

Development of the Western Concept of Press Freedom in South Asia under the British Raj and Aftermath: A Comparative Contextualisation with Special Reference to Bangladesh

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Abstract: *The classical liberal political philosophy that began to emerge in the 17th century came to have worldwide influence on the development of the concept of a free press. England, being the principal source of this political philosophy, then adhered to the 'libertarian theory' denoting the absence of state control in the operation of the press. The concept of press freedom in a modern sense could thus be said to have originated in England, the press being transferred from the authoritarian to libertarian principles. Unfortunately, the Indian sub-continent by then had come under British colonial administration, and as a colony, it was outside the ambit of such liberalising transition. Rather, discretionary decision-making in implementing 'authoritarian theory' by the colonial administration introduced a range of laws to consolidate control over the press. Even after the partition of British India in 1947, successive Pakistani governments perpetuated the 'authoritarian theory' keeping those laws in place. In 1971, Bangladesh emerged as a sovereign state, but all the earlier British-made press laws remained intact. This article aims to investigate the conceptual basis of the right to press freedom in South Asia and proceeds with its historical development through comparative contextualisation.*

Introduction

The concept of press freedom developed slowly with the growth of civilisation. As seems typical in Anglophone contexts, England takes pride in bringing forth the idea of press freedom¹ and the struggle against censorship and for free expression has a long history. From 1559, as Appignanesi² observes, all serious books had to be approved by the Queen, her Archbishops or the Chancellor of Oxford or Cambridge University, before being licensed

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1 K.G. Joglekar, *Press Freedom: The Indian Story*, New Delhi 2005, p. 1.

2 Lisa Appignanesi, Editor's Preface, in: Lisa Appignanesi (ed.), *Free Expression is No Offence*, London 2005, p.2.

by the Stationers' Company. When Cromwell brought censorship back in 1643 after a brief hiatus, Milton penned his *Areopagitica*, a passionate plea for free expression³. Jeremy Bentham argued that 'liberty of the press has its inconveniences, but the evil which may result from it is not to be compared to the evil of censorship'⁴. John Stuart Mill expanded the liberal tradition found in Milton into a broader concept of press freedom. As Mill⁵ observes, the necessity of freedom of opinion and freedom of the expression of opinion is recognised as integral to the mental well-being of mankind and that 'if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility'.

Considering the importance of press freedom in a democratic society, the political leaders of historical importance also did not fall behind. Sir Winston Churchill called a free press 'the unsleeping guardian of every right that free men prize', being the most dangerous foe of tyranny⁶. In India, from a post-colonial perspective, which seems to have made no difference, Jawaharlal Nehru⁷ observed:

To my mind, the freedom of the press is not just a slogan from the larger point of view but it is an essential attribute of the democratic process. I have no doubt that even if the Government dislikes the liberties taken by the press and considers them dangerous, it is wrong to interfere with the freedom of the press. By imposing restriction you do not change anything; you merely suppress the public manifestation of certain things, thereby causing the idea and thought underlying them to spread further. Therefore, I would rather have a completely free press with all the dangers involved in the wrong use of that freedom, than a suppressed or regulated press.

None of these authors, however, advocated absolute freedom. As Nehru⁸ explicitly admitted, '[t]here is no such thing as abstract freedom. Freedom is always accompanied by responsibility. Freedom always entails an obligation, whether it is a nation's freedom, or an individual's freedom or a group's freedom or the freedom of the press'. In fact, press freedom as a concept in an absolute sense of the term is a misnomer; for no government, even a democratic one, will perhaps allow the press to enjoy absolute freedom. Especially, the politicians are usually afraid of a free press. Napoleon Bonaparte observed: 'I fear three news-

3 Ibid.

4 *Ralph Negrine*, Politics and the Mass Media in Britain, London 1989, p. 26.

5 *John Stuart Mill*, On Liberty, London 1865, p. 30.

6 *L. E. Ingelhart*, Press Freedoms, A Descriptive Calendar of Concepts, Interpretations, Events, and Court Actions, from 4000 BC to the Present, Connecticut 1987, p. 294.

7 *Jawaharlal Nehru*, Freedom and Licence, in: Suresh K. Sharma, Press in India: Historical Development, Vol. 1, Delhi 2006, pp. 221-222.

8 *Jawaharlal Nehru*, Tasks for the Press, in: Suresh K. Sharma, Press in India: Historical Development, Vol. 1, Delhi 2006, p. 239.

papers more than a hundred thousand bayonets'⁹. Restriction on the press is therefore a common phenomenon in every legal system of the world. The legal history of South Asia, the legacy of which Bangladesh is still maintaining, is also deeply embedded into this culture.

This article aims to investigate the historical and conceptual basis of the right to press freedom in South Asia. Introducing the concept of press freedom that originally developed in the West, the article proceeds with its historical development in South Asia through comparative contextualisation. The concluding part, while placing emphasis on the importance of press freedom in democracy, sheds light on the present situation of the concept in post-colonial Bangladesh.

Origin of the concept of press freedom

The modern press has developed in different ways in different parts of the world¹⁰. But the concept of press freedom did not originate from Gutenberg's printing machine in the fifteenth century. Even before the invention of ink and paper, the importance of news was clearly understood¹¹. Thus intelligence about what was taking place at the seats of power dates back to the earliest days of recorded history¹². Information flowed between rulers even before the rise of Rome and apart from reporting to the rulers, the agents of communications used to broadcast carefully selected news in public announcements from the towers of buildings¹³. Thus in the pre-printing era, elaborate espionage systems for the collection and transmission of news for state purposes was an indispensable part of government activity all over the world¹⁴. Even the early Hindu rulers in the Indian sub-continent used to collect information on matters of administrative and political importance and the Muslim rulers maintained the system inherited from their Hindu predecessors¹⁵. This pre-printing press surveillance used to serve the role of 'an agency of social control, in the hands of the powerful, surveying the environment for threats and opportunities'¹⁶. So it is not really different from what follows later, only the media of communication are different.

The arrival of the printing press made possible for the first time a reading public and undoubtedly the invention shattered the medieval world and gave rise to modernism, but

9 *George L. Bird and Frederic E. Merwin, The Newspaper and Society: A Book Reading*, New York 1947, p. 254.

10 *J. Herbert Altschull, Agents of Power: The Role of the News Media in Human Affairs*, New York 1984, p. 3.

11 *Aurobindo Mazumdar, Indian Press and Freedom Struggle: 1937-42*, Calcutta 1993, p. 1.

12 *Altschull*, note 10, p. 4.

13 *Id.*, p. 6.

14 *Mazumdar*, note 11, p. 1.

15 *Ibid.*

16 *Altschull*, note 10, p. 6.

did not give the press system any modern form¹⁷. Even shortly after its introduction into England in 1476, the rapid rise of the government regulation on printing ‘set the pattern of control for the next hundred years’¹⁸. The first licensing system under secular control in 1530 by Henry VIII was followed by the establishment of the Stationers’ Company as part of the control system in 1557 by Mary and reached the climax of the regulation of the press by the Star Chamber Decree of 1586¹⁹. Thus the Tudors to a greater extent adopted, what Siebert et al.²⁰ have called the ‘authoritarian theory’ in the operation of controlling the mass media.²¹ In that society, as Siebert et al.²² (1956: 2) have observed (*italics in the original*):

[T]ruth was conceived to be, not the product of the great mass of people, but of a few wise men who were in a position to guide and direct their fellows. Thus truth was thought to be centered near the center of power. The press therefore functioned from the top down. The rulers of the time used the press to inform the people of what the rulers thought they should know and the policies the rulers thought they should support.

This theory of the press, which made the press a servant of the state, was universally accepted by the sixteenth century and set the original pattern for most of the national press systems of the world²³. In an effort to control the knowledge of society, to strengthen the position of authority, and to define the limits of free expression in society, censorship and

17 Id., pp. 4-6.

18 Fred Seaton Siebert, *Freedom of the Press in England 1476-1776: the Rise and Decline of Government Controls*, Urbana 1952, p. 2.

19 Ibid.

20 Fred Seaton Siebert, Theodore Peterson and Wilbur Schramm, *Four Theories of the Press: The Authoritarian, Libertarian, Social Responsibility, and Soviet Communist Concepts of What the Press Should Be and Do*, Urbana 1956.

21 This theory along with Libertarian, Social Responsibility and Soviet Communist theories has structured the model which is well known as the ‘Four Theories of the Press’. There are a lot of criticisms about four theories of the press as put forward by Siebert et. al., in terms of their applicability in the changed circumstances (e.g. John C. Nerone, *Last Rights: Revisiting Four Theories of the Press*, Baltimore 1995; Jennifer Ostini and Anthony Y. H. Fung, *Beyond the Four Theories of the Press: A New Model of National Media Systems*, *Mass Communication and Society* 5(2002), but ‘there has never been a successor’ (John C. Merrill and John C. Nerone, *The Four Theories of the Press Four and a Half Decades Later: A Retrospective*, *Journalism Studies* 3(2002), p. 136). Besides, Nerone (John C. Nerone, *Revisiting Four Theories of the Press*, Baltimore 1995) observes (*italics in the original*) that ‘[t]he great contribution of *Four Theories* to the curriculum was to carve out a terrain that encompasses both law and history...’. Therefore, these theories of the press have been applied in this chapter according to their relevance to explain the historical development of the press in England and South Asia from a legal point of view.

22 Siebert et al., note 20, p. 2.

23 Id., p. 3.

privilege became major weapons²⁴. That is, the press was always subject to direct or implied control by the state or sovereign and the constraint of potential censorship always existed²⁵. Thus, the regulation for censorship under authoritarian philosophies was more common than any other and was widely practised by the governments of France, Germany, Spain and the Italian States and also by the early colonial governments in America²⁶. The licensing systems and censorship in most parts of Europe forced editors to remain within the limits of officially sanctioned opinions²⁷. Editors and reporters used to exercise a good deal of self-censorship, but never knew how far they could go without triggering official disfavour and intervention²⁸. When state monopolies or licensing had failed to accomplish the necessary control, the method of prosecution before the courts was adopted, particularly in England²⁹.

However, from the opening of the seventeenth century, government control in England showed a pattern of decline. As Siebert³⁰ observes, '[i]t took approximately eighty years to build up the system to its highest point; it took more than two hundred years to tear it down'. But censorship was back again in 1643 by an Order of Parliament and there were attempts to revive the Elizabethan system³¹. This was the period which produced the first reasoned arguments for a free and uncontrolled press in the writings of the Puritan and non-conformist thinkers such as William Walwyn, Henry Robinson, John Lilburne and, especially, John Milton³². Being influenced by the Athenian orator Isocrates in the 5th century BC, Milton argued strongly against the Licensing Order of 1643, noting that such censorship had never been a part of classical Athens³³. In his famous work 'On Liberty', he com-

24 Hanno Hardt, Press Freedom in Western Societies, in: Leslie John Martin and Anju Grover Chaudhary (eds.), *Comparative Mass Media Systems*, New York 1983, p. 300.

25 William A. Hachten and James F. Scotton, *The World News Prism: Global Information in a Satellite Age*, Oxford 2007, p. 18.

26 Sieber et al., note 20, p. 22.

27 Hardt, note 24, p. 301.

28 Hachten and Scotton, note 25, p. 18.

29 Sieber et al., note 20, p. 22.

30 Siebert, note 18, p. 2.

31 Id., p. 3.

32 Ibid.

33 Barbara K. Lewalski, *The Life of John Milton: A Critical Biography*, Oxford 2002, p. 191. Athens takes pride in ensuring free speech as a principal component of democratic ideology. *Parrhesia* meaning 'free and candid speech' had social and political implications and in the Assembly, courts or theatre, Athenians were free to say almost anything, including blatant vituperation (Stanley N. Katz (ed.), *The Oxford International Encyclopedia of Legal History: Vol. 5*, New York 2009, p. 329). Though different speech regulations existed for courts and assemblies, slander law or the restrictions on dramatic speech, Athenians rarely regulated free speech and did so mainly for the protection of the community (Id., pp. 330-331). However, more recent work doubts the historicity of many stories of Athenian tolerance and raises the question why, then, Athens did execute Socrates for 'not recognizing' the city's gods (Id., p. 331).

pared the silencing of expression with the peculiar evil of robbing the human race³⁴. Though both Milton and his ideas fell into disrepute and had little effect on his time, his views on press censorship did eventually have some effect³⁵. Siebert et al.,³⁶ noted: 'The sixteenth century provided the experiences; the seventeenth century saw the development of the philosophical principles; and the eighteenth century put these principles into practice'. Especially England, which was the principal source of political philosophy in the seventeenth century, ended with the triumph of liberalism³⁷, where a press relatively free of arbitrary government controls slowly evolved³⁸. The concept of press freedom thus originated in England as a component of what Siebert et al.³⁹ have called the 'libertarian theory' of the press. Regarding a more specific description of what 'libertarian theory' signifies, Siebert et al.⁴⁰ write:

In Libertarian theory, the press is not an instrument of government, but rather a device for presenting evidence and arguments on the basis of which the people can check on government and make up their minds as to policy. Therefore, it is imperative that the press be free from government control and influence.

Thus, an important element of the 'libertarian theory' is the absence of state control in the operations of the news media⁴¹. Considering that the historical context of struggle for press freedom was one of antagonism between publication and government, it was not surprising that press freedom came to be defined primarily as 'freedom from restriction'⁴². This meaning was reflected in the First Amendment to the Constitution of the United States (1791) to the effect that 'Congress shall make no law...abridging the freedom of speech or of the press'⁴³.

However, by the end of the eighteenth century, the transfer of the press from authoritarian to libertarian principles was complete⁴⁴. Therefore, in the nineteenth century, 'the abstract image of a free and outspoken press gained popularity'⁴⁵. Unfortunately, the Indian

34 Mill, note 5, p. 10.

35 Ken I. Kersch, Freedom of Speech: Rights and Liberties under the Law, Santa Barbara 2003, p. 47.

36 Siebert et al., note 2, p. 41.

37 Id., p. 42.

38 Hachten and Scotton, note 25, p. 19.

39 Siebert et al., note 20.

40 Id., p. 3.

41 I. Bayo Oloyede, Press Freedom: A Conception Analysis, Journal of Social Science 11(2005), p. 102.

42 Denis McQuail, McQuail's Mass Communication Theory, London 2005, p. 170.

43 Ibid.

44 Siebert et al., note 20, p. 44.

45 J. Herbert Altschull, Agents of Power: The Media and Public Policy, New York 1995, p. 48.

sub-continent was by then under the administration of British colonial authority and hence outside the ambit of such transition. As Altschull⁴⁶ notes:

[A]ll across the Western world...so highly was the idea of free expression praised that few persons were willing to speak out against it. Even the despots who imposed restrictions on the liberty of the press represented themselves as friends of free expression. No thought was given, of course, to free expression in the traditional societies that made up the colonial empires of Africa and Asia.

In fact, colonial administration was never comfortable with the idea of a free press. Openness was always contrary to their objectives. As Keller⁴⁷ observed:

Liberal views on the importance of a free press were, however, not always consonant with the needs of colonial authorities in distant parts of the British Empire. Constant vigilance against threats to British authority was a necessary and accepted part of colonial administration and, while military force was available in emergencies, the legal system was expected to serve as the principal means of preventing the spread of subversion among the local population.

Therefore, the history of development of press freedom is completely different from Europe in colonial as well as post-colonial South Asia.

Development of press freedom in the Indian subcontinent and aftermath

The historical development of the concept of press freedom in a crystallised form in the present South Asian context revolves to a great extent around the British occupation of the Indian sub-continent, more specifically the colonial domination that began in 1757. However, a fuller understanding of the influence and also the after-effect, whether positive or negative, of colonial intervention into the already existing vague concept of the press requires comparative contextualisation by exploring the social dynamics of pre-colonial British India.

As mentioned earlier, oriental monarchs had also recognised the necessity of news services from the earliest times⁴⁸. The early Hindu rulers maintained an elaborate espionage system for the collection and transmission of news for state purposes⁴⁹. The Muslim rulers, namely the Pathans, assumed kingship around 1095 and then continued to govern major portions of the subcontinent for about 424 years, until Sultan Babar, the founder of the

⁴⁶ Ibid.

⁴⁷ Perry Keller, Freedom of the Press in Hong Kong: Liberal Values and Sovereign Interests, Texas International Law Journal 27(1992), p. 376.

⁴⁸ Margarita Barns, The Indian Press: A History of the Growth of Public Opinion in India, London 1940, p. 3.

⁴⁹ Mazumdar, note 11, p. 1.

Mughal empire,⁵⁰ overpowered Sultan Ibrahim Shah in 1519⁵¹. The Pathans improved the system of their Hindu predecessors by introducing some modifications, but it was the Mughals who ensured a regular supply of news by expanding the functions of the news-writers⁵². They maintained a bureau of intelligence in every provincial capital⁵³. As Manucci and Irvine⁵⁴ note:

It is also a fixed rule of the Moguls that the vaquianavis (waqi'ah-navis) and the cofianavis (Khufiyah-navis), or the public and secret news-writers of the empire, must once a week enter what is passing in a vaquia (waqi'ah) – that is to say, a sort of gazette or Mercury, containing the events of most importance. These news-letters are commonly read in the king's presence by women of the mahal at about nine o'clock in the evening, so that by this means he knows what is going on in his kingdom.

In fact, it was during the period of Aurangzeb when the duties of the news-writers were extended from those of mere 'diarists', who used to record the daily events, especially the 'orders and doings' of the Emperor⁵⁵. Apart from public and secret news-writers, there was also a post of historiographer, who used to cover special assignments of important events for incorporation into the work of history⁵⁶. The application of the term 'the press' to the communication of these official news-writers, who also occupied ministerial posts at the Mughal Court, created much confusion⁵⁷. Practically, not only these communications, but other reports of spies on which the rulers depended, different other proclamations of the government and even the exchange of gossip at the market place or around the village well also served the role of the press⁵⁸. People used to enjoy considerable freedom of discussion⁵⁹. Especially, Aurangzeb is credited with having allowed such extensive freedom to

50 The term 'Mughal' has its origin in the Persian language. Therefore, different writers have used this term in different spellings such as: Mogul, Moghul, Mughal etc. This thesis has preferred the spelling 'Mughal', though while quoting other authors, different variants have of course been followed.

51 Niccolò Manucci and William Irvine, *Mogul India 1653-1708 or Storia Do Mogor Vol., 1*, Delhi 1996, p. 109.

52 Mazumdar, note 11, p.1.

53 Nadig Krishna Murthy, *Indian Journalism: Origin, Growth and Development of Indian Journalism*, Mysore 1966, p. 7.

54 Niccolò Manucci and William Irvine, *Mogul India 1653-1708 or Storia Do Mogor Vol., 2*, Delhi 1996, p.309.

55 S.M.A. Feroze, *Press in Pakistan*, Lahore 1957, p. 1.

56 Abdus Salam Khurshid, *Newsletters in the Orient*, Islamabad 1988, p. 52.

57 Swaminath Natarajan, *A History of the Press in India*, Bombay 1962, p. 5.

58 Ibid.

59 Barns, note 48, p.5.

the press in the matter of news⁶⁰. He even allowed a writer to criticise his grandson⁶¹. Thus, it seems that complete freedom was extended to the news-writers⁶². A newly appointed news-writer was given the instruction to write 'the truth' in every matter⁶³. As Khurshid⁶⁴ observes:

Just as the ideal journalism today follows a code of ethics, saying that journalists should remain above party politics, should not take sides and should report every event in an objective and impartial manner and make comments without fear or favour, the news organisation in the days of Aurangzeb was expected to remain neutral in all its reporting and the news writers were expected to be disinterested observers and reporters of events.

It is noteworthy that while the nonconformist western thinkers were struggling to establish their reasoned arguments for a free press in England, the press in the then Indian sub-continent used to enjoy considerable freedom. Unfortunately, this liberty of the press was 'an example which was certainly not always followed by their English successors'⁶⁵. Rather, the development of the press after the colonial intervention is again a history of the struggle for press freedom⁶⁶.

Englishmen had learnt from experience that awareness among the people was the foundation on which the struggle of the masses against autocracy was built⁶⁷. Therefore, in the early period, it was the policy of the British rulers to keep the 'natives' in the dark and any attempt to spread light of knowledge or to disseminate information among the people was vehemently opposed⁶⁸. In 1768, William Bolts was deported immediately just because of placing a proposal before the Select Committee of the Council to set up a printing press in Calcutta⁶⁹. It was not until 1780 that the first Indian newspaper appeared in Calcutta when James Augustus Hicky published his weekly Bengal Gazette⁷⁰. But this editor-publisher of the weekly Bengal Gazette of 1780, who used to introduce himself as 'the first and the late printer to the Honorable Company'⁷¹, that is, the East India Company, also became the sub-

60 Id., p. 33.

61 Natarajan, note 57, p. 5.

62 Murthy, note 53, p. 8.

63 Jadunath Sakar, Mughal Administration, Calcutta 1924, p. 75.

64 Khurshid, note 56, pp. 52-53.

65 Barns, note 48, p. 5.

66 Mazumdar, note 11.

67 Joglekar, note 1, p. 23.

68 Mazumdar, note 11, p. 29.

69 Id., pp. 29-30.

70 Barns, note 48, p. 46; Natarajan, note 57, p. 14; Mazumdar, note 11, p. 30; Joglekar, note 1, p. 23.

71 Barns, note 48, p. 46; Natarajan, note 57, p. 17.

ject in several famous libel suits by criticising Warren Hastings and his general policies⁷². Just within ten months of its publication, the Bengal Gazette had incurred the wrath of the government and its circulation through the channel of the General Post Office was stopped as it had been found 'to contain several improper paragraphs tending to vilify private characters and to disturb the peace of the settlement'⁷³. Hicky bitterly complained of the Governor-General's action and in the forty-fourth issue of his paper, he declared that the order was the 'strongest proof of arbitrary power and influence that can be given'⁷⁴. Following the imposition of a large fine, imprisonment, torture and humiliation, Mr. Hicky, the pioneer of the Indian press, ultimately stopped the publication in 1782, went back to England and died in poverty⁷⁵.

After Hicky's Gazette, a few other newspapers such as the India Gazette (1780), the Calcutta Gazette (1784), the Madras Courier (1785), the Bombay Courier (1789), the Bombay Gazette (1791) and also the Madras Gazette (1795) were founded. All of them, directly or indirectly, had to assure the Governor-General that they would abide by the instructions made by his government⁷⁶. Apart from arresting and deporting Mr. Humphreys, the editor of the India Herald, who allegedly published the paper without the authority of the government⁷⁷, the next editor to be summarily dealt with was William Duane⁷⁸. His Bengal Journal became a victim of the Company's policy by criticising its officers or publishing news which were 'not palatable to the authorities'⁷⁹. The treatment meted out to him by the government of Sir John Shore smacked of despotic rule⁸⁰. Being invited by the Governor for breakfast, when Mr. Duane reached the Government House, he discovered himself to be a state prisoner and subsequently, he was deported to England⁸¹. This extremely repressive attitude of the East India Company towards the press, Joglekar⁸² notes, was influenced by 'the changing political situation in the country'. The Company was out to establish itself as the paramount power in India and was in no mood to tolerate any writing which might disturb this effort⁸³. Therefore, just like the Tudors of sixteenth-century England, the colonial administration of British India was strictly following the 'authoritarian theory' in the operation of controlling the mass media.

72 Barns, note 48, pp. 46-55; Mazumdar, note 11, p. 30; Joglekar, note 1, p. 23.

73 Barns, note 48, p. 47; Mazumdar, note 11, p. 30.

74 Barns, note 48, p. 47.

75 Mazumdar, note 11, p. 30; Joglekar, note 1, p. 24.

76 Barns, note 48, pp. 55-60.

77 Barns, note 48, pp. 58-59.

78 Mazumdar, note 11, p. 31.

79 Joglekar, note 1, p. 24.

80 Mazumdar, note 11, p. 31.

81 Mazumdar, note 11, p. 31; Joglekar, note 1, p. 24.

82 Joglekar, note 1, p. 25.

83 Ibid.

Press censorship was officially first introduced in 1795 in Madras, when the Madras Gazette was prohibited from publishing copies of the General Orders of the government until they had been finally submitted for inspection by the Military Secretary⁸⁴. Even the Madras Gazette was punished by withdrawing free postage facilities when it protested against pre-censorship, which was followed by the Regulations of 1799 to confirm the pre-censorship measures⁸⁵. Since then, the enactment of a collection of laws and regulations to consolidate control over the press marked the dark episode of the repressive legislative development in British India.

In October 1813, Lord Hastings took charge of the Governor-General position, whose influence over the Indian press and public opinion was extensive⁸⁶. Shortly after arriving in Calcutta, on October 16, 1813, he modified the pre-censorship rules and thus succeeded in establishing in India 'some of the more progressive views which were now gaining ground in England'⁸⁷. Not only that, in 1818, he altogether abolished the 'censorship' and substituted in its place some general rules for the guidance of editors⁸⁸. Thus, being of a liberal turn of mind, Lord Hastings tried to adopt the 'libertarian theory' of the press.

Unfortunately, this golden period of the decline in press control did not last for long. It is only in 1823 that the new Governor-General John Adam, who had no faith in a free press, adopted the Regulations of 1823, introducing a new licensing system for the press⁸⁹. Similar restrictions were imposed by the Governor of Bombay in 1825 and 1827⁹⁰. Thus this phase may well be compared with the British government's attempts to revive the Elizabethan system, especially by the Order of Parliament of 1643. However, the system introduced by Adam was primarily aimed at the Indian language newspapers, called since those days the 'vernacular press'⁹¹. The applications for licenses which followed the enforcement of the system revealed how the Indian-owned newspapers, especially in Bengali and Persian, were increasing⁹². The British knew that knowledge was power and therefore, 'there was a constant need for surveillance to ban or suppress those aspects of colonial knowledge which were deemed a threat to the continuance of empire'⁹³. While promulgating the licensing system, the government was fully aware that, while comments in the English language newspapers might hurt the ego and reputation of some individual officers, comments

84 *Barns*, note 48, p. 59.

85 *M. D. Hossain*, *Laws and Regulations Affecting the Press in Bangladesh: A Quest for Freedom of the Press*, *The Chittagong University Journal of Law* 6(2001), p. 115.

86 *Barns*, note 48, p. 84.

87 *Ibid.*

88 *Id.*, p. 89.

89 *Id.*, p. 115; *Joglekar*, note 1, p. 26.

90 *Joglekar*, note 1, p. 26.

91 *Ibid.*

92 *Barns*, note 48, p. 126.

93 *Miriam Sharma*, *Censoring India: Cinema and the Tentacles of Empire in the Early Years*, *South Asia Research* 29(2009), p. 44.

in the Indian language newspapers would have far-reaching consequences because they were read by the native masses⁹⁴. Being concerned with the effect of the licensing system on the Indian-owned press, Raja Ram Mohun Roy,⁹⁵ and five of his colleagues submitted a petition before the Supreme Court to protest against the measure in the name of Indians⁹⁶. This petition, which came to be known as the '*Areopagitica* of the Indian Press' concluded with the following argument⁹⁷:

Every good Ruler, who is convinced of the imperfection of human nature, and reverences the Eternal Governor of the world, must be conscious of the great liability to error in managing the affairs of a vast empire; and therefore he will be anxious to afford to every individual the readiest means of bringing to his notice whatever may require his interference. To secure this important object, the unrestrained liberty of publication is the only effectual means that can be employed.

The petition, however, was rejected by the Supreme Court⁹⁸. Raja did not rest content with the rejection; rather he addressed an 'Appeal to the King in Council against the Press Regulations' and compared the privileges which had been enjoyed by Hindus under the Mughal rule with their position under the British regime⁹⁹. Unfortunately, the Privy Council also rejected this appeal, which has been described as one of the noblest pieces of English to which Ram Mohun Roy ever put his hand¹⁰⁰.

Just like Milton's *Areopagitica*, the spirit of Raja's appeal was revived and utilised in the contest with the government at a later stage. As a result, Lord William Bentick and Sir Charles Metcalfe adopted a more liberal attitude towards the press, which had a healthy effect¹⁰¹. But the cataclysmic event of 1857, which British historians brush aside as the Sepoy Mutiny, while Indian writers call this the first war of independence¹⁰², hindered the process of liberalisation and Lord Canning's government re-imposed the restrictions placed in the time of John Adam by the Act of 1857¹⁰³. This was followed by a number of Acts and Or-

94 Joglekar, note 1, p. 26.

95 Raja Ram Mohun Roy was one of the greatest leaders of the Bengali Renaissance. His name is associated in the mind of the people of the Indian sub-continent as a social reformer who fought strongly against the pernicious practice of *sati* and ultimately made the government ban it, though his role as a fighter for press freedom is comparatively ignored (Joglekar, note 1, p. 26).

96 Barns, note 48, p. 123.

97 Id., pp. 123-124.

98 H.P. Ghose, Press and Press Laws, in: Suresh K. Sharma (ed.), Press in India: Historical Development, Vol. 1, Delhi 2006, p. 17.

99 Barns, note 48, p. 124.

100 Id., pp. 125-126.

101 Joglekar, note 1, pp. 26-27.

102 eg. Murari Lal Gupta, History of British Rule in India, New Delhi 1993, pp. 263-276; Mohit Moitra, A History of Indian Journalism, Calcutta 1969, p.4.

103 Joglekar, note 1, pp. 27-28.

dinances to maintain the continuity of press control until the unnatural divide of the Indian subcontinent in 1947¹⁰⁴. Thus, British colonial administration never allowed the transfer of the press from authoritarian to libertarian principles, a process that was completed in England by the end of the eighteenth century.

After the partition of India in 1947, Bangladesh formed a part of Pakistan and the press was expected to enjoy more freedom. But successive Pakistani governments perpetuated the 'authoritarian theory' of the press by keeping the colonial British press laws in place¹⁰⁵, so that the practice of legal action against the press did not come to an end¹⁰⁶. In West Pakistan, the first paper against which a suspension order was issued for publishing an article about Kashmir was *The Zamindar*¹⁰⁷. It was followed by the seizure order against the *Nawa-i-Waqt* on the plea that the paper had violated the pre-censorship order¹⁰⁸. On the other hand, in East Pakistan, the autocratic declaration of the Pakistani government that Urdu would be the national language of Pakistan led to the mass language movement in 1952, which subsequently turned into the movement for provincial autonomy¹⁰⁹. In 1958, the Pakistan government proclaimed martial law and the legal framework under the regime became more stringent for the press¹¹⁰. Following the war between India and Pakistan in 1965, the Defence of Pakistan Ordinance was issued and altogether restricted press freedom¹¹¹.

Following a nine months long liberation war, Bangladesh achieved independence in 1971. The new constitution of Bangladesh in 1972 explicitly incorporated the fundamental right to freedom of the press under article 39. But the new government of independent Bangladesh, just like the military regime of Pakistan, did not consider the citizens of Bangladesh fit for 'laws and rules consistent with an independent state'¹¹². Therefore, the same tradition of keeping the colonial press laws intact was followed by Bangladesh even after its emergence as a sovereign state. Not only that, with the passage of time, the regulations have become 'more stringent, more undemocratic and more insulting for the people of an independent nation'¹¹³. Thus, the striking continuity of the colonial legislations is strongly echoed in the control-focused attitude and practices of the so-called 'democratic' governments of the post-colonial independent Bangladesh.

104 *Barns*, note 48, pp. 317-391.

105 *Abu N. M. G. Hoque*, *Bangladesher Gonomaddhom Ain O Bidhimala* (Mass Media Laws and Regulations in Bangladesh), p. 22.

106 *Feroze*, note 55, p. 145.

107 *Ibid.*

108 *Ibid.*

109 *Hoque*, note 105, p. 22.

110 *Ibid.*

111 *Hossain*, note 85, p. 116.

112 *Narul Kabir*, *Media Regime in Bangladesh: Rule of Repressive Law*, in: Odhikar (ed.), *Proceedings of the National Workshop on the Media, Democracy and Human Rights*, Dhaka 2003, p. 11.

113 *Ibid.*

Role of press freedom in a democracy and post-colonial Bangladesh

The role of the newspapers has become so crucial in the contemporary democratic process that Thomas Jefferson, the great lover of freedom, already stated in 1787: 'If it is left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter'¹¹⁴. In fact, in 'libertarian theory', the press is considered to be the 'fourth estate' in the governing process of a country¹¹⁵. The term 'fourth estate' is often credited to nineteenth-century historian Thomas Carlyle, who quoted eighteenth-century Statesman Burke, as he termed the Reporter's Gallery in the parliament as the 'fourth estate', more powerful than the other three¹¹⁶. But Oscar Wilde observed in 1895¹¹⁷:

In old days men had the rack. Now they have the press. That is an improvement certainly. But still it is very bad, and wrong, and demoralizing. Somebody – was it Burke? – called journalism the fourth estate. That was true at the time no doubt. But at the present moment it is the only estate. It has eaten up the other three. The Lords Temporal say nothing, the Lords Spiritual have nothing to say, and the House of Commons has nothing to say and says it. We are dominated by Journalism.

The above statement very much proves the historical attachment of the press to the political process, which is increasing in importance with time. Although at that time, the other three estates as mentioned by Wilde meant the Church, the Nobility and also the Commoners, these estates nowadays differ in meaning in different writings of different countries. For example, Willis¹¹⁸ has referred to the executive, legislature and the judiciary as the other three estates in America, while Masani¹¹⁹ noted the government, the opposition and the judiciary as the other three estates in India. However, in all cases, the present democratic scenario of the Western world very much conforms to the observation of Wilde in so far as the influence of the media over political process is concerned. This increased importance of the press in the political scenario as a kind of supervisory mechanism rather makes the role of the press ambiguous. As Lichtenberg¹²⁰ observes:

114 John Keane, *The Media and Democracy*, Oxford 1991, p. 2.

115 Siebert *et al.*, note 20, p. 4.

116 William James Willis, *The Media Effect: How the News Influences Politics and Government*, London 2007, p. 138.

117 quoted in Josephine M. Guy (ed.), *The Complete Works of Oscar Wilde: Historical Criticism, Intentions, the Soul of Man*, Vol. 4, Oxford 2007, p. 255.

118 Willis, note 116, p. 138.

119 M. R. Masani, *The Importance of a Free Press in a Democracy*, in: Abdul Gafoor Noorani (ed.), *Freedom of the Press in India*, Bombay 1970, p. 69.

120 Judith Lichtenberg (ed.) *Democracy and the Mass Media: A Collection of Essays*, New York 1990, p. 1.

Traditionally, the press has been conceived as an observer – ideally, a neutral observer – of the political scene. On this view, the press is part of the political process but it is also not part; it stands outside. But events of the last few decades have demonstrated the inadequacy of this view. The press today – the mass media in particular – is one of the primary actors on the political scene, capable of making or breaking political careers and issues.

This observation clearly states the important and increasing role that the press has been playing in more recent democratic processes everywhere in the world. This complex role seems to have favoured the growth of a twentieth-century theory of new libertarianism, which Siebert et al.¹²¹ has called the ‘social responsibility theory’ of the press, ‘for want of a better name’. This theory, which received wide publicity in connection with the report of the Hutchins Commission,¹²² usually puts increasing emphasis on the responsibilities of the press and expects the media to take it upon themselves to elevate their standards¹²³. Though social responsibility should be reached by self-control and not by government intervention, the latter was not ruled out¹²⁴. However, the functions of the press under the ‘social responsibility theory’ are basically the same as those under the ‘libertarian theory’, such as, according to Siebert et al.¹²⁵: i) servicing the political system by providing information, discussion and debate on public affairs; ii) enlightening the public so as to make it capable of self-government; iii) safeguarding the rights of the individual by serving as a watchdog against government; iv) servicing the economic system, primarily by bringing together the buyers and sellers of goods and services through the medium of advertising; v) providing entertainment; vi) maintaining its own financial self-sufficiency so as to be free from the pressure of special interests. Undoubtedly, all these functions are crucial for the development of a healthy democratic system. But the ‘social responsibility theory’, while generally accepting those functions, is dissatisfied with the interpretation of those functions by the modern media owners and operators and also dislikes the way they are carrying them out on the ground, arguing that the press has been rather deficient in performing those tasks¹²⁶.

121 Siebert et al., note 20, p. 4.

122 The official name of this commission is the ‘Commission on Freedom of the Press’, which was recruited by Robert Maynard Hutchison, the president of the University of Chicago, in the midst of World War II, to inquire into the proper function of the media in modern democracies (John C. Nerone, Social Responsibility Theory, in: Denis McQuail (ed.), *McQuail’s Reader in Mass Communication Theory*, London 2002, p. 185). The Commission, which consisted mostly of academics, deliberated for four years and interviewed dozens of important figures from the media, government and the academy, before issuing its landmark report in 1947, titled ‘A Free and Responsible Press’ (Id., pp. 184-186). For details of findings of the commission, see also McQuail, note 42, pp. 170-171.

123 Nerone, note 122, p. 184.

124 McQuail, note 42, p. 171.

125 Siebert et al., note 20, p. 74.

126 Ibid.

Curran¹²⁷, while critically rethinking the classical liberal theory, argues that the press is no more the principal intermediary between the state and the public. Civil society has taken this place instead and the classical liberal approach is incompatible with the modern survey research, which has revealed how unrepresentative newspapers can be. He gives the example of the *Sun*, which was widely thought to be the authentic voice of popular Thatcherism, but it could persuade only a minority of its readers to vote for the Conservatives¹²⁸. Curran seems to have missed the point that politically conscious voters are often keen to decipher the newspapers of the opposite ideology to be better acquainted with the flows and flaws of that ideology. Hence the example does not appear to be realistic to prove that the newspapers are 'unrepresentative'. It should not always be expected that the readers of any particular newspaper must be the supporters of the ideology that the writing is advocating. It is very much universal that the press usually cannot dictate to readers 'what to think', but it is always successful in telling its readers 'what to think about'¹²⁹. Besides, the civil society's arguments, thoughts and critiques see the light and become communicative to the people only through the mass media. Thus in Bangladesh, the press is still one of the most vital media for moulding public opinion in the process of building and advancing the post-colonial democratic system.

Curran¹³⁰ also argues that the press is no more an agency of information, rather it is now a part of the entertainment industry; therefore, the classical liberal conception about the press as a vital source of public information and life-blood of democracy is in need of a critical overhaul. This argument then poses a critical question as to why the British colonial administration used to censor films and dramas in the Indian subcontinent and thus introduced the structure of cultural regulation.¹³¹ The modified form of the Cinematography Act of 1918 is still regulating 'film censorship' in Bangladesh today. In fact, the free flow of information, in whatever form it may be, be it cultural or social, is crucial for the healthy development of any post-colonial democratic system. Curran further argues that the press is no more an independent watchdog of democracy, rather it is now organised into larger corporations, whose profitability is affected by the policy outcomes of a greatly enlarged government. The government, in turn, is affected by the editorial positions of the press, which relationship can significantly be influenced by calculations of mutual advantage¹³². This argument may have a different meaning and outcome in the developed countries, especially for the United States of America, where the content of broadcasting 'has from the begin-

127 James Curran, *The Liberal Theory of Press Freedom*, in: James Curran and Jean Seaton (eds.), *Power without Responsibility: The Press, Broadcasting, and New Media in Britain*, London 2003, p. 347.

128 Ibid.

129 Bernhard C. Cohen, *The Press and Foreign Policy*, Princeton 1963, p. 13.

130 Curran, note 127, p. 347.

131 see for details Sharma, note 93 and also Raminder Kaur and William Mazzarella (eds.), *Censorship in South Asia: Cultural Regulations from Sedition to Seduction*, Bloomington 2009.

132 Curran, note 127, p. 347.

ning been controlled by commercial forces'¹³³. For example, Akhavan-Majid and Wolf¹³⁴ suggest an elite power group model for American media instead of a libertarian one, due to increasing concentration and conglomeration of ownership and the subordination of the ideals of diversity and independence to the corporate search for synergy and profits. They have characterised the American media as having concentration in media outlets, integration with other elite power groups (such as big business and government elite), and two-way flow of influence and control between the government and the press¹³⁵. In a country like Bangladesh, where most of the daily newspapers suffer from financial constraints, Curran's argument rather points at the policy level intervention of the 'authoritarian' government into the freedom of the press. This is so because the financial viability of many newspapers depends largely on government-sponsored advertising and the allocations of newsprint imported at a favourable tariff rate¹³⁶. Therefore, newspapers critical of government hardly get their due share of newsprint and government advertisements, though it is claimed that 'the allocations are made in accordance with circulation figure, accuracy of news items etc. of the newspaper concerned'¹³⁷. These government policies in turn give birth to partisan newspapers, encouraging another dangerous phenomenon of 'self-censorship'. The newspapers must support the status quo and neither criticise nation's leadership, nor give offense to the dominant moral or political values¹³⁸. The result is obvious: newspaper readers often get fragmented pictures and biased views of developments taking place in various sectors, especially in the political arena¹³⁹.

The modern liberalists, who support the 'social responsibility theory', often refer to this particular phenomenon of the partisan editors and are afraid of granting absolute right of editorial autonomy, which may adversely affect the right to free speech¹⁴⁰. Anyone may send off his writings in the exercise of his right to publish but whether he will succeed or not depends on the choices that the editors are entitled to make¹⁴¹. Therefore, Lichtenberg¹⁴² points out that the principle of 'noninterference' to uphold press freedom often does not include the right to free speech under the principle of 'multiplicity of voices', which will allow everyone to publish his speech. Thus, the commitment to free speech amounts only to 'prohibitions against restrictions by government, leaving open restriction by private

133 Altschull, note 10, p. 49.

134 Roy Akhavan-Majid and Gary Wolf, American Mass Media and the Myth of Libertarianism: Toward an „Elite Power Group“ Theory, Critical Studies in Mass Communication, 8(1991), p. 139.

135 Id., p. 142.

136 Kabir, note 112, p. 20.

137 Ibid.

138 Hachten and Scotton, note 25, p. 18.

139 Kabir, note 112, p. 19.

140 Judith Lichtenberg, Foundations and Limits of Freedom of the Press, in: Judith Lichtenberg (ed.), Democracy and the Mass media: A Collection of Essays, New York 1990, pp. 120-121.

141 Id., p. 119.

142 Id., pp. 120-121.

parties'¹⁴³. But this is unsatisfactory, since the valuation of free speech must remove obstacles to it from whatever source, public or private¹⁴⁴. Therefore, 'social responsibility theory' rather demands government regulation, as private power poses a grave threat to the independence and integrity of the press¹⁴⁵.

In fact, after maintaining the 'libertarian theory' for around two hundred years, the United States and England are facing a new trend towards the 'social responsibility theory'¹⁴⁶. Therefore, they are calling for the media to be responsible for fostering productive and creative 'Great Communities'¹⁴⁷. Thus, instead of demanding that the media be free to print or transmit whatever their owners want, the 'social responsibility theory' rather imposes a burden on practitioners to behave 'properly'¹⁴⁸. This is obviously true in Western democratic countries, where state assistance has been extended since the development of the independent press and the evidence indicates that positive intervention need not conflict with the press¹⁴⁹. But in a post-colonial country like Bangladesh, which never even witnessed the transition from 'authoritarian theory' to 'libertarian theory' in a true sense, the arguments and demands of the new libertarianism for positive benign intervention to uphold social responsibility of the media appear to be absurd. Rather, the regular negative interventions of the government fruitfully make the editors partisan in the end. Even some extralegal controls of the media, peculiar to South Asia, such as strike (*hartal*), encirclement (*gherao*), or blockade (*oborodh*) are often backed by the government¹⁵⁰. These negative interventions and constraints on the part of the government sometimes invoke the alibi of the 'developmental concept' as described by Hachten and Scotton¹⁵¹ which they admit as a variation of the authoritarian concept, though it is not clearly defined. This concept argues that in the wake of political independence in impoverished nations throughout the developing world, freedom of the press can be restricted for the sake of 'nation building'¹⁵². Information or truth thus becomes the property of the state: The flow of power between the governors and the governed works from the top down¹⁵³. The defining characteristic of this

143 Id., pp. 114-115.

144 Id., p. 115.

145 Id., p. 127.

146 Siebert *et al.*, note 20, p. 4.

147 Stanley J. Baran and Dennis K. Davis, *Mass Communication Theory: Foundations, Ferment and Future*, Belmont 2008, p. 114.

148 Ibid.

149 Robert G. Picard, *The Press and the Decline of Democracy: The Democratic Socialist Response in Public Policy*, Westport 1985, p. 19.

150 Raminder Kaur and William Mazzarella, *Between Sedition and Seduction: Thinking Censorship in South Asia*, in: Raminder Kaur and William Mazzarella (eds.), *Censorship in South Asia: Cultural Regulation from Sedition to Seduction*, Bloomington 2009, p. 5.

151 Hachten and Scotton, note 25, pp. 30-32.

152 Id., pp. 30-31.

153 Id., p. 31.

concept is the idea that individual rights must be subordinated to the larger goals of nation-building and thus must support authority¹⁵⁴. Censorship, prior and post, and direct control by government are considered legitimate where the government feels that the press is about to overstep limits or has transgressed¹⁵⁵. Thus the concept not only vividly echoes the voice of the colonial administration in British India who advocated for press restrictions for the sake of social development, but also tries to justify the colonial legacy of post-colonial dictatorship. In South Asia, Pakistan is the glaring example of a victim of such an autocratic approach. By adhering to this 'developmental concept' of authoritarian nation-building, Pakistan ended up with long lasting military rule, corruption and political chaos. Nam¹⁵⁶ rightly observes that 'political leaders do not have a monopoly on love for the people or on what is best for the country'. Unless inspection by the press is allowed with a great deal of latitude, the developmental programmness of ruling elites may end up enriching relatively few individuals because of the inherent temptation to be corrupt in any power situation¹⁵⁷. In fact, it is illusory to think of a benevolent-authoritarian in newly-independent countries, which sincerely maintain the colonial legacy. As is evident in Pakistan, without accountability in any sphere of life, all democratic institutions crumble and often the question is raised as to the very survival of the state as an independent sovereign nation¹⁵⁸. Fortunately enough, Bangladesh had achieved divorce from Pakistan in 1971 and since then, has been trying to nurture democracy as a tool for building the nation. But in my view, until now, the successive governments of Bangladesh have failed to get rid of their colonial legacy, continuing the authoritarian nature of governance.

In this context, a media free from government interference as per the 'libertarian theory' is essential for the advancement of fragile democracy in post-colonial independent Bangladesh. So far as individual journalistic values are concerned, Bangladesh now conforms to the 'authoritarian-liberal system' as suggested by Ostini and Fung¹⁵⁹. In this system, official policies suppress dissent, but individuals within media organisations support social reform and display such support in their practice of journalism.¹⁶⁰ The amount of atrocities the Bangladesh working journalists undergo every year is a testimony to the fact

154 Ostini and Fung, note 21, p. 44.

155 Oloyede, note 41, p. 107.

156 Sunwo Nam, Press Freedom in the Third World, in: Leslie John Martin and Anju Grover Chaudhary (eds.), Comparative Mass Media Systems, New York 1983, p. 314.

157 Ibid.

158 Zamir Niazi, The Press in Chains, Karachi 1986, p. 41.

159 Ostini and Fung, note 21, p. 48.

160 Going beyond the 'Four Theories of the Press', Ostini and Fung (note 21, p.48) have classified national press systems as democratic-conservative, democratic-liberal, authoritarian-conservative, or authoritarian-liberal. Apart from this authoritarian-liberal system, democratic-conservative media systems are those in which the political system is democratic but the professional values of the majority of journalists are conservative – that is, the professional system(s) in which they operate emphasise support of societal status quo. Conversely, in a democratic-liberal system, dissent and free speech are values supported by both the political system and individual journal-

that they, despite multidimensional limitations, have been trying to generate a substantive amount of news and views against undemocratic governance, corruption, and other social evils¹⁶¹. It is true that only journalists who are free and independent of authoritarian controls and other constraints can begin the difficult task of reporting the news that we all have a right and need to know in a democratic society¹⁶². Negative interventions through the colonial laws which are still in continuity are too often unfavourable to the positive role that the press could play in the development of the country as a whole. It is not that all the colonial legal strictures are regularly applied against the media. But they are always there, ready to decapitate the media practitioners and impose restrictions on the press.

The article does not argue for absolute freedom of the press as 'complete noninterference with communication is impossible'¹⁶³ and reasonable restrictions rather uphold the interest of the mass media as a whole. But a balance between regulating and promoting press freedom is indispensable. In Bangladesh, after the general election of 5 January 2014, the media at present is practically serving the role of the second estate, that is 'extra-parliamentary opposition',¹⁶⁴ due to negligible opposition parties in the Parliament. Therefore, unreasonable legislative restrictions on the press will obviously be detrimental to the journey towards developed democracy.

ists within that system. Authoritarian-conservative systems officially control press content and professional values within media organisations support such constraints.

161 *Kabir*, note 112, p. 24.

162 *Hachten and Scotton*, note 25, p. xxii.

163 *Onora O'Neill*, *Practices of Toleration*, in: Judith Lichtenberg (ed.), *Democracy and the Mass Media*, New York 1990, p. 178.

164 *Masani*, note 119, p. 70.