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Media Laws And Regulations In Pakistan

By

Sharif al Mujahid
MEDIA LAWS AND REGULATIONS IN PAKISTAN

By Prof. Sharif al Mujahid

PAKISTAN has had a common history with present day India till 1947. This explains why and how the Pakistan press came to be influenced rather extensively by the principal formative trends generated by the nature and course of the development of the press in the South Asian subcontinent from 1780 to 1947.

From 1820s onwards, the Indian press comprised two strands — the Anglo-Indian and the Indian, and from 1870s onwards emerged, at first nebulous and haltingly, a third strand. This third strand developed over the next sixty years to blossom forth into what came to be known as the Muslim press in India in 1940s. This Muslim press, which represented the weakest link in the triangular Indian press, became the nucleus of the emerging Pakistan press upon partition of the subcontinent. While the newly established Pakistan press carried over the traditions of its antecedent Indian Muslim press, it was also heir to in terms of press freedom, the curbs and controls which the Indian press was subjected to during the period of British colonial rule.

It may be remembered here that while the colonial countries practised democracy at home, they imposed autocracy on the colonies; while they subscribed to the concept of a
free and unfettered press at home, they imposed curbs and controls on the fledgling press in the colonies. Same was the case with British rule in India. Actually, the British authorities had armed themselves with an arsenal of acts and ordinances that gave them absolute power over the dissemination of news, and ownership, contents, publication and distribution of papers. And the tragedy of it all is that these acts and ordinances continued to be enforced even after the exit of the colonial power from the scene. In consequence, therefore, the press did not become all that free with the advent of freedom. For one thing, the successor authorities in the decolonized countries found it to their great advantage to retain these acts and ordinances— for the simple reason that they were eminently conducive to augmenting the regulative and coercive capabilities of the regime in power. And since it was considered a transitory period, it was as well tolerated by the press, whether willingly or willy nilly, without much by way of remonstrance or a protest.

But, as an old French adage says, nothing is more permanent than that which is temporary. Thus, to its great dismay and discomfiture, the press in Pakistan, like the press in most of the newly emergent countries, found that the acts/ordinance of the previous colonial era, retained at first ostensibly to tide over the teething pains, have
tended to etch for themselves somehow a permanent place on the Statute Book — to become fetters for the press for all time to come.

At the time of independence, the following ten laws relating to, or impinging, in one way or another, on the press were in force:

1. The Registration of Books and Newspapers Act, 1867
2. The Press (Emergency Powers) Act, 1931
3. The States (Protection Against Disaffection) Act, 1922
4. The Foreign Relations Act, 1932
5. The Criminal Law (Amendment) Act, 1932
6. The States (Protection) Act, 1934
7. The Post Office Act, 1898
8. The Official Secrets Act
9. The Telegraph Act
10. The Sea Customs Act

It may be appropriate to dilate briefly on some of the more important of these Acts.

The Press and Registration of Books Act, 1867, dealt with the filing of declaration for newspapers and journals, authentication of declaration by the Magistrate, copies of newspapers/books to be granted gratis to the Government, penalty for infringement of the rules stipulating the printing of the names of the printer and publisher and the place of both printing and publication, as well as for contravention
of other rules.

The Press (Emergency Powers), Act 1931, which, designed "for the better control of the press", amended and enlarged the 1867 Act, dealt with matters concerning the deposit of security by the owners of printing presses on the orders of the Magistrate; the forfeiture of security deposit in case any paper offended established authority; and penalties in case of failure to deposit security as required. It also gave powers to the authorities concerned to seize and destroy unauthorized news sheets and newspapers; to seize and forfeit undeclared presses producing such unauthorized news sheets and newspapers; to declare certain publications forfeited, and to issue search warrants for the same; to prohibit transmission by post of certain documents and to detain articles or packages containing certain publications transmitted by post; and laid down the penalty for disseminating unauthorized news sheets and newspapers. The affected party was, however, conceded the right of appeal to the High Court to set aside the order of forfeiture. In case of such appeal, the case was to be heard by a Special Bench of the High Court composed of three judges and the Special Bench was empowered to set aside the forfeiture of the press or of the deposit money.

The States (Protection Against Disaffection) Act, 1922, was designed to prevent the dissemination by means of books, newspapers and other documents of matter calculated to bring
into hatred or contempt, or to excite disaffection against, the Governments or Administrations established in the acceding princely states. (This Act became defunct after the princely states were integrated into and incorporated within the dominion of Pakistan in early 1950s.)

The Foreign Relations Act, 1932, as amended after the establishment of Pakistan, was designed to provide against the publication of statements likely to prejudice the maintenance of friendly relations between the Government of Pakistan and the governments of certain foreign states. It empowered the authorities concerned to forfeit publications considered prejudicial and to detain them in the course of transmission through post.

The criminal Law (Amendment) Act, 1932, which amended the Criminal Law Amended Act, 1908, dealt with the dissemination of contents of prescribed documents, or of false rumours (with a view to obstructing a person from carrying on his business or attending to his job), and empowered the Government to make certain offences cognizable and non-bailable.

The States(Protection) Act 1934, which supplemented the Act of 1922, was designed to protect the Administration of acceding states from activities which tended to subvert or to excite disaffection towards or to obstruct such Administrations.

The Post Office Act, 1898, also contained certain provisions which empowered the authorities to prohibit transmission by post of certain printed materials considered
prejudicial and to detain them.

Additionally, there were certain provisions in the Code of Criminal Procedure, 1898, which related to the press. They supplemented the provisions stipulated in the Act of 1867 in respect of empowering the authorities concerned to declare certain publications forfeited and to issue search warrants for the same; they also laid down the procedure for application to the High Court against such orders.

The Pakistan Penal Code also contained certain provisions relating to the cognisance of sedition and seditious activities. These activities included calling into question the creation of Pakistan; bringing or attempting to bring into hatred or contempt, exciting or attempting to excite disaffection towards Pakistan; promoting or attempting to promote feelings of enmity or hatred between the different classes; insulting or attempting to insult the religion or religious beliefs of any class; circulating any statement, rumour or report which causes or is likely to cause any member of the Armed Forces to mutiny, causing or likely to cause fear or alarm to the public; inciting or likely to incite any class or community of persons against any other class or community.

This, in brief, was the colonial legacy that the Pakistan press inherited in terms of press controls. It is true that the emerging trend since independence has been towards more press freedom, if only because the publishers, editors and working journalists have kept up a crusade for a free and
unfettered press. Yet, for one reason or for another — and sometimes the reasons were both weighty and plausible — the colonial legacy could not be exorcised. For one thing, the regimes that came to power since independence have found it handy to fall back upon it, not only during the initial critical period but also at other times, in order to augment the coercive capabilities of the political system. There have been, of course, changes in the nature of the political system under which Pakistan has been governed — from one end of the continuum to the other, from parliamentary democracy to military rule — but the tenor towards the press has undergone little change, if any, and whatever change there has been could be termed merely cosmetic. And this brings us to a discussion of the acts and ordinances promulgated since 1947.

The first measure to be enacted was the Public Safety Ordinance which was promulgated on 8 October 1949. It was enforced with immediate effect and was valid for one year. It vested wide powers of detention, restriction of movement, control of subversive associations, prevention of specific acts, and censorship of news in the interest of public safety. This ordinance was almost identical with the war-time Public Safety Act which was promulgated by the British, the only difference being that the powers under it were vested in the provincial government. This ordinance sought to impose penalties
from three to five years' imprisonment with or without fine. (Interestingly, in response to protests, an official spokesman clarified that no political motive was involved in the enactment of this ordinance.)

The next measure to be promulgated was the Security of Pakistan Act, 1952, which vested in the government wide powers specifically to deal with persons acting in a manner prejudicial to the defence, external affairs and the security of Pakistan. While its section 11 dealt with the control of information, section 12 sought to regulate publication of certain matters. It curtailed the right to secrecy of the source of information — i.e., the right to professional secrecy — and sought to impose precensorship, if necessary. Penalties proposed under this section could be imprisonment for a maximum of three years with or without fine. Although it was enacted ostensibly for the security of Pakistan, yet it was liable to abuse since few if any checks were provided against the misuse of powers assumed by the government under the Act.

The 1956 Constitution guaranteed freedom of the press as part of the fundamental rights (Section 8); but the Constitution itself was subverted in October 1958, and martial law imposed, which remained in effect till 8 June 1962. The new Constitution of 1962 also guaranteed freedom of the press as part of the fundamental rights (Section 3).
Meantime, in 1960 was promulgated the Public Maintenance Order which authorised the executive authorities to suspend the circulation of any newspapers for a prescribed period in case of its creating a law and order situation.

About the same time was enacted the Press and Publication Order of April 1960 which, while repealing the Press Law enacted under the British, vested in the government wide powers against the publication of "objectionable material". True, some of the more stringent provisions were deleted but this ordinance retained wide powers for the authorities to suspend and penalise the more audacious papers, and jail the recalcitrant editors. However, it contained some redeeming features, which were as follows: (i) the approval of the sessions judge was required before demanding/security deposit or before any notice for a security deposit or forfeiture of the previous security could be sent; (ii) it provided specific clauses to prevent loose interpretation, contenance disapprobation, and alteration of any measure by lawful means, and canceled the newspapers the right to petition the High Court to set aside the order demanding fresh security or forfeiture of the existing security deposit.

In September 1963, this ordinance was replaced by a comprehensive Press and Publications Ordinance. Originally, the ordinance was very stringent, leading to widespread protests in the press and by the journalists. In consequence, the government declared a one-month moratorium on 11 September 1963, met with representatives of the organizations of publishers,
editors and working journalists, and in the light of their discussions, issued the Press & Publications (Amendment) Ordinance of 1963. This amended ordinance, however, retained the power to appoint commissions of inquiry to investigate whether a press or a newspaper was receiving subsidy or raising funds through undesirable methods. Nevertheless, it also provided safeguards in respect of appeals, the nature of appellate tribunal and the time limit within which the inquiry must be completed. It also entitled the person against whom action was contemplated, to being heard by the officer or authority concerned.

This ordinance, which has been amended from time to time, has remained the most comprehensive law relating to the press.

The Indo-Pakistan war of 1965 brought a new shackle for the press — the declaration of a state of emergency and the imposition of the Defence of Pakistan Rules (DPR). The state of emergency was to remain in force for the two decades, and was lifted only on 30 December 1985, when the lifting of the Martial Law was announced, as part of the civilianisation of the political system in Pakistan.

As indicated earlier, the Press and Publication Ordinance of 1963 had come in for a good deal of criticism. Interestingly, at one time the government made repeated offers to withdraw the 1963 Ordinance if the journalists themselves were to come forward with an agreed code of ethics. Finally, as a result of prolonged negotiations between the Pakistan Newspapers
Editors (CPNE) and the government, a press code was drawn up and signed on 29 July 1965. The earlier ordinance was rescinded but several of its provisions were written into the code, and a Court of Honour, presided over by a retired judge, was provided to implement it. Actually, it was a forced compromise dictated by the government and accepted by the CPNE because it seemed the only way to get the 1963 ordinance rescinded. The government conceived of the court as an instrument through which the printing and publishing trade be policed by the Court on behalf of and without involving the government — similar to the role played the Stationers' Company in 17th century England. But the CPNE had no intention of allowing the court to become a handmaid of the government. Thus, in June 1966, at its first session, the court dismissed an East Pakistan Government's complaint against Ittefaq, saying that it had been made in ignorance of a provision in the code. Strangely though, the government, in contravention of the code, now took resort to Rule 52(2) of the DPR to jail its editor and seize the press, and when the Dacca High Court and the Supreme Court ruled the seizure of the press illegal, the government amended subsection of Rule 52 of the DPR to extend the seizure of the press. This instance indicates how the DPR was used to skirt around the media laws.

The middle 1960s also witnessed the taking of two measures which tended to augment considerably the economic hold of the government over the media. First was the setting up of a Central Advertising Board to channel advertising not only of government
agencies but also of autonomous and semiautonomous agencies which hitherto placed advertisements on their own in papers on the basis of their circulations and importance. The difficulties of the nonconformist papers were all the more compounded by the fact that not only was the government, as in most of afro-Asia, the biggest advertiser in the country, contributing about one-half of all advertising, but that the government also rather unabashedly claimed the privileges and prerogatives of a private advertiser whose patronage of a newspaper depends not on its circulation and importance alone, but on his own sweet will.

Second, was the government entry into the media field— to take over established papers and turn them into "official" journals, similarly to those established in most Western countries in the seventeenth and eighteenth centuries to counteract "misrepresentation" of governmental activities. Thus was launched early in 1964 the government-inspired National Press (NPT) financed by twenty-four prominent industrialists (at the instance of the government), each contributing some $21,000. In pursuance of this aim, ten dailies and one weekly were acquired or set up in the two wings during the next six months. Z.A. Bhutto had once characterized the Trust papers as "the Marie Walewska" of the Information Ministry, while some others have compared them to "a class of paid pipers". (Interestingly, Bhutto, when he came to power in 1971, stoutly refused to disband the NPT, despite his previous pledge, despite widespread clamour.) In any case, this rather surreptitious entry of the government in the media
field had disastrous consequences for the development of the press as a neutral and autonomous institution in the service of politics.

Additionally, and unofficially, the government could resort to some covert techniques to penalise and prevent the printing of nonconformist papers — such as pressuring the printers to refuse printing a paper or journal, refusing grant of declarations to applicants to bring out new papers; annual declarations to existing newspapers and periodicals. Beyond and behind all these looms large what is known as the "Press Advice" which almost makes it incumbent on the newspapers to publish or not to publish certain items.

All this indicates that the various regimes in Pakistan have wanted the press to be a mere adjunct of the state, a mere extension or agency of the Information Ministry, so that it could mobilize the masses in favour of its goals. However, the most redeeming feature in respect of press freedom in Pakistan is that while the various regimes have more often than not harked back to an authoritarian tradition, the press and the public have stood steadfast with the libertarian tradition. Because of this, the press has, generally speaking, always enjoyed a fair measure of freedom and exhibited a considerable independence of attitude; this was true even during the last years of General Ziaul Haq's Martial Law regime. Part of the pre-independence heritage of the press was to be in conflict with the government,
but this had not been an unmixed evil either. In the final analysis, it had substantially helped in the development of a critical temper and of trade unionism among journalists and editors, the one impelling and the other enabling them to stand together in case of encroachments on their domain. On occasion some papers had been influenced by official patronage of various kinds or deterred by threats of prosecution. As indicated earlier, the government had always been armed to impose even extreme penalties, but recourse to such drastic measures had usually been tempered with discretion. For one thing, the government wanted to avoid a "bad" press; for another, trade unionism, as already noted, had always been rather strong among Pakistani journalists.

Finally, as of now, the present trend towards the civilianisation of Pakistan's political system, and the lifting up of the emergency augur well for both its political and press freedoms.