source confidentiality. While the Court which is supreme of India recognized the importance of source protection , there is no specific law that provides for it. Second, there is a lack of trust between journalists and law enforcement agencies. The police in India have a history of targeting journalists who report on sensitive issues, such as corruption or human rights abuses, who are often reluctant to reveal their sources for fear of retribution. Third, there is a lack of training and resources for journalists on source protection. Many journalists in India are not aware of the best practices for protecting their sources, such as using secure communication channels or encrypting their data. Fourth, made it easier for the government to track down sources. Journalists must be aware of the risks of digital communication and take steps.

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<sup>5</sup> Impact on press freedom available at <https://www.sciencedirect.com/science/i/S0264999316301316> (visited on 2 June 2024)

Pressure on them to reveal their sources is a serious threat to press freedom in India. It creates a chilling effect on investigative journalism and undermines their capacity to take their power accountable. Journalists in India face several problems with their sources, including a lack of legal protections, a lack of trust between journalists and law enforcement agencies, and a lack of training and resources. To ensure that the media can operate independently and effectively, it is essential to address these challenges and strengthen protections for source confidentiality.<sup>6</sup>

### **Writ petition filed by journalists against police for forcing to disclose sources**

In India, journalists have protection under the Constitution of India i.e, protection of expression, speech. However, there have been instances where the police have forced which have led to writ petitions being filed by journalists in court. Some examples of cases where writ petitions have been filed by journalists against the police for forcing them to disclose their sources.

In this case, Tarakant Dwivedi, a journalist from Lucknow, the Allahabad HC after he was arrested and charged with criminal conspiracy and other offenses under the IPC, secrets act, . The police had forced him to reveal the basis of his info regarding a government document he had published in his newspaper. The High Court quashed the charges against Dwivedi and held that “a journalist has the right to protect his sources under the Constitution<sup>7</sup>.

Another instance is of Rohini Singh, a journalist with The Wire, Gujarat HC after she was served with a notice by the Enforcement Directorate asking her to disclose her source for a story she had written on a company owned by Jay Shah, the son of BJP President Amit Shah. The High Court quashed the notice and held that a rights given to them protect her bases <sup>8</sup>

These cases demonstrate an important aspect of speech, expression and is protected by the Constitution. Writ petitions have been a crucial tool in enforcing this right and upholding the principles of a free press in India.

One well-known case of this occurred in 2017, when the “Central Bureau of Investigation (CBI)

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<sup>6</sup> Challenges faced by journalist available at <https://hrhub.my/top-challenges-that-journalists-face/> (visited on 2 June 2024)

<sup>7</sup> *Tarakant Dwivedi v. State of U.P*

<sup>8</sup> *Rohini Singh v. State of Gujarat*

raided the residence of NDTV's founder, Prannoy Roy”, over allegations of financial irregularities. NDTV had reported on several sensitive issues, including the 2002 Gujarat riots and the Adarsh Housing Society scam, and some speculated that the raid was intended to intimidate the channel and its journalists. The CBI later questioned NDTV's senior journalist, Nidhi Razdan, in connection with a case against a former Jammu and Kashmir minister, and reportedly asked her to reveal her sources. Razdan refused to comply, citing journalistic principles, and the matter eventually died down.<sup>9</sup>

In India, there have been instances where individuals who have provided information to journalists have faced problems when journalists are forced to reveal their., as it enables journalists to obtain information that might otherwise remain hidden, but this can lead to conflicts when sources fear retribution for speaking out.

In The Radia tapes controversy 2010, a series of call and recording of their talk in between lobbyist naira radian and another person’s related to politics. business people were leaked to the media. The conversations revealed the extent of Radia's influence and her attempts to manipulate the media. One of the journalists who received the tapes, Vir Sanghvi, was later summoned by a parliamentary panel and was for the story. Sanghvi refused to do so, stating that he had a duty to protect his sources.<sup>10</sup>

In The Bhima Koregaon case 2018, several activists were arrested by the Pune police in connection with violence that erupted during a Dalit commemoration event in Bhima Koregaon, Maharashtra. being targeted for their dissenting views. Journalists who had reported on the case were also questioned by the police and were asked to reveal their sources. Some of them refused to do so, citing the need to protect their sources.<sup>11</sup>

### **AMBIGUITY IN THE IEA, ABOUT THE ISSUE OF CONFIDENTIAL SOURCES**

IEA, specifically addresses the issue of confidential sources. However, there have been instances where the courts have dealt with this matter based on the principles of relevancy and admissibility

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<sup>9</sup> Editorial “Indian investigators raid premises linked to NDTV founders” The Guardian, June 5, 2017

<sup>10</sup> Editorial “ radia tapes controversies” The quint Feb 2, 2018

<sup>11</sup> Editorial “The 16 activists arrested in relation to the case are victims of witch-hunt” The Hindu July 11, 2021



of evidence. However, certain provisions within the act can be interpreted in a way that may create ambiguity in this regard. One such “*provision is Section 126 of the Indian Evidence Act, which relates to the examination of a witness who is not obliged to disclose the source of information*”.

*“Section 126 states that a witness cannot be compelled to answer questions that would disclose the identity of the person from whom he or she has received any confidential information. While this provision is meant to protect the confidentiality of sources in general, it does not explicitly mention journalists or their sources.”*

The interpretation of **Section 126** in relation to journalists and their confidential sources legal uncertainty. Some say that they should be granted the same protections as any other witness under this provision, as they often rely on confidential sources to obtain information that is in the public interest. Others contend that the act does not specifically mention journalists, and therefore, the protection may not be applicable to them. It's worth noting that several Indian courts protect journalists' confidential essential elements of press freedom and investigative journalism. These courts have relied on constitutional principles, such as the expression, speech, freedom, right, to provide limited protection to journalists and their sources.

*“Section 122 of the Indian Evidence Act states that communications made to a person in the course of their employment, which have a professional character, are generally considered privileged and cannot be compelled to be disclosed. This privilege extends to journalists and their confidential sources in certain situations, as the courts protecting identity such to encourage free flow of information”.*

While the Act does not specifically mention "confidential sources," the courts have relied on principles of privilege and protection of sources to develop a legal framework for addressing this issue. In landmark judgments, the Court supreme of India has recognized the protection of the identity of confidential sources in the constitution in Article 19.<sup>12</sup>

Evidence Act, enacted in 1872, governs the admissibility and evaluation of evidence in Indian courts. While it witnesses examination and the disclosure of information, confidential sources of

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<sup>12</sup> “.P.Jain, *Indian Constitution Law* 98(Kamal Law House, Calcutta, 5<sup>th</sup> edn., 1998).”

journalists. Section 126 of the Indian Evidence Act provides protection to persons who agree to tell the truth and present that they are not forced to answer questions that would disclose the identity of their confidential sources. However, the section does not mention journalists or make any specific reference to journalistic privilege.<sup>13</sup>

The ambiguity arises from the interpretation of Section 126 in relation to journalists and their sources. On one hand, proponents argue that journalists should be afforded the same protection as any other witness. They assert that the act's language is broad enough to encompass journalists and their sources, as the provision does not explicitly limit its application to specific professions. On the other hand, skeptics contend that since the IEA does not explicitly mention journalists, it may not extend the same protection to them. They argue that the section's language may be construed narrowly, limiting its application to witnesses in legal proceedings rather than journalists in the course of their work.

In the absence of protection of confidential sources, Indian courts have relied on constitutional principles to provide limited safeguards. The SC of India, in the case of, emphasized the role of the press in a self-governing society and highlighted the need to protect the sources of journalists. Similarly, in the case of.<sup>14</sup> While these judicial pronouncements provide some level, they are not universally applied and lack the force of a specific legislation or clear legal framework. As a result, the level of protection may vary, and ambiguity remains regarding the extent of safeguards available to them to address this ambiguity, some experts and organizations advocate for the enactment of a dedicated law or amendment to the Indian Evidence Act that explicitly recognizes and protects journalistic privilege. Such legislation could provide clear guidelines and procedures for the protection of journalists' confidential sources, ensuring a robust framework that upholds press freedom and investigative journalism.

One relevant case that touched upon the issue of confidential sources is the case of *In this case*, the SC discussed the admissibility of evidence obtained from anonymous sources. The court held that anonymous information can be the basis for investigation and can lead to the discovery of relevant

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<sup>13</sup> Batuk Lal *The Indian Evidence Act 1872* (Central Law agency 3<sup>rd</sup> Edition 2019)

<sup>14</sup> *Romesh Thappar v. State of Madras*

evidence<sup>15</sup>. However, the court also emphasized maintaining the need for secrecy of the accused's fair trial. The court stated that in such cases, the court should carefully evaluate the credibility and reliability of information to ensure rights which are for the accused and protected. where the Supreme Court discussed the issue of the admissibility of confessions made to police officers. While this case doesn't directly address confidential sources, it highlights that evidence obtained through coercive or unreliable means is not admissible in court.<sup>16</sup>

## **CONTEMPT OF COURT AND OTHER LEGAL CONSEQUENCE FOR JOURNALIST WHO REFUSE TO DISCLOSE SOURCES**

Court contempt refers to a lawful offense that can occur when someone disobeys or shows disrespect towards a law of courts. In some jurisdictions, journalists may face contempt of court charges if they refuse to disclose their sources in certain circumstances. Journalists often rely on confidential sources to gather information for their reporting. The protection of these sources is considered essential for maintaining press freedom and ensuring However, there are situations where courts may demand that journalists reveal their sources, such as when it is crucial to a criminal investigation or the administration of justice. When journalists refuse to disclose their sources despite a court order, The specific consequences and penalties for contempt of court vary depending on the jurisdiction. Journalists found guilty of contempt could face fines, imprisonment, or other punitive measures imposed. When it comes to court and contempt for journalists who refuse to disclose their sources, the underlying principle is freedom, press the admin of fairness. Journalists have a responsibility to protect their sources to encourage whistleblowers, informants, and others to come forward with sensitive information.<sup>17</sup>

However, there are situations where the court may require journalists to reveal their sources. This typically occurs when the information is crucial to a criminal investigation, national security matters,. Courts may argue that the interest in obtaining the truth and ensuring a fair trial outweighs the journalist-source privilege. Journalists who refuse to comply with a court order to disclose their

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<sup>15</sup> *State of Maharashtra v. Dr. Praful B. Desai*

<sup>16</sup> *Selvi & ors.v. Karnataka*

<sup>17</sup> Contempt of court for journalist available at <https://indianexpress.com/article/explained/journalists-not-exempt-from-disclosing-sources-what-is-the-law-8392518/> ( visited on June 22, 2023)

sources can be held in contempt of court. Contempt of court is a broad legal concept that encompasses various types of behavior that obstruct or disrespect the authority, dignity, or functioning of the court. By refusing to reveal their sources, journalists may be seen as obstructing the court's ability to ascertain the truth or impeding. Penalties for court contempt may vary by jurisdiction. In some cases, journalists may face fines, imprisonment, or other sanctions imposed by the court. However, it's worth noting that some jurisdictions have legal protections in place to safeguard journalists' right to source confidentiality. These protections may vary in their scope and strength, and they can influence the consequences faced by journalists who refuse to disclose their sources. It is essential to remember that the legal landscape surrounding contempt of court and source protection can differ significantly between countries. Some countries have enacted legislation or established legal precedents to provide stronger protections for journalists, while others may have more limited safeguards. Therefore, it's crucial to consult local laws and seek legal advice from experts in your jurisdiction to understand the specific implications and considerations for journalists refusing to disclose their sources.

*Smt. Archana Guha v. Sri Ranjit Guha*,<sup>18</sup> in which the disagreement was founded on a piece written for a newspaper in Calcutta. It should be highlighted that a judgment was criticized by falsifying the facts, but the Calcutta High Court ruled that there was no contempt because criticizing the judiciary should be free, even if done incorrectly. This case highlighted the crucial idea that no contempt proceeding should be launched just because a particular ruling was misrepresented in the media. For the same, there is an alternate remedy in the form of clearing up the misunderstanding with the Registrar of the Press.

The Act imposes constraints to remind us that no freedom is absolute, without reducing media freedom. It distinguishes between civil and criminal contempt. Civil contempt involves failing to comply with a court's ruling, while criminal contempt refers to any publication seeking to hinder the power of the Courts or obstruct justice. The limitation on media freedom arises from criminal contempt. "Sections 3, 4, 5, 7, and 13 (added in 2006) of the Act define what does not constitute contempt. However, some parts of the Act use ambiguous language when explaining contempt. The courts ultimately have discretion in determining when contempt actions are applicable. The

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<sup>18</sup> (1936 AC 322 at 335



term "fair" is mentioned in the marginal notes of Sections 4 and 5 without further clarification. Although Section 3(3) may imply a presumption of guilt, it's crucial to note that this presumption relies on the publication under Section 3 being made in good faith"<sup>19</sup>

## **POSITIONS OF THE US AND THE UK ON COURT CONTEMPT RELATED TO JOURNALIST RIGHTS**

In US Constitution, specifically Art 6, upholds the importance of open trials as a means to safeguard the rights of the accused and ensure transparency in legal proceedings. For instance, the trial of O.J. Simpson serves as an illustrative case. O.J. Simpson, an African American, faced accusations of an estranged companion and her friend. The high-profile trial garnered extensive media coverage on television and lasted for a significant period. Despite being acquitted in the criminal case, Simpson was later found liable for the wrongful deaths in a civil trial, which was not open to the public. Questions arose regarding whether this verdict influenced the convict's ability to obtain bail and if the criminal trial truly achieved its intended purpose of public scrutiny. The potential effectiveness of a public trial in upholding justice could be compromised due to the heightened presence of media and its potential interference. The Criminal Justice of 1925 restricts involvement in court proceedings.<sup>20</sup>

In "UK. Section 41(1) of the law specifies that it is unconstitutional for anyone to:

- a) Take or attempt to take a photograph of a judge of the court, a juror, a witness in or a party to any proceedings before the court, whether civil or criminal;
- b) or Make or attempt to make a portrait or sketch of a judge of the court with a view to publication; or
- c) Publish any picture that was captured, created, or reproduced in violation of the aforementioned clauses of this section.

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<sup>19</sup> Contempt of court by media Available at <https://blog.iplayers.in/contempt-of-court-by-the-media-a-study/> (visited at June 22, 2022)

<sup>20</sup> Positions of the US and the UK on Court Contempt related to journalist rights available at <https://www.cps.gov.uk/legal-guidance/contempt-court-reporting-restrictions-and-restrictions-public-access-hearings> (visited at June 22, 2023)

d) A person who violates the aforementioned clause is subject to a fine of up to £50 for each offence upon summary conviction.<sup>14</sup> Even though the two nations' legal systems are so drastically different, they both nonetheless happen to be strong democracies. Despite being a democracy, we have more social, cultural, and historical traits with the UK.

The media enjoys greater freedom in assessing the validity of any case that has been presented and reaching conclusions. Nevertheless, if such scrutiny to undermine the fair diminish the respect owed to courts, it would cease to be a valid criticism.

## **LEGAL FRAMEWORK IN INDIA**

### **IN INDIA, THE PRESS COUNCIL ACT OF 1978 PLAYS A CRUCIAL ROLE IN SAFEGUARDING THE ANONYMITY OF JOURNALISTS' SOURCES.**

Role of journalism in any democratic society is vital. Considered important and pillar fourth, as it provides the public with information knowledge about what is happening in their society. It is also essential for the media to keep corruption, social and political issues. To do this, journalists often rely on confidential sources to obtain information that would otherwise be inaccessible. In this regard, the confidentiality of sources plays a crucial role in protecting and ensuring transparency in governance. (PCI) is answerable for ensuring freedom of the press protecting the rights of journalists. One of the primary functions of PCI is to protect the confidentiality of sources of journalists. This article aims to provide an overview governing the sources India examine some of the significant cases in which the protection of sources was involved.<sup>21</sup> Indian Constitution does not openly remark on the right to press freedom. However, implicitly guaranteed.)<sup>22</sup> In addition to constitutional protection, the Indian Parliament has enacted numerous regulations to protect the freedom of the press and the confidentiality of sources of journalists. The most significant legislation in this regard is the Press Council Act, 1978.<sup>23</sup> In Sec 13 (2)(b) of PCI provides that PCI book, or relevant to an inquiry. However, it also states that no one shall except in cases where

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<sup>21</sup> Press council Act 1978 in the protection of confidentiality of sources of journalist in India *available at* (visited on June 22,2023)

<sup>22</sup> M.P.Jain, *Indian Constitution Law* 98(Kamal Law House, Calcutta, 5<sup>th</sup> edn., 1998).

<sup>23</sup> *Ibid*

the interest requires the revelation. This provision recognizes the importance of protecting the confidentiality of journalists”.<sup>24</sup>

*“Sec15 Press Council, there is a for safeguarding the confidentiality of journalistic sources. However, this protection applies specifically to inquiries conducted by the Press Council itself. Under Section 15, the Press Council is granted powers similar to those of a civil court when dealing with cases governed by the Code of Civil Procedure. Nevertheless, subsection (2) of Section 15 clarifies the following:*

*(2) Subsection (1) does not imply any compulsion on newspapers, news agencies, editors, or journalists to reveal this”*

Court which is supreme detained that the freedom press, right of the press maintain confidentiality of sources. It stated that journalists had a duty to protect their sources and that the disclosure of sources could lead to harassment and victimization of the sources. The Court also said that the administration might not compel the disclosure of sources to harass or intimidate journalists or publication.<sup>25</sup>

In *“State of Maharashtra v. Rajendra Jawanmal Gandhi”*<sup>26</sup> The police had arrested a journalist, Rajendra Jawanmal Gandhi, for publishing a news report about the alleged involvement of a minister in a financial scandal. The police had sought to question the journalist about his sources of information, but he refused to disclose them. Court which is supreme said protection of sources and that journalists could not be forced to disclose cases demanded such disclosure. Court also held disclosure was a matter of ethics that is journalistic and that it was the responsibility. Establishment of the first PCI, Sweden known as the took place in, marking the beginning of its extensive history. This idea has since become a global phenomenon, as the Press Council continues to hold influence in nearly every country today. The PCA of 1965 started the first legislation to establish a PC with the aim of enhancing journalistic standards. Unfortunately, it was disbanded. However, following the end of the state of emergency and the assumption of power by the Janata

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<sup>24</sup> Press council Act available at <https://www.legalserviceindia.com/legal/article-7091-media-and-press-council-of-india-act.html#:~:text=General%20powers%20of%20the%20Council,Code%20of%20Civil%20Procedure%2C%201908>. (visited on June 2, 2024)

<sup>25</sup> *Ibid*

<sup>26</sup> (1997) 8 SCC 386

Party, composition of this Act was largely inspired by the 1965 model.<sup>27</sup>

**The responsibilities of the press council include:**

- (i) Enhancing the standards of journalism.
- (ii) Educating journalists about ethical practices.
- (iii) Safeguarding and promoting the independence of journalism.
- (iv) Setting higher standards for news organizations and newspapers.
- (v) Upholding press freedom.
- (vi) Encouraging good taste in the general public through improved journalism.

**The Press Council of India possesses two distinct authorities:**

- (i) It has powers akin to a civil court.
- (ii) It has the ability to admonish. Through this authority, it can provide warnings, reprimands, or censor any content that violates journalistic ethics.

The press council is notable for its independent operation, functioning autonomously without involvement from the executive branch. On June 2nd, 1998, the Indian Press Council established a committee to assess the future of print media. The committee sought responses from concerned citizens through a questionnaire containing twenty-four questions. One of the questions inquired about how the RTI rule would support journalists in fulfilling their professional duties.<sup>28</sup>

The Press Council significance of the RTI Legislation March 2001, recognizing the obstacles faced by journalists in accessing official information. The bureaucracy, police, army, courts, and even the legislature strongly defend information, making it challenging for journalists to investigate and report effectively. The RTI holds public entities accountable and encourages curiosity among journalists and society at large. It eliminates the need for journalists to rely on speculation, rumors, leaks, or unreliable sources. Implementing this law will serve as a deterrent against special interests attempting to manipulate the truth through media manipulation or disinformation. Overall, this legislation promotes transparency across public, professional, social, and personal realms.<sup>29</sup>

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<sup>27</sup>Press council Act available at <https://www.outlookindia.com/national/no-specific-press-freedom-safeguards-how-indian-journalism-lacks-a-free-environment-news-235239> (visited on June 2, 2024)

<sup>28</sup> *Ibid*

<sup>29</sup> Norms and conduct of Journalist available at <https://www.presscouncil.nic.in/Norms.aspx> ( visited on June 2, 2024)



*“Although the Indian constitution guarantees the right to freedom of speech and expression under section 19(1) (a), this right remained incomplete without access to information”.* The capability to assess public authorities governance relies on having factual, up-to-date, and primary information. Unfortunately, the government consistently kept a close watch on the flow of information.<sup>30</sup>

The unfortunate situation arose when government officials utilized the **Officials Secret Act** to undermine certain constitutional limitations. Consequently, the rights of citizens remained constrained. Similarly, within the legislative branch, there are Contempt of Court statutes, and the judicial branch enjoys privileges from parliament. These restrictions hindered the journalist from thoroughly investigating any subject matter.<sup>31</sup>

### **THE 93RD LAW COMMISSION REPORT**

In September 1983, the 93rd Commission Report law was released, led by Justice KK Mathew. It put forward a recommendation to amend the Indian Evidence Act. It suggested adding an exception that specifically addresses individuals who are accountable for publications. The recommended amendment states that no court can be forced to reveal if the person obtained the information under an agreement, either explicit or implicit, to keep the source confidential. The purpose of this amendment is to ensure the anonymity of sources and protect the integrity of journalism. To provide further clarification, the report defines important terms. "Publication" refers to any form of communication, such as speeches, writings, broadcasts, or other means, that reaches either the specific individual. Additionally, "source" can refer to either the person from whom the information was obtained or the means by which it was acquired. The Law Commission believes that the matter should allow for flexibility and suggests that the court should have discretionary powers. Each case should be evaluated individually, considering the importance of preserving the confidentiality of the information source in relation to crime. In summary, the 93rd Law Commission Report proposes an amendment to the IEA, to safeguard identity sources for individuals responsible for

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<sup>30</sup> *Supra* note 42, Art 19

<sup>31</sup> Official secret act available at <https://blog.ipleaders.in/conflict-between-right-to-information-and-official-secrets-act-1923/> (visited on June 2, 2024)

publications. The report emphasizes the need for courts to balance the preservation of source confidentiality.<sup>32</sup>

## “RTI”

RTI Act of 2005 grants the right to access info said by community specialists. However, certain exemptions protect, sovereignty, and strategic interests. Journalists, despite legal protection for their sources, still face challenges in maintaining source confidentiality. Hence, journalists must exercise caution and take necessary steps to protect their sources. In a democratic society, information is power, and the media, with its wide reach and ability to shape public opinion, plays a crucial role in constructing an inclusive information society. Implementing the RTI regime empowers the media to contribute constructively and strengthen democratic. RTI unnoticed grassroots changes, which the media can highlight. By utilizing the Act, the media can investigate and shed light on matters of, providing credible accurate information to combat lack of access to entitlements. Upholding principles of impartiality information dissemination, particularly in the context of (RTI). For the media to actively fulfill the roles of disseminator, educator, and awareness generator. Media organizations are main beneficiaries of the RTI, as they possess the necessary time and resources to seek credible information and utilize it for meaningful outcomes, as highlighted by Justice P.B. Sawant. The media fulfills several significant functions in relation to the RTI. Firstly, it informs and educates the public about the RTI law. Secondly, it promotes debate and discussion on the subject. Lastly, it fosters a democratic culture that encourages tolerance for diverse viewpoints.<sup>33</sup>

Journalists have a dual responsibility in the implementation of the RTI. They act as activists, advocating for RTI promotion, and also as monitors, scrutinizing the law's implementation in both urban and rural areas. Collaborating with NGOs, especially those focused on legal literacy, is essential in rural regions. The media's role encompasses various actions to support the implementation of this act. This includes providing information to citizens and raising awareness about the Act, giving voice to citizens, addressing the democratic deficit, encouraging stakeholder

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<sup>32</sup> The Law commission report available at <https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-report-no-93-disclosure-sources-information-mass-media/> (visited on June 23, 2023)

<sup>33</sup> Right to information act available at <https://www.moneylife.in/article/rti-an-important-tool-for-all-journalists/56878.html> ( visited on June 2, 2024)

debates, and complementing RTI-related development initiatives such as anti-corruption efforts, NREGS, and Food for Work programs.<sup>34</sup> Regarding reporting, the media should focus on specific areas, such as evaluating public authorities' compliance with the Act, engaging citizens through opinion polls, debates, and articles to promote public action, monitoring the Act's progress, showcasing innovative practices worldwide, and creating awareness of best practices."

## **CASE OF AARUSHI AND THE CONSEQUENCE OF MEDIA –LAID TRAIL<sup>35</sup>**

The Aarushi murder case has triggered discussions about the media's role in such investigations. While initially considered a closed case by the police, part in uncovering flaws investigation. However, ongoing debates surround the methods employed by the police, media coverage, and public response in this case. The media's involvement has turned this tragic double murder into a spectacle, with constant speculation and twists that question the authorities' credibility. Critics argue that the media has conducted its own trial, with their reports becoming the primary source of information for the public. Intellectuals and social activists express their outrage towards newspapers and TV channels, prompting the need to examine when and how this case became a media circus and a trial conducted by the media. Initially, reporters were merely collecting information at the crime scene, a sadly common occurrence in the National Capital Region (NCR). The RTI bill encourages curiosity among journalists and society, leading to a critical examination of current affairs. It will serve as a powerful tool to scrutinize and hold accountable activities in the public domain. Journalists will no longer have to rely on speculation, unauthorized leaks, or questionable sources. This legislation will act as a remedy against hidden agendas that aim to hide or distort information and manipulate the media to spread misinformation. Enacting this legislation will bring transparency to various aspects of public, professional, social, and personal life. RTI has become the general public and the media, as demonstrated by an incident involving the privatization of the Delhi Jal Board in 1998. In this case, the media organization Parivartan used the RTI act to uncover alarming facts about the awarded tender, which was based on false information. In another instance, irregularities in the promotion of officials and employees within

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<sup>34</sup> *Ibid*

<sup>35</sup> CRIMINAL APPEAL No. - 293 of 2014

the Jharkhand Vidhan Sabha were brought to light through the RTI process. This discovery highlighted a deviation from the intended path of the esteemed institution of democracy.<sup>36</sup> To produce accurate and comprehensive reports that offer a holistic view, journalists engage in investigative reporting, conducting thorough research and uncovering relevant information.<sup>37</sup>

RTI Act, is a significant government legislation that has emerged in recent years. It has proven invaluable to ordinary citizens and social activists in their fight against corruption and in exerting greater control over government officials in various departments and agencies, safeguarding their legal and constitutional rights. The Act has increased transparency, significantly reducing the secrecy surrounding different types of information. Currently, there is improved accessibility to information within government departments and organizations. While awareness of this act in the general community, especially at grassroots level, may not be as widespread as desired, it has gained considerable recognition among educated individuals and the working class. Consequently, various initiatives related to the RTI Act are actively taking place in society, with the emergence of dedicated RTI activists assisting people.<sup>38</sup>

## **CENSORSHIP OVER RIGHT TO PROTECTION OF JOURNALIST'S RIGHTS RELATED TO CONFIDENTIALITY IN INDIA**

In India, there have been instances where the government and law enforcement agencies have attempted to curtail the protection of persons who work in media and journalism and safety also through censorship and other means. One such example is the case of Ravi Belagere, a journalist from Karnataka who was arrested in 2017 for publishing an article that allegedly defamed a state legislator. During the course of his trial, Belagere refused to divulge his source, citing the importance of protecting journalistic confidentiality. In another example, in 2019, “*the Indian government enacted the Information Technology (Intermediary Guidelines and Digital media Ethics Code) Rules*” which require social media platforms and messaging apps to remove content

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<sup>36</sup> RTI Act access information available at [https://groups.google.com/g/soc.culture.punjab/c/e4pNpL2\\_gHU](https://groups.google.com/g/soc.culture.punjab/c/e4pNpL2_gHU) (visited on June 23, 2023)

<sup>37</sup> Public relation with journalism available at <https://publicmediasolution.com/blog/major-difference-between-public-relations-and-journalism> (visited on June 2023)

<sup>38</sup> Right to information act available at <https://www.drishtiiias.com/to-the-points/paper4/right-to-information-1> (visited on June 2, 2024)

deemed “unlawful” within 36 hours of receiving a legal order from the government. Critics of the law argue that it censors free speech and could potentially be used to silence journalists whistleblowers. Additionally, in recent years, there have been instances of physical attacks and intimidation of journalists in India, particularly those who report on sensitive issues such as corruption, politics, and human rights abuses. These attacks have had a chilling effect on journalists and their ability to report freely and without fear of retribution. Overall, protection and right journalists their sources free and self-governing civilization. However, in India, there are concerns that government censorship and attacks on journalists are eroding this fundamental right. It is important for the Indian government to take steps to protect.<sup>39</sup>

### **FIRST PRESS REGULATION ACT IN INDIA**

The first press regulation act in India, This act was aimed at regulating operating in British our country. Required publishers to register their printing presses and publications with the government, and it also laid down certain provisions for the control and censorship of printed material. This Act, publishers required their publications, including name address publisher, title of the newspaper or periodical, and the language in which it was published. The primary objective of this act was to establish publications. Publishers were mandated to register their printing presses and provide detailed information about their publications to the government authorities. This information included the title of the newspaper or periodical, and the language in which it was published. By implementing this act, the colonial government sought to exercise control and censorship over printed material. It enabled the authorities to monitor and scrutinize the content being published, ensuring that it complied with the regulations and guidelines set by the British administration.<sup>40</sup> The act carried penalties. Publishers who failed to register their presses or provide accurate information about their publications could face fines and even imprisonment. These penalties were intended to deter publishers from violating the regulations and level of controller.

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<sup>39</sup> Censorship over right to protection of journalist’s rights related to confidentiality in India *available at* <https://thewire.in/media/backstory-censorship-comes-in-all-shades-and-sizes-in-india>(visited on June 2, 2024)

<sup>40</sup>First press regulation Act in India



It is important to acknowledge that this act was introduced in a colonial context and was primarily aimed at furthering the interests of the British administration. It reflected the control and censorship measures employed by colonial powers in various parts of the world during that era. While the Act marked an important development in press regulation in India, it is worth noting that subsequent legislation and amendments have shaped the regulatory framework for the press in the country. It is advisable to consult official sources and conduct further research to obtain a comprehensive understanding of the current press regulations in India.

## CONCLUSION

Press and freedom in our country is considered essential for maintaining democracy, and the courts have consistently protected it. The challenges faced by journalists in India are complex and multifaceted. Journalists play a crucial role in ensuring a vibrant democracy by bringing forth information that holds those in power accountable. However, they often encounter numerous obstacles that impede their ability. One significant challenge is the absence of a comprehensive legal framework that guarantees the protection of journalists and their sources. While India recognizes the importance of press freedom, there is no specific legislation or legal provision that explicitly safeguards the anonymity of confidential sources. This legal vacuum creates uncertainty for journalists and exposes them to potential legal repercussions and pressure from powerful entities seeking to suppress information. Moreover, journalists face social and cultural obstacles in establishing and maintaining trust with potential confidential sources. Fear of retaliation, societal stigmas, and a lack of awareness about the importance of whistleblowing hinder individuals from coming forward with sensitive information. This inhibits journalists from uncovering and reporting on critical issues that could otherwise have a significant impact on society. The safety of journalists should be prioritized with Comprehensive safety protocols and guidelines should be developed in consultation with journalists associations taking into account the specific challenges faced by different types of media professionals. Adequate training and resources should be provided to journalists to enhance their physical and digital security, enabling them to carry out their work without fear.