

# An Ode To The Pain Of Pen: A Study of Freedom of Press And Role of Investigative Journalism In Era of Panama Papers Revelation

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## Abstract

*The article intends to provide an insight on the role of Indian jurisprudence and other national instruments in recognizing freedom of press as not only imperative, but also starkly more complex and debatable in a diverse nation like ours. It relates how consumerism and commercialization driven by technology and growing heterogeneous markets have affected its freedom, fairness and values. Demography, democracy and demand govern the media sphere and often lead to a lacuna in the greater good for the society. The article takes into account how political ideologies namely capitalism and communism have affected investigative journalism, growth of industry and participation of the masses taking into account the normative theories of press. Historically, press has served the elite dominant group interests having social and capitalistic muscle. The problem of collusion and bias in news selection is global in nature. The paper expresses key pointers how democracy as an institution affects the functioning of press. The paper deciphers role of media in investigative journalism thereby reasoning its crucial consequences through various cases.*

*There are three concluding understandings from the quantitative and qualitative data that the research finds: non-western democracies have seen dysfunctional freedom of press, where democracy is worked as the best political system it has been prone to quick corruption, freedom of press has been limited to the elite and the commoners have to fight hard to penetrate legal and bureaucratic layers.*

**Key words:** Freedom of Press, Investigative Journalism, Scams, commercialism, consumerism, globalization

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## **Introduction**

Freedom of Expression has always been emphasized as an essential basis for the democratic functioning of a society where press is free, yet may be subjected to restrictions, both legally and socially. Before independence, there was no special mention of the word “press” in our constitution, yet ethos of free speech and expression was widely accepted and practiced by the Indian civil society. India then bore primitive mass communication centers and the opinion leaders differed in expertise from the innovators and ideators. India was influenced by westerly models of communication though there was a dire need for indigenous industries that penetrated with the ground level demographics and psychographics.

Year 1950 saw Supreme Court binding freedom of press constitutionally. Pre-censorship of newspapers was also introduced. Discussing freedom of press in his draft Ambedkar remarked, “No law shall be made abridging the freedom of speech, of the press, of association and of assembly, except for consideration of public order and morality” (Padhy and Sahu, 2005)

Media being the fourth pillar of democracy has contributed gracefully in nation’s socio-political as well as economic development, albeit in hostile environments and a political convoluted inhospitable environment. Taking into account the diverse and acutely heterogeneous audience in terms of religion, social order, and economic background, various hindrances and limitations come in way that often delay or even lead to incomplete justification to issues important for growth of the society. Major socio-political scandals like Bofors Scandal, Panama Papers and role of press in JNU have been elaborated trying to make sense of the condition of freedom of press in difficult and sometimes hostile conditions. And even after completion of reports and content, there are various factors that guard systematic and holistic reach of the news to the general masses.

## **History**

Censorship as a means of controlling communication has existed since classical antiquity. In historic context, the press has been restricted in two ways. It began soon after Guttenberg’s inventions of moving press. Henry, the eighth, on articulating the persuasive and opinion generating power of press, was one of the first leaders to impose censorship in England. One of the many ways when the press underwent censorship or mandatory licensing directed towards

the publications by the government, and the second being a check on the printed material, especially that reflected seditious behavior. This included any action that excited dissatisfaction—something that is unconstitutional. Pope Alexander VI, in 1501 debarred unlicensed functioning of printing press and issued notice requiring printers to submit copy to church authorities before publication. Any indiscipline was discouraged with fines, or excommunication or both. The struggle of an Independent and autonomous press first began in England like a cajoling revolution with the appearance of unauthorized publication that compelled Royal Proclamation (1534, while England was still under the queen's rule) to require a publishing license. It may not be wrong to say that the concept of a restrained press does not hail from democracies. All impediments to it thrive its roots from imperialistic and authoritarian cohort. Censorship was centric to be affected more by the political discourse than by the religious sentiment or practice. However, in 1644, John Milton attacked the parliament to suppress its offensive publications. Milton's objections to prior restraint in due course of time became the cornerstone of press freedom albeit final abolishment of licensing and censorship occurred not until next year. In 1643, the English Parliament instituted the Licensing Order. This meant pre-publication censorship on all printed writings, including and aiming mostly at newspapers. (Clegg , 2008)

Meanwhile post American Revolution, most American states were also providing freedom of press before amassing the nation under the first amendment in 1791 in the constitution declaring that "Congress shall make no law ... abridging the freedom of speech or of the press." It remains a conundrum if such actions reflected in prohibiting prosecution for seditious libel or merely to prohibit prior restraint before in 1798, composite liberal ideologies interpreted the first amendment rendering to reject sedition libel as crime.

The beginnings of the struggle for free speech in India date back to 18th century British India. Indian Press History and national freedom struggle run parallel to each other.

Throughout India's struggle for independence, though freedom of press was compromised, freedom of speech was given highest importance by nationalistic leaders. Strong campaigns were carried out with heavy mobilization to revolt against such repression. Fight was themed with a series of legislations aiming to exhaust scenarios of mass revolt against the British. The British feared India's growing consciousness on a national front and made several efforts, including

repressive enactments in order to maintain smooth acts colonization and neutralized the effects of opinions generating print that penetrated all economic strata of the Indian microcosm.

India Press faced its genesis of restrictions during the colonial year in 1867 with imposition of Press and Registration of Book Act. Newspapers like Times of India (1838), The Pioneer (1865) and The Hindu (1878) faced repercussions of it. This was followed by an Official Secrets Act of 1923 that checked and maintained security and confidentiality of official secrets and documents against breakage, sabotage and the like. The nation, clearly under colonial roots had its democratic emotion stained and bruised. National leaders like Jawaharlal Nehru and Bankim Chandra Chatterjee spoke widely on ill-informed citizenry and indulged in skirmishes with the government bureaucrats over newspaper regulations.

In March 1930 when Mahatama Gandhi started his Salt Satyagraha, the peace between the Press and Government shattered. In 1931, the Indian Press (Emergency) Powers Act was introduced that gave sweeping powers to curb and dismantle the national sentiment caused by civil disobedience. The provincial governments were acutely aware of its effectiveness. In the year following, the act was amplified and all activities were included that calculated to weaken the colonial governments authority. By now, major freedom revolts had made colossal ethical and official damage to the British Government at large and indigenous newspapers had picked the forefront of daily social ethnography. The struggle for freedom passed through many vicissitudes between 1932 and 1946. Along due course of time and geographical space, the press censorship act was efficient and was applied with grey tones on the pan-Indian cultural and political activities maintaining emotions of forced obedience towards the British rule.

As India gained holistic and supreme independence from the British rule in 1947, freedom of press was also acquired. Many editors, journalists, reporters and owners of Indian press agencies were associated with freedom struggle, remarking a diminishing demarcation between the press and the state. This slowly came back and a different concept and emotion was aged with gate keeping press. The pain of pen began showing scarce, but permanent damage, something that still lingers in the present constitution. Press Council Act of 1965 enacted to implement the recommendations of the press commission. Though it established a council to preserve the freedom of press and improve the quality of newspaper content, the underlined code of conduct and gatekeepers gave media what is known as a Hobson's choice. The writings were not legally

punishable but were objectionable following lengthy trials and arguments. Free Press came to be seen as a myth with the act thoroughly delaying the news, thereby questioning its timeliness.

### **Current Scenario of Press**

Freedom of press while not recognized as a separate freedom in the fundamental rights is incorporated within the fold of freedom of expression. Investigative journalism has an unmatched power to link officials to certain crimes, but it may also create a mistaken public perception about the existence of wrongdoing, especially in a democracy where bureaucracy is stronger due to its convoluted network strained in corruption. Reporting is a double edged sword, for with great persuasion comes power and also the greater risk of committing unethical activities. Rushed judgments or reporting that is not timely and without any sense of political or religious sentiments may do more harm than good. Social responsibility theory highlights the responsibility towards culture, politics and economy as well as the citizens' sentiment. The press should maintain its stand as the fourth pillar of democracy and not intervene in institutions designed for claiming verdicts and finding them guilty. Forming an unreasonable public opinion may damage reputation of an individual or an institution.

In September 2014, Assam police arrested journalist Jaikhlong Brahma accusing him of having links with a faction of the National Democratic Front of Bodoland, a separatist group. Amnesty International reported that he was held without formal charges for several weeks under the National Security Act, but released on bail in December. Journalist Sudhir Dhawale, who had been charged and jailed in 2011 under the Unlawful Activities Prevention Act (UAPA) and the sedition law due to allegations that he was supporting the Maoist insurgency, was acquitted of all charges in May 2014 and released after more than three years in prison.

<https://freedomhouse.org/report/freedom-press/2015/india> (accessed on 2nd October 2016)

Investigative journalism has its roots originating from propaganda. It raises questions on the ideologies and actions of an organization or an individual that has direct or indirect impact on people. Investigative journalism functions the same way any other mass communication source would- to inform, to aware, to persuade and to educate. It is interdisciplinary in nature- something that is the growing trend of not just social science but also of journalism as a discipline.

In India, one of the earliest media reporting that grabbed public attention and became successful in social empowerment was in 1987 with the Bofors Scandal grabbing newspaper headlines. Although it faced a lot of public criticism with corruption at its centre.

Media has often picked up certain issues that have low public interest and made them the talk of the town. The most recent one being the Balochistan or the Uri issue. What may be ethical persuasion and social enlightenment to the society is wrapped under several layers of bureaucracy and the press is metamorphosing into something less democratic. It obeys tactics like debates, discussions, talk shows etc to initiate awareness about something less important than the rest that is not covered. Selective bias towards new selection leads to de-selection of what actually needs mass attention.

We have reached global standards of intellect in journalism by being a part of stepping stones in journalistic eras like recent Panama Papers leak and Wiki Leaks. Indian media has also performed in Tehelka scam, Arushi murder case, Indrani Mukherjee case, Lok sabha open money transfer dispute, Jessica Lal murder case, etc. Role of effective and ethical press is elaborated through the below mentioned case studies. The pain of pen may be hard to eliminate, but struggles to decrease continues, as and when opportunity strikes.

### **Case Study: BOFORS SCANDAL**

Investigative journalism came into force for the first time in 1987, when Rajiv Gandhi was convicted in the infamous Bofor's scandal that later led to his defeat in the next elections. The type and kind of reporting and the intensity of the same took shape of a new breed of journalism in the subcontinent- investigative journalism. The nation was brought under the umbrella of a rigorous campaigning both in print and broadcast industry with wide coverage. Investigative journalism was earlier restricted to magazines and journals, but had now crept in the audio-visual industry of journalism per se. According to investigative reports carried out by N. Ram under the publishing house 'Kasturi and Sons', the personalities were charged for receiving rebounds from the Bofor's deal in supplying India with 410, 155mm field howitzer guns in lieu of US \$1.4 billion. The major parties involved were the Swedish arms manufacturer- Bofors and the Indian central government. The supply contract were almost of twice that amount. The amount appeared

to be enough and significant for a pre-liberalization India, the time when our oil reserves and indigenous business was dropping.

The scandal was first made public through the Swedish radio broadcast claiming that AB Bofors was involved in paying rebounds to the Indian policy makers and its influential defense personnel through a classified and undisclosed deal. It got picked up by the Indian media but the news faced quick denial by the prime minister under serious accusations. The gravity of the situation was more on the Indian side and along with that came grave loss of reputation both nationally and internationally. Indian National Congress faced political defeat in the immediate election in November 1989.

A compilation of this investigation from an Indian context has been done by N. Ram and Chitra Subramaniam of the Hindu Newspaper owned by Kasturi and Sons pvt ltd. Swedish Daily-Dagens Nyheter quoted in Bofors top management alleged that Hindujas had been paid commission on the deal, giving it another twist to the story. The public believed all this and a panic stricken PMO started their propaganda campaign persuading the nation that a foreign hand was trying to destabilize the nation which no media house or citizen was ready to believe.

The then defense minister, Vishwanath Pratap Singh was exposed by a Reuters news revelation on Swedish radio, followed up by a team led by N. Ram of the newspaper *The Hindu*. Chitra Subramaniam reporting for *The Hindu* lead to the collection of 350 documents revealing Congress party's scandalous affair. Even after 25 years since the scandal happened, the principle convicts have not been convicted and no money has been resurrected for the fiasco. Rather additional funds have been used up in the investigation. A system where the legislature and the executives have their hands held back, no judiciary or media (the fourth estate) can recover the grave bruises of a transparent democracy.

Not too late *The Hindu* discontinued to publish articles on the issue and newspapers like *The Indian Express* and *The Statesman* took over the news as Chitra Subramaniam joined them. "The Hoot"- a magazine founded in 1979 published her interview with the former chief of Swedish police. The condition of world's largest democracy is marked with a short term memory, which usually limits to 5 years of a Lok Sabha government. It reflects on a system suffering from acute corruption manifested by bureaucrats, politicians, and armed manufacturers and their agents that

weaken all senses of a free press in a democracy. What usually is left out is a dying urge to ethical and relevant reporting that does more harm than good. With assailable hard evidence coupled with different artifacts to support the wrongdoings of the accused, the foremost case of the investigative journalism in India can be righteously judged as coherent and internally to be whole in nature. The impeccable investigation carried out by the pioneers like The Hindu, The Indian Express and The Statesman have time and again proved to be not just responsible but also have obeyed the ethos of a transparent democracy.

### **Case Study 2 THE OPERATION WEST END (TEHELKA EXPOSE)**

Tehelka is another media source which exposed many corrupt practices by investigative journalism and sting operations. Tehelka, a news portal which started in the year 2000 as tehelka.com is an Indian news organization mainly known for investigative journalism especially sting operations. The portal was founded by Tarun Tejpal and Aniruddha Bahal. Operation West End is another noticeable piece of investigative journalism in which major defense personnel and politics were filmed on camera accepting bribes from the government in an arms deal.

Based on the footings many officials resigned while many were sentenced imprisonment. Tehelka, however, was criticized severely about its ethics. It has been accused of having close connection with Congress party of India. They were also accused of favoring some companies.

Their sting operation tool has influences on other media organizations of the country. The Tehelka expose was welcomed by the big media houses and Tarun Tejpal was praised for his efforts. The Times of India mentioned that the issue of ethics “pales before the sleaze that their team has dug up” while the Hindu called it a “turning point in Indian journalism” (Malhotra A, 2014)

Though the politicians called for the arrest of the journalists, the reporters insisted that their “extra-ordinary methods” were for the larger public and national interest. In 2004, the CBI registered cases against Jaitely, Laxman, and other officials in the defence ministry. In 2012 Bangaru Laxman was sentenced to four years jail for this case. A book titled ‘Tehelka as Metaphor’ was written by noted journalist and author Madhu Trehan on this expose which was published in 2009.



The Supreme Court of India expressed concerns over the growing number of freelance journalists selling their sting operation recordings to the highest bidder thereby questioning the organization's ethics and morals and their neglect towards public interest. The accusation on tehelka, it seems conveys the absence of any freelance journalist in the nation – something that is questionable to the proper functioning of a democracy. Soutik Biswaas, BBC's India correspondent says in 2006, that a sting operation is a brave and daring job and not all have the guts to do it. The critics of investigative journalism have called the increasing number of crime channels as “a cottage industry of sleaze and slime” as people were increasingly using false sting operations to earn easy money.

Media has also been criticized for imposing their half-baked moral judgments on the audience. Media shapes the opinion of people, therefore it is very important for them not to showcase the news in such a manner that it victimizes an innocent person. The revelations of West End raised questions on, and put the politicians under the sword of Damocles. The operation flooded the news channels and print for five long years and a trend of sting operations picked up. Tejpal called it the “ultimate tool of journalistic investigation”

### **Case Study 3: Panama Paper Leak**

Almost four decades later, WikiLeaks in 2010 published Cablegate, a world-shaking unprecedented leak of 11.5m files that caused upheaval across the globe, revealing secret accounts of former and present global personalities. According to The Guardian, the Panama Papers leak is larger in magnitude than the diplomatic cables exposed by WikiLeaks in 2010 or the trove of intelligence documents stolen by former NSA contractor Edward Snowden in 2013. Snowden also agreed that the Panama Papers are the “biggest leak in the history of data journalism.” The UK Daily Mail quotes Peskov denying the Panama Papers revelations, portraying the story as an attack by foreign intelligence services on Putin's legitimacy “in the context of the coming parliamentary election.” Panama leaks- a massive 2.6 terabyte leak of documented evidence of global personalities in the web of corruption and tax avoidance has shaken and stirred global media standards for journalism convoluted on the back bone of political influential people of dynamic power and strength.

It was an unprecedented expose to the world's 4<sup>th</sup> largest off-shore firm Mossack Fonseca. Major national and international personalities who were involved, include holly-wood actor Jackie Chan with 4 off-shore accounts, Pedro Almodovar a Spanish film director, screenplay writer, producer and former actor, Presidents of Iraq, Iceland, Sudan, Argentina, Ukraine, Jordan Italy, Georgia, and many more. Indians like Arvind Kejriwal , Aishwarya Rai Bacchan, Amitabh Bacchan, Rajendra Patil, son-in-law of Karnataka minister Shamanuru Shivashankarappa, Anil Vasudev Salgaocar, former Member of the Goa Legislative Assembly are accused of being involved in this scam.

ICIJ-International Consortium of Investigative Journalism, a non-profit American organization propagated the investigation before making it public, after receiving inception warning signs from a German newspaper - Süddeutsche Zeitung about records of worldwide personalities having accounts in pseudo operational companies.

The ICIJ launched what was then code-named "Project Prometheus," and invited a total of 250 media organizations—working in 25 different languages—to partner on reporting the data. For such an enormous leak the role of collaborating media played an important role. For such investigation it was essential to understand the context of each country or access to other sources of information outside the data base, such archives or public registries.

Lastly, if Panama Papers were about disclosing global financial offshore scams, it was also a success story of collective and organised investigative journalism, well coordinated through continents. Unlike the wiki leaks, it took scores of reporters convened by the German daily, the recipient of the leaked cache jointly with the International Consortium of Investigative Journalists to disclose data and took more than a year to sort from acquired information. Contribution goes to the anonymous source helping in secret along with all journalists who participated in the disclosing of the murky side of offshore banking. Executive Editor Ritu Sarin with senior journalists P Vaidyanathan Iyer and Jay Mazoomdaar from the Indian Express attended the investigative briefings and meetings of ICIJ in Washington, as Indian representatives. This is the most crucial step for India in doing the needful to propagate such journalism enthusiasm indigenously, given that the nation stands low in the pit of corruption and scams in spite of regulatory authorities that alter professional climates on alteration of central governments.

## **Conclusion**

Free speech and expression coupled with a commercialized global economy and a heterogeneous audience has empowered India to be a major market for technology trade and of capitalistic goods. The knowledge economy of the world is taking over materialistic recourse economy. Also, even though after coming up of new media (something that is not so new anymore) and citizen journalism showing huge benefits, major players and influential people govern public opinions. Yellow journalism has risen and Indian press credibility has seen a decelerating graph. A democracy must rely on an informed citizenry through balanced, analyzed and structured reporting that is comprehensible, comprehensive, and most importantly issued in public interest. It is the freedom of a society at large that takes a grandeur and we must carefully be able to decipher. The various normative theories of press including the socio-responsibility theory, the democratic participation theory and, development theory nullify if the freedom of press is risked.

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