(1984) 12 SC CK 0003

Supreme Court of India

Case No: Writ Petns. No''s. 2656-60, 2935 to 2952, 3402, 3467, 3595, 3600-03, 3608, 3632, 3653, 3661, 3821, 3890-93, 4590-93, 4613-15, 5222, 5576, 5600-02, 5726-27, 7410, 8459-62, 8825. 8944 of 1981, 1325 of 1982, 470-72 of 1984, T.C. No''s. 23 of 1983 and 23 of 1

Indian Express Newspapers (Bombay) Private Ltd. and Others		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Dec. 6, 1984

Acts Referred:

- Constitution of India, 1950 - Article 10, 13(3), 14, 142, 143
- Customs Act, 1962 - Section 12, 14, 159, 2, 25
- Customs Tariff Act, 1975 - Section 2
- Delhi Municipal Corporation Act, 1957 - Section 150<

Citation: AIR 1986 SC 515 : (1985) 1 SCC 641

Hon'ble Judges: O. Chinnappa Reddy, J; E.S. Venakataramiah, J; A.P. Sen, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Venkataramiah, J.

The majority of Petitioners in these petitions filed under Article 32 of the Constitution are certain companies, their shareholders and their employees engaged in the business of editing, printing and publishing newspapers, periodicals, magazines etc. Some of them are trust or other kinds of establishments carrying on the same kind of business. They consume in the course of their activity large quantities of newsprint and it is stated that 60% of the expenditure involved in the production of a newspaper is utilized for buying newsprint, a substantial part of which is imported from abroad. They challenge in these petitions the validity of the imposition of import duty on newsprint imported from abroad u/s 12 of the Customs Act, 1962 (Act 52 of 1962) read with Section 2 and Heading No. 48.01/21 Subheading No. (2) in the First Schedule to the Customs Tariff Act, 1975 (Act 51 of

1975) and the levy of auxiliary duty under the Finance Act, 1981 on newsprint as modified by notifications issued u/s 25 of the Customs Act, 1962 with effect from March 1, 1981.

2. The first set of writ petitions challenging the above levy was filed in May, 1981. At that time under the Customs Act, 1962 read with the Customs Tariff Act, 1975 customs duty of 40% ad valorem was payable on newsprint. Under the Finance Act, 1981 an auxiliary duty of 30% ad valorem was payable in addition to the customs duty. But by notifications issued u/s 25 of the Customs Act, 1962 the customs duty had been reduced to 10% ad valorem and auxiliary duty had been reduced to 5% ad valorem in the case of newsprint used for printing newspapers, books and periodicals.

3. During the pendency of these petitions while the Customs Tariff Act, 1975 was amended levying 40% ad valorem plus Rs. 1,000/- per MT as customs duty on newsprint, the auxiliary duty payable on all goods subject to customs duty was increased to 50% ad valorem. But by reason of notifications issued u/s 25 of the Customs Act, 1962 duty at a flat rate of Rs. 550/- per MT and auxiliary duty of Rs. 275/- per MT are now being levied on newsprint i.e. in all Rs. 825/- per MT is now being levied.

4. The Petitioners inter alia contend that the imposition of the import duty has the direct effect of crippling the freedom of speech and expression guaranteed by the Constitution as it has led to the increase in the price of newspapers and the inevitable consequence of reduction of their circulation. It is urged by them that with the growth of population and literacy in the country every newspaper is expected to register an automatic growth of at least 5% in its circulation every year but this growth is directly impeded by the increase in the price of newspapers. It is further urged that the method adopted by the Customs Act, 1962 and the Customs Tariff Act, 1975 in determining the rate of import duty has exposed the newspaper publishers to Executive interference. The Petitioners contend that there was no need to impose customs duty on newsprint which had enjoyed total exemption from its payment till March 1, 1981, as the foreign exchange position was quite comfortable. Under the scheme in force, the State Trading Corporation of India sells newsprint to small newspapers with a circulation of less than 15,000 at a price which does not include any import duty, to medium newspapers with a circulation between 15,000 and 50,000 at a price which includes 5% ad valorem duty (now Rs. 275/- per MT) and to big newspapers having a circulation of over 50,000 at a price which includes the levy of 15% ad valorem duty (now Rs. 825/- per MT). It is stated that the classification of newspapers into big, medium and small newspapers is irrational as the purchases on high seas are sometimes affected by a publisher owning many newspapers which may belong to different classes. The Petitioners state that the enormous increase in the price of newsprint subsequent to March 1, 1981 and the inflationary economic conditions which have led to higher cost of

production have made it impossible for the industry to bear the duty any longer. Since the capacity to bear the duty is an essential element in determining the reasonableness of the levy, it is urged, that the continuance of the levy is violative of Article 19(1)(a) and Article 19(1)(g) of the Constitution. It is suggested that the imposition of the levy on large newspapers by the Executive is done with a view to stifling circulation of newspapers which are highly critical of the performance of the administration. Incidentally the Petitioners have contended that the classification of newspapers into small, medium and big for purposes of levy of import duty is violative of Article 14 of the Constitution. The Petitioners have appended to their petitions a number of annexure in support of their pleas,

5. On behalf of the Union Government a co inter-affidavit is filed. The deponent of the counter-affidavit is R.S. Sidhu, Under Secretary to the Government of India, Ministry of Finance, Department of Revenue. In paragraph 5 of the counter-affidavit it is claimed that the Government had levied the duty in the public interest to augment the revenue of the Government. It is stated that when exemption is given from the customs duty the Executive has to satisfy itself that there is some other corresponding pubic interest justifying such exemption and that in the absence of any such public interest the Executive has no power to exempt and that it has to carry out the mandate of Parliament which has fixed the rate of duty by the Customs Tariff Act, 1975. It is also claimed that the classification of newspapers for purposes of granting exemption is done in the public interest having regard to the relevant considerations. It is denied that the levy suffers from any mala fides. It is pleaded that since every section of the society has to bear its due share of the economic burden of the State, levy of customs duty on newsprint cannot be considered to be violative of Article 19(1)(a) of the Constitution. But regarding the plea of the Petitioners that the burden of taxation is excessive the counter-affidavit states that the said fact is irrelevant to the levy of import duty on newsprint. In reply to the allegation of the Petitioners that there was no valid reason for imposing the duty on the foreign exchange position was quite comfortable, the Union Government has stated that the fact that the foreign exchange position was comfortable was no bar to the imposition of import duty. It is further pleaded that since the duty imposed is an indirect tax which would be borne by the purchaser of newspaper, the Petitioner; cannot feel aggrieved by it.

II

A Brief History of the levy of Customs Duty on Newsprint.

6. In order to appreciate the various contentions of the parties it is necessary to set out briefly the history of the levy of customs duty on newsprint in India

7. Even though originally under the Indian Tariff Act, 1934 there was a levy of customs duty on imported paper, exemption had been granted for import of white, grey or unglazed newsprint from the levy of any kind of customs duty in excess of

1.57 per cent ad valorem but subsequently a specific import duty of Rs. 50/- per MT used to be levied on newsprint imports up to 1966. The question of levy of customs duty on newsprint was examined by the Inquiry Committee on Small Newspapers. In its Report submitted in 1965 that Committee recommended total exemption of newsprint from customs duty because in 90% of the countries in the world no such levy was being imposed because newspapers played a vital role in a democracy. On the basis of the said recommendation the Government of India abolished customs duty on newsprint altogether in the year 1966 in exercise of its power u/s 25 of the Customs Act, 1962. The price of newsprint was Rs. 725/- per MT during the year 1965-66 but there was a sudden spurt in its price in 1966-67 when it rose to Rs. 1155/- per MT. During the period 1966-71 although almost all imported goods suffered basic regulatory and auxiliary customs duty, there was no such levy on newsprint in spite of severe foreign exchange crisis which arose on the devaluation of the Indian Rupee in 1966. But on account of the financial difficulties which the country had to face as a consequence of the Bangladesh War in 1971, a regulatory duty of 2 1/2% was levied on newsprint imports to meet the difficult situation by the Finance Act of 1972. The price of newsprint in the year 1971-72 was Rs. 1134/- per MT. The above 21/2% ad valorem regulatory duty was abolished by the Finance Act of 1973 and was converted into 5% auxiliary duty by the said Act. This levy of 5% was on all goods including newsprint imported into India. On April 1, 1974 under the Import Control Order issued u/s 3 of the Imports and Exports (Control) Act, 1947, import of newsprint by private parties was banned and its import was canalized through the State Trading Corporation of India In 1975, the Customs Tariff Act, 1975 came into force. By this Act the Indian Tariff Act, 1934 was repealed. u/s 2 read with Heading No. 48.01/21 of the First Schedule to the Customs Tariff Act, 1975, a levy of basic customs duty of 40% ad valorem was imposed on newsprint. But in view of the exemption granted in the year 1966 which remained in force, the imposition made by the Customs Tariff Act, 1975 did not come into force. Only 5% auxiliary duty which was levied from April 1, 1973 continued to be in operation. In the budget proposals of July, 1977, the 5% auxiliary duty was reduced to 2 1/2% but it was totally abolished by a notification issued u/s 25 of the Customs Act on July 15, 1977. The notification dated July 15. 1977 reads as follows:
NOTIFICATION CUSTOMS GSR No.

In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962). and in super session of the notification of the Government of India in the Department of Revenue and Banking No. 72 Customs dated the 18th June 1977, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts newsprint, falling under sub-heading (2) of Heading No. 48.01/21 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). when imported into India from the whole of that portion of the duty of customs livable thereon, which is specified in the said First Schedule.

Sd/-

(Joseph Dominic)
Under-secretary to the Government of India

8. The price of newsprint during the year 1975-76 was Rs. 3,676/- per MT. The total exemption from customs duty imposed on newsprint was in force till March 1, 1981. In the meanwhile the Central Government notified increased salaries and wages to employees of newspaper establishments in December. 1980 on the recommendations contained in the Palekar Award. On March 1, 1981, the notification dated July 15,1977 issued u/s 25(1) of the Customs Act, 1962 granting total exemption from customs duty was superseded by the issue of a fresh notification which stated that the Central Government had in the public interest exempted newsprint imported into India for printing of newspapers, books and periodicals from so much of that portion of the duty of customs livable thereon as was in excess of 10 per cent ad valorem. The effect of the said notification was that publishers of newspapers had to pay ten per cent ad valorem customs duty on imported newsprint. By another notification issued at about the same time auxiliary duty imposed by the Finance Act of 1981 above 5 percent ad valorem was exempted in the case of newsprint. The net result was that a total duty of 15 per cent ad valorem came to be imposed on newsprint for the year 1981-82.
9. The explanation given by the Government in support of the above notification was as follows:

Customs duly on newsprint:

Originally import of the newsprint did not attract any customs duty. The rearmament of India abolished the custom duty on newsprint after the devaluation of the rupee on the recommendation of the Inquiry Committee on Small Newspapers (1965). She Committee had mentioned in its report that 90% of the newsprint in international trade was tree from customs duty and had recommended complete abolition of customs duty on newsprint. However, during the Bangladesh crisis in 1971, a 2 1/2% ad valorem regulatory duty was imposed on newsprint imposts. Subsequently this was abolished on April 1, 1973 and in its place a 5% auxiliary customs duty on newsprint imports was proposed in the Union Budget Proposals for 1973-74. While no customs duty was levied on newsprint because of the exemption granted by Customs Notification No. 235/F No. 527/1/76-CUS (TU) dated August 2, 1976 of the Department of Revenue and Banking, 5% auxiliary duty was continued to be levied on imported newsprint till July 15, 1977 when the Ministry of Finance, Department of Revenue by its Notification No. 148/F. No. Bud (2) Cus/77 dated July 15, 1977 exempted newsprint from the whole of duty of customs. Prior to this, the Ministry of Finance, Department of Revenue vide its Customs Notification No. 72/F. No. Bud (2) Cus/77 dated June 18, 1977 had reduced the auxiliary duty to 2 1/2%.

In the Budget proposals for the current year, the Minister of Finance has proposed a customs duty of 15% on newsprint imports which has become effective from March 1, 1981 because of the Customs Notification No. 24/F. No. Bud (Cus)/8J dated March 1, 1981. This 15% customs duty constitutes 10% basic duty and 5% auxiliary duty.

10. The price of imported newsprint in March 1, 1981 was Rs. 4,560/- per MT. The extract from the speech of the Finance Minister in support of the imposition of a total 15% of duty (10% basic duty and 5% auxiliary duty) on newsprint is given below:

The levy of 15 per cent customs duty on newsprint has understandably attracted a good deal of comment both within the House and outside, As it has been explained in the Budget speech, this levy is intended to promote a measure of restraint in the consumption of imported newsprint and thus help in conserving foreign exchange. In the light of the observations made by the How Members in the course of the General Debate on the Budget I had assured the House that I would try to work out a scheme of providing relief to small and medium newspapers about which Members had voiced their special concern. We have now worked out the modalities of a scheme for affording relief to small and medium newspapers. Under this Scheme, the State Trading Corporation would sell imported newsprint to small newspapers at a price which would not include any amount relatable to import duty. Medium newspapers will get their newsprint at a price which would include an amount relatable to import duty of 5 per cent ad valorem Big newspapers would however, pay a price which will reflect the full duty burden of 15 per cent ad valorem There is a definition of small medium and big newspapers in the Press Council At the moment the present definition is that those which have a circulation of 15,000 or less are classified as small, those with a circulation of more than 15.000 but less than 50,000 are classified as medium and those with a circulation of ever 50,000 are called big newspapers. There lore, the small newspapers with a circulation of 15,000 and less will not pay any customs duty, those with a circulation between 15.000 and 50,000 will pay customs duty of 5 percent and with a circulation of over 50,000 will pay 15 per cent. Suitable financial arrangements will be worked out as between Government and the State Trading Corporation to enable the STC to give effect to these concessions. As Hon Members are aware, the categorization of newspapers as small, medium and big in terms; of circulation is already well understood in the industry and is being followed by the Ministry of Information and Broadcasting for purpose of determining initial allocation of newsprint and for setting the rates of growth of consumption of newsprint by various newspapers from year to year. The State Trading Corporation will, for purposes of the present scheme, follow the same categorization of newspapers into small, medium and big. These arrangements will, in effect provide a relief of about Rs. 5.86 crores to small and medium newspapers.

11. The relevant provisions of the laws imposing customs duty and auxiliary duty on newsprint which arise for consideration are these:

Section 12 of the Customs Act, 1962 reads:

12. Dutiable goods.- (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act. 1975 (51 of 1975) or any other law for the time being in force, on goods imported into or exported from India

(2)...

12. Section 2 of the Customs Tariff Act, 1975 reads:

2. Duties specified in the Schedules to be levied. - The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules.

13. The relevant part of Chapter 48 of the First Schedule to the Customs Tariff Act, 1975 which deals with import tariff read in 1981 thus:

Rate of duty			
"Heading No.	Sub-heading No. and Standard description of article	Preferential Duration when rates Areas of duty are protective	
(1)	(2)	(3)	(4) (5)

48.01/21 (2)	Newsprint containing mechanical wood pulp amounting to not less than 70 per cent of the fibre content (excluding chrome, marble, flint, poster, stereo and art paper)	40%	_ _

14. Newsprint used by the Petitioners falls under sub- heading (2) of Heading No. 48.01/21 by which 40% ad valorem customs duty is levied on it. By the Finance Act of 1982 in subheading No. (2) of Heading No. 48.01/21, for the entry in column (3), the entry "40% plus Rs. 1,000/- per tonne" was substituted.

15. The relevant part of Section 44 of the Finance Act, 1982, which levied an auxiliary duty of customs, read thus:

44.(1) In the case of goods mentioned in the First Schedule to the Customs Tariff Act, or in that Schedule, as amended from time to time, there shall be levied and collected as an auxiliary duty of customs an amount equal to thirty percent of the value of the goods as determined in accordance with the provisions of Section 14 of the Customs Act 1962 (hereinafter referred to as the Customs Act)

16. The above rate of auxiliary duty was to be in force during the financial year 1982-83 and it was open to the Government to grant exemption from the whole or any part of it u/s 25 of the Customs Act 1962.

17. Section 45 of the Finance Act 1983 imposed fifty per cent of the value of the goods as auxiliary duty in the place of thirty per cent imposed by the Finance Act 1982.

18. But by notifications issued on February 28, 1982 u/s 25(2) of the Customs Act. 1962 which were issued in super session of the notification dated March 1. 1981. Rs. 550 per rate of duty

Heading No.

Sub-heading No. and Standard description of article

Preferential Duration when rates Areas of duty are protective

(1)

(2)

(3)

(4)

(5)

48.01/21

(2) Newsprint containing mechanical wood pulp amounting to not less than 70 per cent of the fibre content (excluding chrome, marble, flint, poster, stereo and art paper)

40%

_ _

tonne was imposed as customs duty on newsprint and auxiliary duty was fixed at Rs. 275/- per tonne. In all Rs. 825/- per tonne of newspaper has to be paid as duty. The high seas sale price of newsprint had by that time gone up above Rs. 5,600/- per tonne.

19. What is of significance is that when the Government was of the view that the total customs duty of newsprint in the public interest should be not more than 15 percent and when these writ petitions questioning even that 15 per cent levy were pending in this Court, Parliament was moved by the Government specifically to increase the basic customs duty on newsprint by Rs. 1,000/- per tonne by the Finance Act, 1982. Hence today if the Executive Government withdraws the notifications issued u/s 25 of the Customs Act, a total duty of 90 per cent plus Rs. 1.000/- per tonne would get clamped on imported newsprint

20. The effect of the imposition of 15 per cent duty may to some extent have led to the increase in the price of newspapers in 1981 and it resulted in the fall in circulation of newspapers. On this point the Second Press Commission has made the following observations in its Report (Vol 1 page 18):

Fall in circulation during 1981. 94. To examine recent trends in circulation and their relationship to recent trends in the economic environment, the Commission''s office

undertook an analysis of the Audit Bureau of Circulations (ABC) certificates for the period July 1980 to June 1981. It was found that there was a decline in circulation in the period January-June 1981 compared to the previous six-month period in the case of dailies and periodicals.

21. The two important events which had taken place during the period between July, 1980 to June 1981 were the enforcement of the Palekar Award regarding die wages and salaries payable in the newspaper industry and the imposition of the customs duty of 15% on the imported newsprint. Under the newsprint policy of the Government there are three sources of supply of newsprint - (i) high seas sales, (ii) sales from the buffer stock built up by the State Trading Corporation which includes imported newsprint and (iii) newsprint manufactured in India. Imported newsprint is an important component of the total quantity of newsprint utilized by any newspaper establishment.

III

The Importance of Freedom of Press in a Democratic Society and the Role of Courts.

22. Our Constitution does not use the expression "freedom of press" in Article 19 but it is declared by this Court that it is included in Article 19(1)(a) which guarantees freedom of speech and expression. (See Brij Bhushan & Anr. v. The State of Delhi (1950) S.C.R. 605 and Bennett coleman & Co. & Ors. v. Union of lndia & ors [1973] 2 S.C.R. 757

23. The material part of Article 19 of the Constitution reads:

19. (1) All citizens shall have the right- (a) to freedom of speech and expression:...(g) to practice any profession or to carry on any occupation, trade or business.

(2) Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.

(6) Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause...

24. The freedom of press, as one of the members of the Constituent Assembly said, is one of the items around which the greatest and the bitterest of constitutional struggles have been waged in all countries where liberal constitutions prevail. The said freedom is attained at considerable sacrifice and suffering and ultimately it has come to be incorporated in the various written constitutions. James Madison when

he offered the Bill of Rights to the Congress in 1789 is reported as having said:

The right of freedom of speech is secured, the liberty of the press is expressly declared to be beyond the reach of this Government

(See 1 Annals of Congress (1789-96) p. 141). Even where there are no written constitutions, there are well established constitutional conventions or judicial pronouncements securing the said freedom for the people. The basic documents of the United Nations and of some other international bodies to which reference will be made hereafter give prominence to the said right The leaders of the Indian independence movement attached special significance to the freedom of speech and expression which included freedom of press apart from other freedoms. During their struggle for freedom they were moved by the American Bill of Rights containing the First Amendment to the Constitution of the United States of America which guaranteed the freedom of the press. Pandit Jawaharlal Nehru in his historic resolution containing the aims and objects of the Constitution to be enacted by the Constituent Assembly said that the Constitution should guarantee and secure to all the people of India among others freedom of thought and expression. He also stated elsewhere that "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" (See D. R Mankekar: The Press under Pressure (1973) p. 25). The Constituent Assembly and its various committees and sub-committees considered freedom of speech and expression which included freedom of press also as a precious right. The Preamble to the Constitution says that it is intended to secure to all citizens among others liberty of thought expression, and belief. It is significant that in the kinds of restrictions that may be imposed on the freedom of speech and expression, any reasonable restriction impossible in the public interest is not one enumerated in Clause (2) of Article 19. In Romesh Thappar v. The State of Madras and Brij Bhushan's case (supra) this Court firmly expressed its view that there could not be any kind of restriction on the freedom of speech and expression other than those mentioned in Article 19(2) and thereby made it clear that there could not be any interference with that freedom in the name of public interest Even when Clause (2) of Article 19 was subsequently substituted under the Constitution (First Amendment) Act 1951 by a new clause which permitted the imposition of reasonable restrictions on the freedom of speech and expression in the interests of sovereignty and integrity of India the security of the State, friendly relations with foreign States, public order, decency or morality in relation to contempt of Court defamation or incitement to an offence, Parliament did not choose to include a clause enabling the imposition of reasonable restrictions in the, public interest

25. Article 19 of the Universal Declaration of Human Rights. 1948 declares:

Every one has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

26. Article 19 of the International Covenant On Civil and Political Rights, 1966 reads:

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print in the form of art or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

27. Article 10 of the European Convention on Human Rights reads:

Article 10

1. Everyone has the right to freedom of expression This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties a, are prescribed by lay and are necessary in a democratic society, in the interests of national security, territorial integrity of public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

28. The First Amendment to the Constitution of the United States of America declares:

Amendment 1Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

29. Frank C. Newman and Karel Vasak in their article on ''Civil and Political Rights'' in the International Dimensions of Human Rights (Edited by Karel Vasak) Vol. I state at pages 155-156 thus:

(ii) Freedom of opinion, expression, information and communication, A pre-eminent human right, insofar as it allows everyone to have both an intellectual and political activity, freedom of expression in the broad sense actually includes several specific rights, all linked together in a ""continuum" made increasingly perceptible by modern technological advance. What is primarily involved is the classic notion of freedom of opinion that is to say, the right to say what one thinks and not to be harassed for one''s opinions This is followed by freedom of expression, in the limited sense of the term, which includes the right to seek, receive and impart information and ideas, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one''s choice. When freedom of expression is put to use by the mass media, it acquires an additional dimension and becomes freedom of information. A new freedom is being recognized which is such as to encompass the multiform requirements of these various elements, while incorporating their at once individual and collective character, their implications in terms of both "rights" and "responsibilities": this is the right to communication, in connection with which UNESCO has recently undertaken considerable work with a view to its further elaboration and implementation.

30. "Many Voices. One World" a publication of UNESCO which contains the Final Report of the international Commission for the Study of Communication Problems, presided over by Sean Mac Bride, in Part V thereof dealing with ''Communication Tomorrow'' at page 265 emphasizes the importance of freedom of speech and press in the preservation of human rights in the following terms:

IV. Democratization of Communication. Human Rights Freedom of speech, of the press, of information and of assembly are vital for the realization of human rights. Extension of these communication freedoms to a broader individual and collective right to communicate is an evolving principle in the democratization process. Among the human rights to be emphasized are those of equality for women and between races Defence of all human rights is one of the media''s most vital tasks. We recommend:

52. All those working in the mass media should contribute to the fulfillment of human rights, both individual and collective, in the spirit of the UNESCO Declaration on the mass media and the Helsinki Final Act and the International Bill of Human Rights. The contribution of the media in this regard is not only to foster these principles, but also to expose all infringement, wherever they occur, and to support those whose rights have been neglected or violated Professional associations and public opinion should support journalists subject to pressure or who suffer adverse consequences from their dedication to the defense of human rights.

53. The media should contribute to promoting the just cause of peoples struggling for freedom and independence and their right to live in the peace and equality without foreign interference. This is especially important for all oppressed peoples who, while struggling against colonialism, religious and racial discrimination, are

deprived of opportunity to make their voices heard within their own countries.

54. Communication needs in a democratic society should be met by the extension of specific rights such as the right to be informed the right to inform, the right to privacy, the right to participate in public communication - all elements of a new concept, the right to communicate. In developing what might be called a new era of social rights, we suggest all the implications of the right to communicate be further explored.

Removal of Obstacles.

Communication, with its immense possibilities for influencing the minds and behavior of people, can be a powerful means of promoting democratization of society and of widening public participation in the decision-making process. This depends on the structures and practices of the media and their management and to what extent they facilitate broader access and open to communication process to a free interchange of ideas, information and experience among equals, without dominance of discrimination.

31. In today''s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to governments and other authorities. The authors of the articles which are published in newspapers have to be critical of the actions of government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power. Governments naturally take recourse to suppress newspapers publishing such articles in different ways. Over the years governments in different parts of the world have used diverse methods to keep press under control They have followed carrot-stick methods. Secret payments of money, open monetary grants and subventions, grants of lands, postal concessions, Government advertisements, conferment of titles on editors and proprietors of newspapers, inclusion of press barons in cabinet and inner political councils etc. constitute one method of influencing the press. The other kind of pressure is one of using force against the press. Enactment of laws providing for pre censorship, seizures, interference with the transit of newspapers and demanding security deposit imposition of restriction on the price of newspapers, on the number of pages of newspapers and the area that can be devoted for advertisements, withholding of Government advertisements, increase of postal rates, imposition of taxes on newsprint, canalization of import of newsprint with the object of making it unjustly costlier etc. are some of the ways in which Governments have tried to interfere with

freedom of press. It is with a view to checking such malpractices which interfere with free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression laying down the limits of interference with it is, therefore the primary duty of all the national Courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.

32. Thomas I. Emerson in his article entitled ''Towards a General Theory of the First Amendment'' (The Vale Law Journal Vol 72.877 at p. 906) while dealing with the role of the judicial institutions In a democratic society and in particular of the apex Court of U.S. A in upholding the freedom of speech and expression writes:

The objection that our judicial institutions lack the political power and prestige to perform an active role in protecting freedom of expression against the will of the majority raises more difficult questions. Certainly judicial institutions must reflect the traditions, ideals and assumptions, and in the end must respond to the needs, claims and expectations, of the social order in which they operate. They must not and ultimately cannot move too far ahead or lag too far behind The problem for the Supreme Court is one of finding of the proper degree of responsiveness and leadership or perhaps better, of short-term and long-term responsiveness. Yet in seeking out this position the Court should not under estimate the authority and prestige it has achieved over the years. Representing the "conscience of the community" it has come to possess a very real power to keep alive and vital the higher values and goals towards which our society imperfectly strives... Given its prestige, it would appear that the power of the Court to protect freedom of expression is unlikely to be substantially curtailed unless the whole structure of our democratic institutions is threatened.

33. What is stated above applies to the Indian Courts with equal force. In Romesh Thappar's case (supra) Brij Bhushan's case (supra) , Express Newspapers (Private) Ltd. & Anr. v. The Union of India & Ors. [1959] S.C.R. 12. Sakal Papers (P) Ltd. &. Ors. v. The Union of India [1962] 3 S.C.R. 842. and Bennett Coleman's case (supra) this Court has very strongly pronounced in favour of the freedom of press of these, we shall refer to some observations made by this Court in some of them

34. In Romesh Thappar's case (supra)

(The freedom)... lay at the foundation of ail democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse.

(But) it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigor of those yielding the proper fruits.

35. In Bennett Coleman's case (supra) A.N. Ray. C.J. on behalf of the majority said at page 796:(at p. 129 of AIR) thus:

The faith of citizen is that political wisdom and virtue will sustain themselves in the free market of ideas, so long as the channels of communication are left open The faith in the popular Government rests on the old dictum '' let the people have the truth and the freedom to discuss it and all will go well. The liberty of the press remains an ''Ark of the Covenant'' in every democracy

The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are correct.

36. In the very same case. Mathew, J. observed at page 818 (of SCR):(at page 143 of AIR):

The constitutional guarantee of the freedom of speech is not so much for the benefit of the press as it is for the benefit of the public. The freedom of speech includes within its compass the right of all citizens to read and be informed In Time v. Hill; 1968 385 US 374 the U.S. Supreme Court said:

The constitutional guarantee of freedom of speech and press are not for the benefit of the press so much as for the benefit of all the people.

In Griswold v. Connecticut (1964) 381 US 479, 482 the U.S. Supreme Court was of the opinion that the right of freedom of speech and press includes not only the right to utter or to print, but the right to read.

Justice Mathew proceeded to observe (at pp. 819-820) (of SCR):(at pp. 143-144 of AIR):

Under Article 41 of the Constitution the State has a duty to take effective steps to educate the people within limits of its available economic resources. That includes political education also.

Public discussion of public issues together with the spreading of information and any opinion on these issues is supposed to be the main function of newspaper. The highest and lowest in the scale of intelligence resort to its columns for information. Newspaper is the most potent means for educating the people as it is read by those who read nothing else and in politics the common man gets his education mostly from newspaper.

The affirmative obligation of the Government to permit the import of newsprint by expanding foreign exchange in that behalf is not only because press has a fundamental right to express itself, but also because the community has a right to be supplied with information and the Government a duty to educate the people within the limits of its resources. The Government may, under CI. 3 of the Imports (Control) Order, 1955 totally prohibit the import of newsprint and thus disable any person from carrying on a business in newsprint if it is in the general interest of the

public not to expend any foreign exchange on that score. If the affirmative obligation to expend foreign exchange and permit the import of newsprint stems from the need of the community for information and the fundamental duty of Government to educate the people as also to satisfy the individual need for self expression it is not for the proprietor of a newspaper alone to say that he will reduce the circulation of the newspaper and increase its page level, as the community has an interest in maintaining or increasing circulation of the newspapers. It is said that a proprietor of a newspaper has the freedom to cater to the needs of intellectual highbrows who may choose to browse in rich pastures and for that he would require more pages for a newspaper and that it would be a denial of his fundamental right if he were told that he cannot curtail the circulation and increase the pages. A claim to enlarge the volume of speech by diminishing the circulation raises the problem of reconciling the citizens'' right to unfettered exercise of speech in volume with the community''s right to undiminished circulation. Both rights fall within the ambit of the concept of freedom of speech as explained above.

37. The Second Press Commission has explained the concept of freedom of press in its Report (Vol. I. pp. 34-35) thus:

The expression ''freedom of the press'' carries different meanings to different people. Individuals, whether professional journalists or not, assert their right to address the public through the medium of the press. Some people stress the freedom of the editor to decide what''s shall be published in his paper. Some others emphasize the right of the owners to market their publication. To Justice Holmes, the, main purpose of the freedom was to prevent all prior restraint on publication.

16. The theory is that in a democracy freedom of expression is indispensable as all men are entitled to participate in the process of formulation of common decisions. Indeed, freedom of expression is the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succor and protection to other liberties. It has been truly said that it is the mother of all other liberties. The Press as a medium of communication is a modern phenomenon. It has immense power to advance or thwart the progress of civilization. Its freedom can be used to create a brave new world or to bring about universal catastrophe.

17. Freedom of speech presupposes that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection. It rests on the assumption that the widest possible dissemination of information from as many diverse and antagonistic: sources as possible is essential to the welfare of the public. It is the function of the Press to disseminate news from as many different sources and with as many different facts and colors as possible. A citizen is entirely dependent on the Press for the quality, proportion and extent of his news supply. In such a situation the exclusive and continuous advocacy of one point of view through the medium of a newspaper which holds a monopolistic

position is not conducive to the formation of healthy public opinion. If the newspaper industry is concentrated in a few hands, the chance of an idea antagonistic to the idea of the owners getting access to the market becomes very remote. But our constitutional law has been indifferent to the reality and implication of non-governmental restraint on exercise of freedom of speech by citizens. The indifference becomes critical when comparatively a few persons are in a position to determine not only the content of information but also its very availability. The assumption in a democratic set-up is that the freedom of the press will produce a sufficiently diverse Press not only to satisfy the public interest by throwing up a broad spectrum of views but also to fulfill the individual interest by enabling virtually everyone with a distinctive opinion to find some place to express it.

38. The Petitioners have heavily relied upon the decision of this Court in sakal's case (supra) in which the constitutionality of the Newspaper (Price and Page) Act, 1956 and the Daily Newspaper (Price and Page) Order 1960 arose for consideration. The Petitioner in that petition was a private limited company engaged in the business inter alia of publishing daily and weekly newspapers in Marathi named ''Sakal'' from Poona. The newspaper ''Sakal'' had a net circulation of 52,000 copies on week days and 56,000 copies on Sundays. The daily edition contained six pages a day, or five days in a week and four pages on one day. This edition was priced at 7 paise. The Sunday edition consisted of ten pages and was priced at 12 paise. About 40% of the space in the newspaper was taken up by the advertisements and the rest by news views and other usual features. The Newspaper (Price and Page) Act. 1956 regulated the number of pages according to the price charged, prescribed the number of supplements to be published and prohibited the publication and sale of newspapers in contravention of the Act. It also provided for the Regulation of the size and area of advertising matter contained in a newspaper. Penalties were prescribed for contravention of that Act or the Order made there under. As a result of the enforcement of that Act, in order to publish 34 pages on six days in a week as it was doing then the Petitioner had to raise the price from 7 paise to 8 paise per day and if it did not wish to increase the price it had to reduce the total number of pages to 24. The Petitioner which could publish any number of supplements as and when it desired to do so before the Order impugned in that case was passed could do so thereafter only with permission of the Government. The contention of the Petitioner in that case was that the impugned Act and the impugned Order were pieces of legislation designed to curtail the circulation of the newspaper as the increase in the price of the paper would adversely affect its circulation and they directly interfered with the freedom of the press. The validity of these pieces of legislation was challenged on the ground that they violated Article 19(1)(a) of the Constitution. The Union Government contested the petition. It pleaded that the impugned Act and the order had been passed with a view to preventing unfair competition among newspapers and also with a view to preventing the rise of monopolistic combines so that newspapers might have fair opportunities of free discussion. It was also

contended that the impugned Act and the impugned Order had been passed in the public interest and the Petitioner''s business being a trading activity falling under Article 19(1)(g) of the Constitution any restriction imposed by the said Act and the Order was protected by Article 19(6) of the Constitution. This Court negativing the contention of the Union Government observed at page 866 (of SCR):(at pp. 314-15 of AIR 1962 SC) thus:

Its object thus is to regulate something which as already stated, is directly related to the circulation of a newspaper. Since circulation of a newspaper is a part of the right of freedom of speech the Act must be regarded as one directed against the freedom of speech. It has selected the fact or thing which is an essential and basic attribute of the conception of the freedom of speech viz.. the right to circulate one''s views to all whom one can reach or care to reach for the imposition of a restriction. It seeks to achieve its object of enabling what are termed the smaller newspapers to secure larger circulation by provisions which without disguise are aimed at restricting the circulation of what are termed the larger papers with better financial strength. The impugned law far from being one, which merely interferes with the right of freedom of speech incidentally does so directly though it seeks to achieve the end by purporting to regulate the business aspect of a newspaper. Such a course is not permissible and the courts must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which envisages changes in the composition of legislatures and Governments and must be preserved. No doubt, the law in question was made upon the recommendation of the Press Commission but since its object is to affect directly the right of circulation of newspapers which would necessarily undermine their power to influence public opinion it, cannot but be regarded as a dangerous weapon which is capable of being used against democracy itself.

39. Continuing further the Court observed at pages 867 and 868 thus:

It was argued that the object of the Act was to prevent monopolies and that monopolies are obnoxious. We will assume that monopolies are always against public interest and deserve to be suppressed. Even so, upon the view we have taken that the intendment of the Act and the direct and immediate effect of the Act taken along with the impugned order was to interfere with the freedom of circulation of newspapers the circumstance that its object was to suppress monopolies and prevent unfair practices is of no assistance.

The legitimacy of the result intended to be achieved does not necessarily imply that every means to achieve it is permissible for even if the end is desirable and permissible, the means employed must not transgress the limits laid down by the Constitution if they directly impinge on any of the fundamental rights guaranteed by the Constitution it is no answer when the constitutionality of the measure is

challenged that apart from the fundamental right infringed the provision is otherwise legal.

40. We have so far seen the importance of the freedom of speech and expression which includes the freedom of press. We shall now proceed to consider whether it is open to the Government to levy any tax on any of the aspects of the press industry.

IV

Do newspapers have immunity from taxation?

41. Leaving aside small newspaper establishments whose circulation may be less than about 10.000 copies a day, all other bigger newspaper establishments have the characteristics of a large industry. Such bigger newspaper concerns are mostly situated in urban areas occupying large buildings which have to be provided with all the services rendered by municipal authorities. They employ hundreds of employees. Capital investment in many of them is in the order of millions of rupees. Large quantities of printing machinery are utilized by them a large part of which is imported from abroad. They have to be provided with telephones, teleprinters, postal and telegraphic services, wireless communication systems etc. Their newspapers have to be transported by roads, railways and air services. Arrangements for security of their property have to be made. The Government has to provide many other services to them.

All these result in a big drain on the financial resources of the State as many of these services are heavily subsidized. Naturally such big newspaper organizations have to contribute their due share to the public exchequer. They have to bear the common fiscal burden like all others.

42. While examining the constitutionality of a law which is alleged to contravene Article 19(1)(a) of the Constitution, we cannot no doubt, be solely guided by the decisions of the Supreme Court of the United States of America. But in order to understand the basic principles of freedom of speech and expression and the need for that freedom in a democratic country we may take them into consideration. The pattern of Article 19(1) (a) and of Article 19(1)(g) of our Constitution is different from the pattern of the First Amendment to the American Constitution which is almost absolute in its terms. The rights guaranteed under Article 19(1)(a) and Article 19(1)(g) of the Constitution are to be read along with Clauses (2) and (6) of Article 19 which carve out areas in respect of which valid legislation can be made. It may be noticed that the newspaper industry has not been granted exemption from taxation in express terms. On the other hand Entry 92 of List I of the Seventh Schedule to the Constitution empowers Parliament to make laws levying taxes on sale or purchase of newspapers and on advertisements published therein.

43. It is relevant to refer here to a few extracts from the speech of Shri Deshbandhu Gupta on the floor of the Constituent Assembly opposing the provisions in the Draft

Constitution which authorised the State Legislatures to levy sales tax on sale of newspapers and tax on advertisements in newspapers. He said:

No one would be happier than myself and my friends belonging to the press, if the House were to decide today that newspapers will be free from all such taxes. of course that is what it should be because in no free country with a democratic Government we have any such taxes as the sales tax or the advertisement tax.

I claim that newspapers do deserve a distinctive treatment. They are not an industry in the sense that other industries are. This has been recognised all over the world. They have a mission to perform. and I am glad to say that the newspapers in India have performed that mission of public service very creditably and we have reason to feel proud of it. I would, therefore, expect this House and my friend Mr. Sidhva to bear it in mind at the time when, God forbid, any proposal comes before the Parliament for taxation. That would be the time for them to oppose it.

Sir, after all, this is an enabling clause. It does not say that there shall be sales and advertisement tax imposed on newspapers. It does not commit the House today to the imposition of a tax on the sales of or a tax on advertisements published in newspapers. All that we have emphasized is that newspapers as such should be taken away from the purview of the provincial Governments and brought to the Central List so that if at all at any time a tax is to be imposed on newspapers it should be done by the representatives of the whole country realizing the full implications of their action. It should not be an isolated act on the part of some Ministry of some Province. That was the fundamental basis of our amendment

If today ail newspapers including those published from Delhi are opposing the imposition of these taxes with one voice and demanding their inclusion in the Central List they do so, not because it is a question of saving some money but because the fundamental question of the liberty of the press is involved. By advocating their transfer to the Central List we are prepared to run the risk of having these taxes imposed in Delhi, and in other Provinces which have not sought to impose such taxes so far. But we do not want to leave it to the Provinces so that the liberty of the press remains unimpaired. We have faith in the Parliament; we have faith in the collective wisdom of the country and we have no doubt that when this matter is viewed in the correct perspective, there will be no such taxes imposed on the newspapers, but we have not got that much faith in the Provincial Ministries. It is in that hope and having a full realization of the situation that we have agreed, as a matter of compromise or should I say as a lesser evil, to have these two taxes transferred from the Provincial to the Central List.

(Vide Constituent Assembly Debates, Vol. IX, pp. 1175-1180 dated September 9, 1949).

44. Ultimately the power to levy taxes on the sale or purchase of newspapers and on advertisements published therein was conferred on Parliament by Entry 92 of List I

of the Seventh Schedule to the Constitution. This shows the anxiety on the part of the framers of our Constitution to protect the newspapers against local pressures. But they however, did not agree to provide any constitutional immunity against such taxation. The power to levy customs duties on goods imported into the country is also entrusted to Parliament by Entry 83 in List I of the Seventh Schedule to the Constitution.

45. On the power of the Government in the United States of America to levy taxes on and to provide for the licensing of newspapers. Corpus Juris Secundum (Vol. 16) says at p. 1132 as follows:

213(13). Taxing and Licensing

The constitutional guaranties of freedom of speech and of the press are subject to the proper exercise of the Government''s power of taxation and reasonable license fees may_ be imposed on trades or occupations concerned with the dissemination of literature or ideas.

As a general rule the constitutional guaranties of freedom of speech and of the press are subject to the proper exercise of the Government''s power of taxation, so that the imposition of uniform and non-discriminatory taxes is not invalid as applied to persons or organizations engaged in the dissemination of ideas through the publication or distribution of writing. The guaranty of freedom of the press does not forbid the taxation of money or property employed in the publishing business or the imposition of reasonable licenses and license fees on trades or occupations concerned with the dissemination of literature or ideas.

A license or license tax to permit the enjoyment of freedom of speech and freedom of press may not, however, be required as a form of censorship, and where the purpose of the tax or license is not for revenue or for reasonable Regulation, but is a deliberate and calculated device to prevent or to curtail the opportunity for, the acquisition of knowledge by the people in respect of their governmental affairs the statute or ordinance violates the constitutional guaranties, and particularly the Fourteenth Amendment to the Federal Constitution. While an ordinance imposing a tax on and requiring a license for the privilege of advertising by distributing books, circulars, or pamphlets has been held valid and ordinance requiring the payment of a license tax by street vendors or peddlers is invalid as applied to members of a religious group distributing religious literature as part of their activities at least where the fee is not merely a nominal one imposed to defray the cost of Regulation, notwithstanding the ordinance is nondiscriminatory. A governmental Regulation requiring a license to solicit for compensation, memberships in organizations requiring the payment of dues is invalid where it fixes indefinite standards for the granting of a license to an applicant. A provision of a retail sales tax act providing that a retailer shall not advertise as to the non-collection of sales tax from purchasers does not deprive retailers of the constitutional right of free speech.

46. The above subject is summarised in American Jurisprudence 2d (Vol. 16) at page 662 thus:

Speech can be effectively limited by the exercise of the taxing power. Where the constitutional right to speak is sought to be deterred by a State''s general taxing programme, due process demands that the speech be unencumbered until the State comes forward with sufficient proof to justify its inhibition. But constitutional guaranties are not violated by a statute the controlling purpose of which is to raise revenue to help defray the current expenses of State Government and State obligations, and which shows no hostility to the press nor exhibits any purpose or design to restrain the press.

47. It may be mentioned here that the First Amendment to the Constitution of the United States of America is almost in absolute terms. It says that the Congress shall make no law abridging the freedom of the press. Yet the American Courts have recognised the power of the State to levy taxes on newspaper establishments, of course, subject to judicial review by courts by the application of the due process of law principle." Due process of law does not forbid all social control; but it protects personal liberty against social control, unless such social control is reasonable either because of a constitutional exercise of the police power or of the power of taxation or of the power of eminent domain." If any legislation delimiting personal liberty is held to be outside of all three of these categories, it is taking away of personal liberty without due process of law and is unconstitutional. The police power, taxation and eminent domain are all forms of social control which are essential for peace and good Government. "The police power is the legal capacity of the sovereignty or one of its governmental agents, to delimit the personal liberty of persons by means which bear a substantial relation to the end to be accomplished for the protection of social interests which reasonably need protection. Taxation is the legal capacity of sovereignty or one of its governmental agents to exact or impose a charge upon persons or their property for the support of the Government and for the payment for any other public purposes which it may constitutionally carry out. Eminent domain is the legal capacity of sovereignty or one of its governmental agents to take private property for public use upon the payment of just compensation". It is under the above said sovereign power of taxation the Government is able to levy taxes on the publishers of newspapers too, subject to judicial review by Courts notwithstanding the language of the First Amendment which is absolute in terms. In India too the power to levy tax even on persons carrying on the business of publishing newspapers has got to be recognized as it is inherent in the very concept of Government. But the exercise of such power should, however, be subject to scrutiny by courts. Entry 92 of List I of the Seventh Schedule to the Constitution expressly suggests the existence of such power.

48. Thomas I. Emerson in his Article on the First Amendment (The Yale Law Journal, Vol. 72 at p. 941; has made certain relevant observations on the power of the State

to impose taxes and economic Regulations on newspaper industry. He says:

(a) Taxation and Economic Regulation Regular tax measures, economic Regulations, social welfare legislation and similar provisions may, of course, have some effect upon freedom of expression when applied to persons or organizations engaged in various forms of communication. But where the burden is the same as that borne by others engaged in different forms of activity the similar impact on expression seems clearly insufficient to constitute an "abridging" of freedom of expression. Hence a general corporate tax, wage and hour or collective bargaining legislation, factory laws and the like are as applicable to a corporation engaged in newspaper publishing as to other business organizations. On the other hand the use of such measures as a sanction to diminish the volume of expression or control its content would clearly be as impermissible an "abridgment" as direct criminal prohibitions. The line may sometimes be difficult to draw the more so as the scope of the Regulation is narrowed.

Two principles for delineating the bounds of "abridging" may be stated. First as a general proposition the validity of the measure may be tested by the rule that it must be equally applicable to a substantially larger group than that engaged in expression. Thus a special tax on the press alone or a tax exemption available only to those with particular political views or associations would not be permitted second neither the substantive nor procedural provisions of the measure, even though framed in general terms may place any substantial burden on expression because of their peculiar impact in that area Thus the enforcement of a tax or corporate registration statute by requiring disclosure of membership in an association, where such disclosure would substantially impair freedom of expression should be found to violate first amendment protection.

(Underlining by us).

49. This view appears to have been accepted by our Second Press Commission in its Report (Vol. I) at page 35. The Commission observes:

21. Economic and tax measures legislation relating to social welfare and wages, factory laws, etc. may have some effect upon freedom of the Press when applied to persons or institutions engaged in various forms of communication. But where the burden placed on them is the same as that borne by other engaged in different forms of activity, it does not constitute abridgment of freedom of the Press. The use of such measures, however to control the ''content'' of expression would be clearly impermissible.

50. In Alice Lee Grosjean v. American Press Company, (1936) 297 US 233: 80 Led 660 in which the Appellants had questioned the constitutional validity of an Act of Louisiana which required every person engaged in the business of selling or making any charge for, advertising or for advertisements printed or published in any newspaper, periodical etc. having a circulation of more than 20,000 copies per week

to pay, in addition to all other taxes, a license tax for the privilege of engaging in such business in the State of Louisiana of two per cent (2%) of the gross receipts of such business the Supreme Court of the United States observed at pages 668-669:

In the light of all that has now been said, it is evident that the restricted rules of the English law in respect of the freedom of the press in force when the Constitution was adopted were never accepted by the American colonists, and that by the First Amendment it was meant to preclude the national government, and by the Fourteenth Amendment to preclude the States from adopting any form of previous restraint upon printed publications or their circulation including that which had theretofore been effected by these two well known and odious methods

It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the government. But this is not an ordinary form of tax but one single in kind, with a long history of hostile misuse against the freedom of the press.

The predominant purpose of the grant of immunity here invoked was to preserve an untrammeled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say have shed and continue to shed more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all a wholly different question would be presented. It is bad because in the light of its history and of its present setting it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties. A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.
(Underlining by us).

51. The levy imposed by Louisiana was quashed by the Supreme Court of the United States of America in the above case on the ground that it violated the First Amendment to the Constitution of the United States of America since it was of the view that the tax levied in this case was a device to limit the circulation of information. The Court however, did not say that no tax could be levied on the press in any event.

52. In Robert Murdock. Jr. v. Commonwealth of Pennsylvania (City of Jeannette), (1943) 319 US 105: 87 Law ed 1292 the Supreme Court of the United States of America declared as unconstitutional and violative of the First Amendment to the Constitution of the United States of America which guaranteed freedom of speech and expression, an ordinance which imposed a license tax on persons canvassing

for and soliciting within the city of Jeannette orders for goods, paintings, pictures, wares or merchandise of any kind or persons delivering such articles under orders so obtained or solicited. The Petitioners in that case were ''Jehovah''s Witnesses'' who went about from door to door in the city of Jeannette distributing literature and soliciting people to purchase certain religious books and pamphlets. None of them obtained a license by paying the prescribed fee and they were convicted for violating the Ordinance by the Superior Court of Pennsylvania the Supreme Court of the United States of America quashed the conviction holding that the Ordinance violated the First Amendment. Douglas, J. who wrote the majority opinion observed at pages 1299 and 1300 thus:

In all of these cases the issuance of the permit or license is dependent on the payment of a license tax and the license tax is fixed in amount and unrelated to the scope of the activities of Petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax the fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press freedom of speech, freedom of religion are in a preferred position.
(Underlining by us).

53. Justice Reed who dissented from the majority observed at page 1306 thus:

It will be observed that there is no suggestion of freedom from taxation and this statement is equally true of the other State constitutional provisions. It may be concluded that neither in the State or the federal constitutional was general taxation of church or press interdicted.

Is there anything in the decisions of this Court which indicates that church or press is free from the financial burdens of government?

We find nothing. Religious societies depend for their exemptions from taxation upon State constitutions or general statutes, not upon the Federal Constitution. Gibbons v. District of Columbia, (1885) 116 US 404, 29 L ed 680, 6 S Ct 427. This Court has held that the chief purpose of the free press guarantee was to prevent previous restraints upon publication.

Near v. Minnesota, (1930) 283 US 697, 713, 75 L ed 1357, 1366, 51 S Ct 625. In Grosjean v. American Press Company (1936) 297 US 233, 250, 80 L ed 660, 668, 56 S ct 444, it was said that the predominant purpose was to preserve "an untrammeled press as a vital source of public information." In that case, a gross receipts tax on advertisements in papers with a circulation of more than twenty thousand copies per week was held invalid because "a deliberate and calculated device in the guise of a tax to limit the circulation.

54. There was this further comment: ''It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the government. But this is not an ordinary form of tax but one single in kind with a long history of hostile misuse against the freedom of the press." Id (1936) 297 US 250, 80 L ed 668, 56 S Ct 444.

It may be said however, that ours is a too narrow, technical and legalistic approach to the problem of State taxation of the activities of church and press; that we should look not to the expressed or historical meaning of the First Amendment but to the broad principles of free speech and free exercise of religion which pervade our national way of life. It may be that the Fourteenth Amendment guarantees these principles rather than the more definite concept expressed in the First Amendment.

This would mean that as a Court we should determine what sort of liberty it is that the due process clause of the Fourteenth Amendment guarantees against State restrictions on speech and church.

Nor do we understand that the Court now maintains that the Federal Constitution frees press or religion of any tax except such occupational taxes as those here levied. income taxes, ad valorem taxes even occupational taxes are presumably valid save only a license tax on sales of religious books. Can it be that the Constitution permits a tax on the printing presses and the gross income of a metropolitan newspaper but denies the right to lay an occupational tax on the distributors of the same papers? Does the exemption apply to book sellers or distributors of magazines or only to religious publications? And, if the latter, to what distributors? Or to what books? Or is this Court saying that a religious practice of book distribution is free from taxation because a State cannot prohibit the "free exercise thereof and a newspaper is subject to the same tax even though the same Constitutional Amendment says the State cannot abridge the freedom of the press? It has never been thought before that freedom from taxation was a perquisite attaching to the privileges of the First Amendment."

55. Justice Reed added at pages 1307 and 1308 thus:

It is urged that such a tax as this may be used readily to restrict the dissemination of ideas. This must be conceded but the possibility of misuse does not make a tax unconstitutional. No abuse is claimed here. The ordinances in some of these cases are the general occupation license type covering many businesses. In the Jeannette

prosecutions, the ordinance involved lays the usual tax on canvassing or soliciting sales if goods, wares and merchandise. It was passed in 1898. Every power of taxation or Regulation is capable of abuse. Each one to some extent prohibits the free exercise of religion and abridges the freedom of the press, but that is hardly a reason for denying the power. If the tax is used oppressively the law will protect the victims of such action.

(Underlining by us).

56. Justice Frankfurter who also dissented from the majority observed at pages 1310 and 1311 thus:

It cannot be said that the Petitioners are constitutionally exempt from taxation merely because they may be engaged in religious activities or because such activities may constitute an exercise of a constitutional right

Nor can a tax be invalidated merely because it falls upon activities which constitute an exercise of a constitutional right. The First Amendment of course protects the right to publish a newspaper or a magazine or a book. But the crucial question is - how much protection does the Amendment give, and against what is the right protected? It is certainly true that the protection afforded the freedom of the press by the First Amendment does not include exemption from all taxation. A tax upon newspaper publishing is not invalid simply because it falls upon the exercise of a constitutional right. Such a tax might be invalid if it invidiously singled out newspapers publishing for bearing the burdens of taxation or imposed upon them in such ways as to encroach on the essential scope of a free press. If the Court could justifiably hold that the tax measures in these cases were vulnerable on that ground, I would unreservedly agree. But the Court has not done so, and indeed could not.

(Underlining by us).

57. In the above case it may be noticed that Douglas, J. who gave the majority opinion did not say that no tax could be levied at all on a press, but he did not approve of a uniform license tax unrelated to the scope of the activities of the persons who had to bear it. The dissenting opinions have clearly stated that the press does not enjoy any immunity from taxation. They, however, say that the taxation should not encroach upon the essential scope of a free press.

58. We may usefully refer here to a passage in the foot-note given below the Essay No. 84 by Alexander Hamilton in ''The Federalist''. It reads:

It cannot certainly he pretended that any degree of duties, however low, would be an abridgment of the liberty of the press. We know that newspapers are taxed in Great Britain, and yet it is notorious that the press nowhere enjoys greater liberty than in that country and if duties of any kind may be laid without a violation of that liberty, it is evident that the extent must depend on legislative discretion regulated by public opinion.

59. At this stage we find it useful to refer to a decision of the Privy Council in Attorney General v. Antigua Times Ltd., (1975) 3 All ER 81 where the Judicial Committee of the Privy Council was called upon to decide about the validity of the imposition of a license fee of $600 annually on the publisher of a newspaper under the Newspapers Registration (Amendment) Act, 1971. Section 10 of the Constitution of Antigua read as follows:

10.(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision - (a) that is reasonably required - (i) in the interests of defense, public safety, public order, public morality or public health; or (ii) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Courts or regulating telephony, telegraphy, posts, wireless, broadcasting, television or other means of communication public exhibitions or public entertainments; or (b) that imposes restrictions upon public officers.

60. Lord Fraser who delivered the judgment of the Privy Council upheld the levy of the license fee as being reasonably required in the interests of defense and for securing public safety etc. referred to in Section 10(2)(a)(i) of the Constitution of Antigua. The learned Lord observed in that connection thus:

Revenue requires to be raised in the interests of defense and for securing public safety, public order, public morality and public health and if this tax was reasonably required to raise revenue for these purposes or for any of them then S. IB is not to be treated as contravening the Constitution.

In some cases it, may be possible for a Court to decide from a mere perusal of an Act whet her it was or was not reasonably required. In other cases the Act will not provide the answer to that question. In such cases has evidence to be brought before the Court of the reasons for the Act and to show that it was reasonably required. Their Lordships think that the proper approach to the question is to presume until the contrary appears or is shown, that all Acts passed by the Parliament of Antigua were reasonably required. This presumption will be rebutted if the statutory provisions in question are, to use the words of Loulsy J. ''so arbitrary as to compel the conclusion it does not involve an exertion of the taxing power but constitutes in substance and effect the direct execution of a different and forbidden power. If the amount of the license fee was so manifestly excessive as to lead to The

conclusion that the real reason for its imposition was not the raising of revenue but the preventing of the publication of newspapers then that would justify the conclusion that the law was not reasonably required for the raising of revenue.

In their Lordships opinion the presumption that the Newspapers Registration (Amendment) Act, 1971 was reasonably required has not been rebutted and they do not regard the amount of the license fee as manifestly excessive and of such a character as to lead to the conclusion that S. IB was not enacted to raise revenue but for some other purpose.

(Underlining by us)

61. Here again it is seen that the Privy Council was of the view that the law did not forbid the levy of fee on the publisher of a newspaper but it would be open to challenge if the real reason for its imposition was not the raising of revenue but the preventing of the publication of newspaper.

62. At this stage it is necessary to refer to a forceful argument addressed before us. It was urged on behalf of the Petitioners that the recognition of the power of the Government to levy taxes of any kind on the newspaper establishments would being in the death-knell of the freedom of press and would be totally against the spirit of the Constitution. It is contended that the Government is likely to use it to make the press subservient to the Government. It is argued that when once this power is conceded, newspapermen will have to run after the Government and hence it ought not to be done. This raises a philosophical question - Press v. Government. We do not think it is necessary for the press to be subservient to the Government. As long as this Court sits'' newspapermen need not have the fear of their freedom being curtailed by unconstitutional means.

It is, however, good to remember some statements made in the past by some wise men connected with newspapers in order to develop the culture of an independent press. Hazlitt advised editors to stay in their garrets and avoid exposing themselves to the subtleties of power. Waiter Lippman in his address to the International Press Institute some years ago said that the danger to the independence and integrity of journalists did not come from the pressures that might be put on them; it was that they might be captured and captivated by the company they keep. Arthur Krock after 60 years of experience said that it ''is true that in most cases the price of friendship with a politician is so great for any newspaperman to pay''. A.P. Wadsworth of the Manchester Guardian said "that no editor should ever be on personal terms with our leaders for fear of creating a false sense of relation of confidence.

James Margach says that ''when leading media figures see too much rather than too little of Prime Ministers that the freedom of press is endangered''. Lord Salisbury told Buckle a famous editor in England "You are the first person who has not come to see me in the last few days who is not wanting something at my hands - place or

decoration or peerage. You only want information." Charles Mitchell wrote in Newspaper Directory'' ''The Press has now so great and so extensive an influence on public opinion that its conductors should be GENTLEMEN in the true sense of the word. They should be equally above corruption and intimidation incapable of being warped by personal considerations from the broad path of truth and honour: superior to all attempts at misrepresenting or mystifying public events''. If the press ceases to be independent the healthy influence of the press and public opinion will soon be substituted by the traditional influences of landlordism and feudalism. The press lords should endeavour to see that their interests do not come into conflict with their duties. All this is said only to show that Government alone may not always be the culprit in destroying the independence of the press. Be that as it may, it is difficult to grant that merely because the Government has the power to levy taxes, the freedom of press would be totally lost. As stated earlier the Court is always there to hold the balance even and to strike down any unconstitutional invasion of that freedom.

63. Newspaper industry enjoys two of the fundamental rights namely the freedom of speech and expression guaranteed under Article 19(1)(a) and the freedom to engage in any profession, occupation, trade, industry or business guaranteed under Article 19(1)(g) of the Constitution, the first because it is concerned with the field of expression and communication and the second because communication has become an occupation or profession and because there is an invasion of trade, business and industry into that field where freedom of expression is being exercised. While there can be no tax on the tight to exercise freedom of expression, tax is livable on profession, occupation, trade, business and industry. Hence tax is livable on newspaper industry. But when such tax transgresses into the field of freedom of expression and stifles that freedom, it becomes unconstitutional. As long as it is within reasonable limits and does not impede freedom of expression it will not be contravening the limitations of Article 19(2). The delicate task of determining when it crosses from the area of profession, occupation, trade, business or industry into the area of freedom of expression and interferes with that freedom is entrusted to the Courts.

64. The Petitioners, however, have placed strong reliance on the Sakal's case (supra) and the Bennett Coleman's case (supra) in support of their case that any tax on newsprint which is the most important component of a newspaper is unconstitutional. They have drawn our attention to the following passage in the decision in Sakal''s case (supra) which is at page 863 (of SCR):(at pp. 313-314 of AIR):

It may well be within the power of the State to place in the interest of the general public restrictions upon the right of a citizen to carry on business but it is not open to the State to achieve this object by directly and immediately curtailing any other freedom of that citizen guaranteed by the Constitution and which is not susceptible of abridgment on the same grounds as are set out in Clause (6) of Article 19.

Therefore, the right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen. Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of Court defamation or incitement to an offence. It cannot like the freedom to carry on business be curtailed in the interest of the general public. If a law directly affecting it is challenged it is no answer that the restrictions enacted by it are justifiable under Clauses (3) to (6). For the scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and CI. (1) does not prefer one freedom to another. That is the plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom. All the greater reason, therefore, for holding that the State cannot directly restrict one freedom by placing an otherwise permissible restriction on another freedom.

65. In Bennett Coleman''s case (supra) the question which arose for consideration related to the validity of a restriction imposed under the newsprint policy which had certain objectionable features such as (i) that no newspaper or new edition could be started by a common ownership unit even within the authorised quota of newsprint, (ii) that there was a limitation on the maximum number of pages, no adjustment being permitted between circulation and pages so as to increase pages (iii) that a big newspaper was prohibited and prevented from increasing the number of pages, page area, and periodicity by reducing circulation to meet the requirement even within its admissible quota etc. The majority held that the fixation of page limit had not only deprived the Petitioners of their economic vitality but also restricted their freedom of expression. It also held that such restriction of pages resulted in reduction of advertisement revenue and thus adversely affected the capacity of a newspaper to carry on its activity which is protected by Article 19(1)(a) of the Constitution.

66. We have carefully considered the above two decisions. In the first case the Court was concerned with the newspaper price-page policy and in the second the newsprint policy imposed by the Government had been challenged. Neither of them was concerned with the power of Parliament to levy tax on any goods used by the newspaper industry. As we have observed earlier taxes have to be levied for the support of the Government and newspapers which derive benefit from the public expenditure cannot disclaim their liability to contribute a fair and reasonable amount to the public exchequer. What may, however, have to be observed in levying a tax on newspaper industry is that it should not be an overburden on newspapers which constitute the Fourth Estate of the country. Nor should it single out newspaper industry for harsh treatment. A wise administrator should realise that the imposition of a tax like the customs duty on newsprint is an imposition on

knowledge and would virtually amount to a burden imposed on a man for being literate and for being conscious of his duty as a citizen to inform himself about the world around him. The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves''. (Per Lord Simon of Glaisdale in Attorney General v. Times Newspapers, (1973) 3 All ER 54). Freedom of expression as learned writers have observed, has four broad social purposes to serve:(i) it helps an individual to attain self fulfillment (ii) it assists in the discovery of truth (iii) it strengthens the capacity of an individual in participating in decision-making and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people''s right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration. It is on account of this special interest which society has in the freedom of speech and expression that the approach of the Government should be more cautious while levying taxes on matters concerning newspaper industry than while levying taxes on other matters. It is true that this Court has adopted a liberal approach while dealing with fiscal measures and has upheld different kinds of taxes levied on property, business, trade and industry as they were found to be in the public interest. But in the cases before us the Court is called upon to reconcile the social interest involved in the freedom of speech and expression with the public interest involved in the fiscal levies imposed by the Government specially because newsprint constitutes the body, if expression happens to be the soul.

67. In view of the intimate connection of newsprint with the freedom of the press, the tests for determining the vires of a statute taxing newsprint have, therefore, to be different from the tests usually adopted for testing the vires of other taxing statutes. In the case of ordinary taxing statutes, the laws may be questioned only if they are either openly confiscatory or a colorable device to confiscate. On the other hand, in the case of a tax on newsprint, it may be sufficient to show a distinct and noticeable burdensomeness, clearly and directly attributable to the tax.

68. While we therefore, cannot agree with the contention that no tax can be levied on newspapers industry, we hold that any such levy is subject to review by Courts in the light of the provisions of the Constitution.

V

Are the impugned notifications issued u/s 25 of the Customs Act, 1962 beyond the reach of the Administrative Law?

69. It is argued on behalf of the Government that a notification issued u/s 25 (1) of the Customs Act granting, modifying or withdrawing an exemption from duty being in the nature of a piece of subordinate legislation, its validity cannot be tested by the Court by applying the standards applicable to an administrative action. Reliance is placed on the decision of this Court in Narinder Chand Hem Raj & Ors. v. Lt.. Governor, Administrator. Union Territory, Himachal Pradesh & Ors. in support of the above contention. In that case the Appellants were wine merchants carrying on business in Simla. At the auction held for the purpose of granting the privilege to sell the Indian made foreign liquor the Appellants were the highest bidders. It appears that before the auction was held the Collector of Excise and Taxation had announced that no sales tax would be liable to be paid on the sale of liquor and despite this assurance the Government had levied and collected from the Appellants a certain amount by way of sales tax. The Appellants prayed for the issue of a writ to the Government restraining them from levying any sales tax and to refund what had been recovered from them by way of sales tax already. It was contended on behalf of the Government of Himachal Pradesh that non-collection of sales tax was possible only on the issue of a notification by the Government pursuant to its statutory power under the Punjab General Sales Tax Act which was in force in the area in question shifting ''liquor'' which was in Schedule ''A'' to Schedule ''B'' to the Punjab General Sales Tax Act and that such a notification could not be issued because the Central Government had not given its requisite approval. Hence it was urged by the Government that since sales tax had been imposed by law on all items in Schedule ''A'' it could not disobey the mandate of law. It further contended that the Court could not issue a mandamus to the Government to issue a notification to amend the Schedules to the statute as the act of issuing such a notification was a legislative act and no writ could be issued to a legislative body or a subordinate Legislative body to make a law or to issue a notification, as the case may be, which would have the effect of amending a law in force,. This Court upheld the contention of the Government. The Court said:

Our attention has not been drawn to any provision in that Act empowering the Government to exempt any assesses from payment of tax. Therefore it is clear that Appellant was liable to pay the tax imposed under the law. What the Appellant really wants is a mandate from the court to the competent authority to delete the concerned entry from Schedule A and include the same in Schedule B. We shall not go into the question whether the Government of Himachal Pradesh on its own authority was competent to make the alteration in question or not. We shall assume for our present purpose that it had such a power. The power to impose a tax is undoubtedly a legislative power. That power can be exercised by the legislature directly or subject to certain conditions, the legislature may delegate the power to some other authority. But the exercise of that power whether by the legislature or by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or

administrative power. No Court can issue a mandate to a legislature to enact a particular law. Similarly no court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact. The relief as framed by the Appellant in his writ petition does not bring out the real issue calling for determination. In reality he wants this Court to direct the Government to delete the entry in question from Schedule A and include the same in Schedule B. Article 265 of the Constitution lays down that no tax can be levied and collected except by authority of law. Hence the levy of a tax can only be done by the authority of law and not by any executive order. Unless the executive is specifically empowered by law to give any exemption; it cannot say that it will not enforce the law as against a particular person. No court can give a direction to a Government to refrain from enforcing a provision of law. Under these circumstances, we must hold that the relief asked for by the Appellant cannot be granted.

(Underlining by us).

70. The above decision does not in fact support the contention of the Government in the cases before us. It is noteworthy that the Court in the passage extracted above has made a distinction between the amendment of the Schedule to the Punjab General Sales Tax Act by the issue of a notification by the Government of Himachal Pradesh in exercise of its power delegated by the legislature and the power of that Government to grant exemption under a power to grant exemption. In the present cases we are concerned with a power to grant exemption conferred on Government by Section 25 of the Customs Act, 1962 and not with a power to amend the Act by means of a notification. Moreover this was just a case relating to business in liquor.

71. We shall assume for purposes of these cases that the power to grant exemption u/s 25 of the Customs Act, 1962 is a legislative power and a notification issued by the Government there under amounts to a piece of subordinate legislation. Even then the notification is liable to be questioned on the ground that it is an unreasonable one. The decision of this Court in Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi & Anr. has laid down the above principle. In that case Wanchoo, C.J. while upholding certain taxes levied by the Corporation of Delhi u/s 150 of the Delhi Municipal Corporation Act, 1957 observed thus:

Finally there is another check on the power of the Corporation which is inherent in the matter of exercise of power by subordinate public representative bodies such as Municipal Boards. In such cases if the act of such a body in the exercise of the power conferred on it by the law is unreasonable, the courts can hold that such exercise is void for unreasonableness. This principle was laid down as far back as 1898 in Kruse v. Johnson, (1898) 2 QBD 91.

72. But it appears that the principle enunciated in Kruse v. Johnson. (1898) 2 QBD 91 is not being applied so stringently in England now.

73. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires". The present position of law bearing on the above point is stated by Diplock L.J. in Mixnam Properties Ltd. v. Chertsey U. D C, (1964) 1 QB 214 thus:

The various grounds upon which subordinate legislation has sometimes been said to be void can. I think, today be properly regarded as being particular applications of the general rule that subordinate legislation, to be valid, must be shown to be within the powers conferred by the statute. Thus the kind of unreasonableness which invalidates a bye-law is not the antonym of "reasonableness" in the sense of which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a court would say: ''Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.''

If the courts can declare subordinate legislation to be invalid for ''uncertainty,'' as distinct from unenforceable his must be because Parliament is to be presumed not to have intended to authorize the subordinate legislative authority to make changes in the existing law which are uncertain...

74. Prof. Alan Wharam in his Article entitled ''Judicial Control of Delegated Legislation,: The Test of Reasonableness'' in 36 Modern Law Review 611 at pages 622-23 has summarised the present position in England as follows:

(i) It is possible that the courts might invalidate a statutory instrument on the grounds of unreasonableness or uncertainty, vagueness or arbitrariness: but the writer''s view is that for all practical purposes such instruments must be read as forming part of the parent sessute. subject only to the ultra vires test.

(ii) The courts are prepared to invalidate bye-laws, or any other form of legislation, emanating from an elected, representative authority, on the grounds of unreasonableness, uncertainty or repugnance to the ordinary law :but they are reluctant to do so and will exercise their power only in clear cases.

(iii) The courts may be readier to invalidate bye-laws passed by commercial undertakings under statutory power, although cases reported during the present century suggest that the distinction between elected authorities and commercial undertakings, as explained in Kruse v. Johnson, might not now be applied so

stringently.

(iv) As far as subordinate legislation of no statutory origin is concerned, this is virtually obsolete, but it is clear from In re French Protestant Hospital (1951) Ch 567 that it would be subject to strict control.

(See also H.W. R. Wade: Administrative Law (5th Edn.) pp. 747-748).

75. In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. In India any enquiry into the vires of delegated legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.

76. That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held in The Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur [1980] 2 S.C.R- 1111 Rameshchandra Kachardas Porwal & Ors. v. State of Maharashtra & Ors. etc AIR 1981 1127 (SC)and in Bates v. Lord Hailsham of St. Marylebone, (1972) 1 WLR 1373. A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc. etc. On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.

77. We do not, therefore find much substance in the contention that the courts cannot at all exercise judicial control over the impugned notifications. In cases where the power vested in the Government is a power which has got to be exercised in the public interest as it happens to be here, the Court may require the Government to exercise that power in a reasonable way in accordance with the spirit of the Constitution. The fact that a notification issued u/s 25(1) of the Customs Act, 1962 is required to be laid before Parliament u/s 159 thereof does not make any substantial difference as regards the jurisdiction of the court to pronounce on its

validity.

78. The power to grant exemption should however, be exercised in a reasonable way Lord Greene M.R. has explained in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, (1948) 1 KB 223 what a ''reasonable way'' means as follows:

It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ. in Short v. Poole Corporation, (1926) 1 Ch 66 gave the example of the red-haired teacher dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another.

79. Hence the claim made on behalf of the Government that the impugned notifications are beyond the reach of the administrative law cannot be accepted without qualification even though all the grounds that may be urged against an administrative order may not be available against them.

80. Now the notifications issued on March 1, 1981 and February'' 28, 1982 u/s 25 of the Customs Act, 1962 which grant exemptions from payment of certain duty beyond what is mentioned in them are issued by the executive Government. They were issued in substitution of earlier notifications which had granted total exemption. Such notifications have to be issued by the Government after taking into consideration all relevant factors which bear on the reasonableness of the levy on the newsprint.

The Government should strike a just and reasonable balance between the need for ensuring the right of people to freedom of speech and expression on the one hand and the need to impose social control on the business of publication of a newspaper on the other. In other words, the Government must at all material times be conscious of the fact that it is dealing with an activity protected by Article 19 (1)(a) of the Constitution which is vital to our democratic existence. In deciding the reasonableness of restrictions imposed on any fundamental right the Court should take into consideration the nature of the right alleged to have been infringed, the

underlying purpose of the restrictions imposed, the disproportion of the imposition and the prevailing conditions at the relevant time including the social values whose needs are sought to be satisfied by means of the restrictions. (See State of Madras v. V.G. Rao [1952] S.C.R. 597 . The restriction in question is burden of import duty imposed on newsprint. Section 25 of the Customs Act, 1962 under which the notifications are issued confers a power on the Central Government coupled with a duty to examine the whole issue in the light of the public interest. It provides that if the Central Government is satisfied that it is necessary in the public interest so to do it may exempt generally either absolutely or subject to such conditions goods of any description from the whole or any part of the customs duty leviable thereon. The Central Government may if it is satisfied that in the public interest so to do exempt from the payment of duty by a special order in each case under circumstances of an exceptional nature to be stated in such order any goods on which duty is livable. The power exercisable u/s 25 of the Customs Act, 1962 is no doubt discretionary but it is not unrestricted. It is useful to refer here to the observations of Lord Denning M.R. in Breen v. Amalgamated Engineering Union, (1971) 2 QB 175 at page 190 read thus:

The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account then the decision cannot stand. No matter that the statutory body may have acted in good faith nevertheless the decision will be set aside. That is established by Pad-field v. Minister of Agriculture Fisheries and Food. 1968 AC997 which is a landmark in modern administrative law.

81. In any event any notification issued under a statute also being a ''law'' as defined under Article 13(3)(a) of the Constitution is liable to be struck down if it is contrary to any of the fundamental rights guaranteed under Part III of the Constitution.

VI

Has there been proper exercise of power u/s 25(1) of the Customs Act, 1962?

82. Freedom of Press as the Petitioners rightly assert means freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers. The most important raw material in the production of a newspaper is the newsprint. The cost and availability of newsprint determine the price, size and volume of the publication and also the quantum of news, views and advertisements appearing therein. It is not disputed that she cost of newsprint works out to nearly 60% of the cost of production of newspaper. In the case of a big newspaper the realization by the sale of newspaper is just about 40% of its total cost production. The remaining cost is met by advertisements revenue which is about 40%, by revenue from waste sales and job work which comes to about 5% and revenue from other sources such as the income from properties and

other investments of the newspaper establishment. These figures have been derived from the statement furnished by one of the big newspapers. The case of all other big newspapers may be more or less the same. The financial and other difficulties felt by the newspaper presses in securing newsprint in recent years which have become an international phenomenon are set out in the Final Report of the International Commission for the Study of Communication Problems referred to above at p. 141 thus:

Extremely serious on an international scale has been the effect of high costs of important materials or facilities Paper is a material consumed in vast quantities whose price in recent years has spiraled out of proportion to the general world-wide inflation As for newsprint, its price on world markets rose from a datum figure of 100 in 1970 to 329 in May 1977, and has continued to rise since. A sad by-product of this situation has been the introduction of a covert form of censorship, as some governments limit the import of newsprint, distribute it by official allocation schemes, and use these schemes to discriminate against the opposition newspapers.

83. In Chapter 4 of the same Report at page 100 the International Commission has observed thus:

While newspapers which are commercial enterprises expect to sustain themselves by sales and advertising, they are not always viable on this traditional basis Capital and profits from other media and from business in general are often injected into the newspaper industry. In many cases, the financing, or at least the deficits are covered by governments or political bodies. Assistance from the State has taken various forms, including tax concessions not enjoyed by other industries, reduced postal and telephone rates, guaranteed Government advertising, and subsidies to the price of newsprint. Although the press is suspicious of Government involvement in its affairs, a desire to preserve variety by keeping the weaker papers alive has led to consideration of various schemes. Direct grants to papers in need are made in seven European nations.

Smaller newspapers and some parts of the "quality" or "specialized" press have experienced difficulties from a contraction of operations and size, which has led to limitations on the variety of information sources. This has induced many governments to examine the possibility of subsidies to help keep newspapers alive or to establish new ones, in monopoly circulation areas and to promote plurality and variety in general.

84. If any duty is levied on newsprint by Government, it necessarily has to be passed on to the purchasers of newspapers unless the industry is able to absorb it. In order to pass on the duty to the consumer the price of newspapers has to be increased. Such increase naturally affects the circulation of newspapers adversely.

85. In Sakal's case (supra) this Court has observed thus:

The effect of raising the selling price of newspaper has been considered by the Press Commission. In paragraph 164 of the Report it is observed:

The selling price of a paper would naturally have an important effect on its circulation. In this connection we have examined the effect of price-cuts adopted by two English papers at Bombay on the circulation of those two papers as well as of the leading paper which did not reduce its price. Prior to 27th October 1952, Times of India which had the highest circulation at Bombay was being sold at Re. 0-2-6 while Free Press Journal and National Standard which rank next in circulation were being sold for Re. 0-2-0. On 27th October 1952. Free Press Journal reduced its price to Re. 0-1-0 and within a year had claimed to have doubled its circulation. On 1st July, 1953, the National Standard was converted into a Bombay edition of Indian Express with a selling price of Re. 0-1-6. Within six months it too claimed to have doubled its circulation

During this period the Times of India which did not reduce its selling price continued to retain its readership. Thus it would appear that Free Press Journal and Indian Express by reducing their price have been able to tap new readership which was latent in the market but which could not pay the higher prices prevailing earlier.

Though the prices of newspapers appear to be on the low side it is a fact that even so many people find it difficult to pay that small price. This is what has been pointed out by the Press Commission in Para. 52 of its report. According to it the most common reason for people in not purchasing newspapers is the cost of the newspaper and the inability of the household to spare the necessary amount. This conclusion is based upon the evidence of a very large number of individuals and representatives of Associations. We would, therefore, be justified in relying upon it and holding that raising the price of newspaper even by a small amount such as one np. in order that its present size be maintained would adversely affect its circulation.

86. This is not a novel phenomenon. A stamp tax on newspapers came to be levied in England in 1712. It virtually crippled the growth of the English press and thus became unpopular. There was a lot of agitation against the said tax. But on its abolition in 1861, the circulation of newspapers increased enormously. The following account found in the Encyclopaedia Britannica (1962) VoL 16 at p. 339 is quite instructive:

Abolition of "Taxes on Knowledge".-

The development of the press was enormously assisted by the gradual abolition of the "taxes on knowledge," and also by the introduction of a cheap postal system.

To Lord Lytton, the novelist and politician, and subsequently to Milner Gibson and Richard Cobden, is chiefly due the credit of grappling with this question in Parliament to secure first the reduction of the tax to a penny in 1836, and then its total abolition in 1835. The number of newspapers established from the early part of

1855, when the repeal of the duty had become a certainty, and continuing in existence at the beginning of 1857. amounted to 107:26 were metropolitan and 81 provincial. The duties on paper itself were finally abolished in 1861.

The abolition of the stamp taxes brought about such reductions in the prices of newspapers that they speedily began to reach the many instead of the few. Some idea of the extent of the tax on knowledge imposed in the early 19th Century may be gathered from the fact that the number of stamps issued in 1820 was nearly 29,400,000, and the incidence of the advertisement tax, fixed at 3s. 6d. in 1804, made it impossible for the newspaper owner to pass on the stamp tax to the advertiser. In 1828 the proprietors of the Times had to pay the State more than £ 68,000 in stamp and advertisement taxes and paper duty. But after the reduction of the stamp tax in 1836 from four pence to one penny, the circulation of English newspapers, based on the stamp returns, rose from 39,000,000 to 122,000,000 in 1854.

87. The Second Press Commission in its Report (Vol. II) at pages 182-183 has stated that the figures of circulation of newspapers compiled by the Audit Bureau of Circulation (ABC) for the period January to June 1981 indicated that the circulation of newspapers in the period January to June 1981 was 1.9% lower than in the previous six months'' period. The decline in the circulation of dailies was more in the case of very big newspapers with circulation of one lakh and above than in the case of smaller papers. The Commission said that the decline in circulation would appear to be attributable mainly to two factors - increase in the retail price of newspapers in September-October, 1980 and again in April-May, 1981 and that the increase in retail prices appeared to have become necessary following continuing increase in newsprint prices in the last few years including levy of import duty in 1981 and increase in wages and salaries cost on account of Palekar Award of these factors which were responsible for increase in prices, the imposition of import duty on newsprint was on account of State action. This aspect of the matter is not seriously disputed by the Government.

88. The pattern of the law imposing customs duties and the manner in which it is operated to a certain extent exposes the citizens who are liable to pay customs duties to the vagaries of executive discretion. While Parliament has imposed duties by enacting the Customs Act. 1962 and the Customs Tariff Act. 1975, the Executive Government is given wide power by Section 25 of the Customs Act, 1962 to grant exemptions from the levy of Customs duty. It is ordinarily assumed that while such power to grant exemption is given to the Government it will consider all relevant aspects governing the question whether exemption should be granted or not. In the instant case in 1975 when the Customs Tariff Act 1975 was enacted. 40% ad valorem duty was levied on newsprint even though it had been exempted from payment of such duty. If the exemption had not been continued, newspaper publishers had to pay 40% ad valorem customs duty on the coming into force of the Customs Tariff

Act. 1975. Then again in 1982 by the Finance Act, 1982 an extra levy of Rs. 1,000 per tonne was imposed in addition to the original 40% ad valorem duty even though under the exemption notification the basic duty had been fixed at 10% of the value of the imported newsprint. No information is forthcoming from the Government as to whether there was any material which justified the said additional levy. It is also not clear why this futile exercise of levying an additional duty of Rs. 1,000 per tonne was done when under the notification issued u/s 25 of the Customs Act, 1962 on March 1, 1981, which was in force then customs duty on newsprint above 10% ad valorem had been exempted. As mentioned elsewhere in the course of this judgment while levying tax on an activity which is protected also by Article 19(l)(a) a greater degree of care should be exhibited. While it is indisputable that the newspaper industry should also bear is due share of the total burden of taxation along with the rest of the community when any tax is specially imposed on newspaper industry, it should be capable of being justified as a reasonable levy in court when its validity is challenged. In the absence of sufficient material, the levy of 40% plus Rs. 1,000 per tonne would become vulnerable to attack. If the levy imposed by the statute itself fails, there would be no need to question the notifications issued u/s 25 of the Customs Act, 1962. But having regard to the prevailing legislative practice let us assume that in order to determine the actual levy we should take into consideration not merely the rate of duty mentioned in the Customs Tariff Act, 1975 but also any notification issued u/s 25 of the Customs Act, 1962 which is in force. Even then the reasons given by the Government to justify the total customs duty of 15% levied from March 1, 1981 or Rs. 825 per tonne as it is currently being levied appear to be inadequate. In the Finance Minister''s speech delivered on the floor of the Lok Sabha in 1981, the first reason given for the levy of 15% duty was that it was intended "to promote a measure of restraint in the consumption of imported newsprint and thus help in conserving foreign exchange". This ground appears to be not tenable for two reasons. In the counter-affidavit filed on behalf of the Government it is stated that the allegation that the position of foreign exchange reserve is comfortable is irrelevant. This shows that nobody in Government had even taken into consideration the effect of the import of newsprint on the foreign exchange reserve before issuing the notifications levying 15% duty. Secondly no newspaper owner can import newsprint directly. Newsprint import is canalized through the State Trading Corporation. If excessive import of newsprint adversely affects foreign exchange reserve, the State Trading Corporation may reduce the import of newsprint and allocate lesser quantity of imported newsprint to newspaper establishments. There is, however, no need to impose import duty with a view to curbing excessive import of newsprint. In the Finance Minister''s speech there is no reference to the capacity of the newspaper industry to bear the levy of 15% duty. In the counter-affidavit it is asserted that the extent of burden faced by the newspaper industry in India is irrelevant to the levy of import duty on newsprint. This clearly shows again that the Government had not also considered a vital aspect of the question before withdrawing the total exemption which was

being enjoyed by newspaper industry till March 1, 1981 and imposing 15% duty on newsprint.

89. The Petitioners have alleged that the imposition of customs duty has compelled them to reduce the extent of the area of the newspapers for advertisements which supply a major part of the sinews of a newspaper and consequently has adversely affected their revenue from advertisements. It is argued by them relying upon the ruling in Bennett Coleman's case (supra) that Article 19(1)(a) is infringed thereby. Our attention is drawn to the following passages in Bennett Coleman''s case (supra) which are at pages 777,778 and at page 782 (of SCR):(at pp. 118 and 120-21 of AIR):

Publication means dissemination and circulation. The press has to carry on its activity by keeping in view the class of readers, the conditions of labour, price of material, availability of advertisements, size of paper and the different kinds of news comments and views and advertisements which are to be published and circulated. The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will not be saved by Article 19(2). If the area of advertisement is restricted price of paper goes up. If the price goes up circulation will go down. This was held in Sakal Papers Case (supra) to be the direct consequence of curtailment of advertisement. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has been held by this Court to be an integral part of the freedom of speech and expression. This freedom is violated by placing restraints upon it or by placing restraints upon something which is an essential part of that freedom. A restraint on the number of pages, a restraint on circulation and a restraint on advertisements would affect the fundamental rights under Article 19(1)(a) on the aspects of propagation, publication and circulation.

The various provisions of the newsprint import policy have been examined to indicate as to how the Petitioners'' fundamental rights have been infringed by the restrictions on page limit, prohibition against new newspapers and new editions. The effect and consequence of the impugned policy upon the newspapers is directly controlling the growth and circulation of newspapers. The direct effect is the restriction upon circulation of newspapers. The direct effect is upon growth of newspapers through pages. The direct effect is that newspapers are deprived of their area of advertisement. The direct effect is that they are exposed to financial loss. The direct effect is that freedom of speech and expression is infringed.

90. In meeting the above contention the Government relying on the decision in Hamdard Dawakhana (Wakf) Lal Kuan, Delhi & Anr. v. Union of India & Ors.[1960] 2 S.C.R. 671 has pleaded in defense of its action that the right to publish commercial advertisement is not part of freedom of speech and expression. We have carefully considered the decision in Hamdard Dawakhana''s case (supra). The main plank of that decision was that the type of advertisement dealt with there did not carry with it the protection of Article 19(1)(a). On examining the history of the legislation the

surrounding circumstances and the scheme of the Act which had been challenged there namely the Drugs and Magic Remedies (Objectionable Advertisements) Act 1954 (21 of 1954) the Court held that the object of that Act was the prevention of self-medication and self-treatment by prohibiting instruments which may be used to advocate the same or which tended to spread the evil. The Court relying on the decision of the American Supreme Court in Lewis J. Valentine v. F.J. Chrestensen, (1941) 86 Law Ed 1262 observed at pp. 687-689 (of SCR):(at Pp. 563-64 of AIR) thus:

It cannot be said that the right to publish and distribute commercial advertisements advertising an individual''s personal business is a part of freedom of speech guaranteed by the Constitution. In Lewis J. Valentine v. F.J. Chrestensen it was held that the constitutional right of free speech is not infringed by prohibiting the distribution in city streets of handbills bearing on one side a protest against action taken by public officials and on the other advertising matter. The object of affixing of the protest to the advertising circular was the evasion of the prohibition of a city ordinance forbidding the distribution in the city streets of commercial and business advertising matter. Mr. Justice Roberts delivering the opinion of the court said:

This Court has unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that though the States and municipalities may appropriately regulate the privilege in the public interest they may not unduly burden or prescribe its employment in these public thoroughfares. We are equally clear that the Constitution imposed no such restraint on Government as respects purely commercial advertising. If the Respondent was attempting to use the streets of New York by distributing commercial advertising the prohibition of the Code provisions was lawfully invoked against such conduct.

It cannot be said, therefore, that every advertisement is a matter dealing with freedom of speech nor can it be said that it is an expression of ideas. In every case one has to see what is the nature of the advertisement and what activity falling under Article 19(1) it seeks to further. The advertisements in the instant case relate to commerce or trade and not to propagating of ideas; and advertising of prohibited drugs or commodities of which the sale is not in the interest of the general public cannot be speech within the meaning of freedom of speech and would not fall within Article 19(1)(a). The main purpose and true intent and aim, object and scope of the Act is to prevent self-medication or self-treatment and for that purpose advertisements commending certain drugs and medicines have been prohibited. Can it be said that this is an abridgement of the Petitioners'' right of free speech? In our opinion it is not just as in Chamarbaugwalla's case 1957 S.C.R. 930 it was said that activities undertaken and carried on with a view to earning profits e.g. the business of betting and gambling will not be protected as falling within the guaranteed right of carrying on business or trade, so it cannot be said that an advertisement commending drugs and substances as appropriate cure for certain

diseases is an exercise of the right of freedom of speech.

91. In the above said case the Court was principally dealing with the right to advertise prohibited drugs, to prevent self-medication and self-treatment. That was the main issue in the case. It is no doubt true that some of the observations referred to above go beyond the needs of the case and tend to affect the right to publish all commercial advertisements. Such broad observations appear to have been made in the light of the decision of the American Court in Lewis J. Valentine v. F.J. Chrestensen (supra). But it is worthy of notice that the view expressed in this American case has not been fully approved by the American Supreme Court itself in its subsequent decisions. We shall refer only to two of them. In his concurring judgment in William B. Cammarano v. United States of America, (1959) 358 US 498: 3 Law ed 2d 462 Justice Douglas said "Valentine v. Chrestensen

Held that business of advertisements and commercial matters did not enjoy the protection of the First Amendment, made applicable to the States by the Fourteenth. The ruling was casual, almost off hand. and it has not survived reflection". In Jeffrey Cole Bigelow v. Commonwealth of Virginia, (1975) 421 US 809: 44 Law ed 2d 600 at p. 610 the American Supreme Court held that the holding in Lewis J. Valentine v. F.J. Chrestensen (supra) was distinctly a limited one. In view of the foregoing, we feel that the observations made in the Hamdard Dawakhana''s case (supra) are too broadly stated and the Government cannot draw much support from it. We are of the view that all commercial advertisements cannot be denied the protection of Article 19(1)(a) of the Constitution merely because they are issued by businessmen. In any event the Government cannot derive any assistance from this case to sustain the impugned notifications.

92. It was next urged on behalf of the Government that the levy of customs duty on newsprint was not strictly a levy on newsprint as such since though customs duties were levied with reference to goods, the taxable event was the import of goods within the customs barrier and hence there could be no direct effect on the freedom of speech and expression by virtue of the levy of customs duty on newsprint. Reliance was placed in support of the above contention on the decision In Re: The Bill To Amend S. 20 Of The Sea Customs Act, 1... Vs. That decision was rendered on a reference made by the President under Article 143 of the Constitution requesting this Court to record its opinion on the question whether the Central Government could levy customs duty on goods imported by a State. The contention of the majority of the States in that case was that the goods imported by them being their property no tax by way of customs could be levied by reason of Article 289 (1) of the Constitution which exempted the property of a State from taxation by the Union. This Court (majority 5. minority 4) held that in view of Clause (1) of Article 289 which was distinct from Clause (2) thereof which provided that nothing in Clause (1) of Article 289 would prevent the Union from imposing or authorising the imposition of any tax to such extent, if any as Parliament might by law provide in respect of a

trade or business of any kind carried on by or on behalf of a State or any operations connected therewith or any property used or occupied for the purposes of such trade or business or any income accruing or arising in connection therewith and the other provisions of the Constitution which enabled the Union to levy different kinds of taxes, customs duty levied on the importation of goods was only a tax levied on international trade and not on property. The Court further held that the immunity granted under Article 289 (1) in favour of States had to be restricted to taxes levied directly on property and even though customs duties had reference to goods and commodities they were not taxes on property and hence not within the exemption in Article 289(1). The above decision is again of very little assistance to the Government since it cannot be denied that the levy of customs duty on newsprint used in the production of newspapers is a restriction on the activity of publishing a newspaper and the levy of customs duties had a direct effect on that activity. There exists no analogy between Article 289 (1) and Article 19(1)'' (a) and (2) of the Constitution. Hence the levy cannot be justified merely on the ground that it was not on any property of the publishers of newspapers.

93. Our attention has been particularly drawn to the statement of the Finance Minister that one of the considerations which prevailed upon the Government to levy the customs duty was that the newspapers contained ''piffles''. A ''piffle'' means foolish, nonsense. It appears that one of the reasons for levying the duty was that certain writings in newspapers appeared to the Minister as ''piffles''. Such action is not permissible under our Constitution for two reasons:(i) that the judgment of the Minister about the nature of writings cannot be a true description of the writings and (ii) that even if the writings are piffles it cannot be a ground for imposing a duty which will hinder circulation of newspapers. In this connection it is useful to refer to the decision of the American Supreme Court in Robert E. Hannegan v. Esquire, Inc. (1945) 327 US 146 in which it was held that a publication could not be deprived of the benefit of second class mailing rates accorded to publications disseminating "information of a public character or devoted literature, the sciences, arts, or some special industry" because its contents might seem to the Postmaster General by reason of vulgarity or poor taste, not to contribute to the public good. Justice Douglas observed in that decision thus:

It is plain, as we have said that the favorable second-class rates were granted to periodicals meeting the requirements of the fourth condition so that the public good might be served through a dissemination of the class of periodicals described. But that is a far cry from assuming that Congress had any idea that each applicant for the second-class rate must convince the Postmaster General that his publication positively contributes to the public good or public welfare. Under our system of Government there is an accommodation for the widest varieties of tastes and ideas. What is good literature what has educational value, what is refined public information what is good art varies with individuals as it does from one generation to another. There doubtless would be a contrariety of views concerning Cervantes''

Don Quixote Shakespeare''s Venus and Adonis or Zola''s Nana. But a requirement that literature or art conform to some norm prescribed by an official smacks of an ideology foreign to our system. The basic values implicit in the requirements of the 4th condition can be served only by uncensored distribution of literature. From the multitude of competing offerings the public will pick and choose. What seems to one to be trash may have for others fleeting or even enduring values.

94. Matters concerning the intellect and ethics do undergo fluctuations from era to era. The world of mind is a changing one. It is not static. The strems of literature and of taste and judgment in that sphere are not stagnant. They have a quality of freshness and vigour. They keep on changing from time to time from place to place and from community to community.

95. It is one thing to say that in view of considerations relevant to public finance which require every citizen to contribute a reasonable amount to public exchequer customs duty is livable even on newsprint used by newspaper industry and an entirely different thing to say that the levy is imposed because the newspapers generally contain ''piffles''. While the former may be valid if the circulation of newspapers is not affected prejudicially, the latter is impermissible under the Constitution as the levy is being made on a consideration which is wholly outside the constitutional limitations. The Government cannot arrogate to itself the power to prejudge the nature of contents of newspapers even before they are printed. Imposition of a restriction of the above kind virtually amounts to conferring on the Government the power to precursor a newspaper. The above reason given by the Minister to levy the customs duty is wholly irrelevant.

96. To sum up, the counter-affidavit filed on behalf of the Government in these cases does not show whether the Government ever considered the relevant matters. It says that the extent of burden on the newspaper industry imposed by the impugned levy is irrelevant. It says that the position that foreign exchange reserve is comfortable is not relevant. It does not say that the increasing cost of imported newsprint was taken into consideration. The Finance Minister says that the levy was imposed because he found ''piffles'' in some newspapers. There is no reference to the effect of the implementation of the Palekar Award on the newspaper, industry. It does not also state what effect it will have on the members of the public who read newspapers and how far it will reduce the circulation of newspapers.

97. It is argued on behalf of the Government that the effect of the impugned levy being minimal there is no need to consider the contentions urged by the Petitioners. As observed by Lord Morris of Borth-Y-Gest in Dr. Paul Borg Olivier v. Dr. Anton Buttigieg, 1967 AC 115 (PC) a case from Malta, that where fundamental rights and freedom of the individual are being considered, a Court should be cautious before accepting the view that some particular disregard of them is of minimal account. The learned Lord observed in the above case that there was always the likelihood of

the violation being vastly widened and extended with impunity. He also referred to the words of Portia "Twill be recorded for a precedent, and many an error by the same example will rush into the State", and the following passage from the American case i.e. Thomas v. Collins, (1944) 323 US 516):

The restraint is not small when it is considered what was restrained. The right is a national right federally guaranteed. There is some modicum of freedom of thought speech and assembly which all citizens of the republic may exercise throughout its length and breadth, which no State nor all together, nor the nation itself can prohibit restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and growing break down the foundations of liberty.

98. In the above decision the Privy Council cited with approval the view expressed by this Court in Romesh Thappar's case (supra) and the US Court in Martin v. City of Struthers, (1943) 319 US 141). The Privy Council observed thus:

A measure of interference with the free handling of the newspaper and its free circulation was involved in the prohibition which the circular imposed. It was said in an Indian case (Romesh Thapper v. State of Madras):

There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas and that freedom is secured by freedom of circulation. ''Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed without circulation the publication would be of little value.

99. Similar thoughts were expressed by Black, J. in his judgment in Martin v. City of Struthers when he said:

Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health Regulations of time and manner of distribution it must be fully preserved.

100. We respectfully endorse the high principle expounded by the Privy Council in the above case. Moreover in the absence of a proper examination of all relevant matters it is not possible to hold that the effect of the levy is minimal. In fact the impact of the impugned levy in these cases is not minimal at all. For example: The Tribune Trust has to pay Rs. 18.7 lacs and The Statesman Ltd. has to pay Rs. 35.9 lacs by way of customs duty on newsprint imported during 1983-84. Other big newspapers have also to pay large sums by way of customs duty annually.

101. The question in the present cases is whether the tax has been shown to be so burdensome as to warrant its being struck down? The Petitioners have succeeded in showing a fall in circulation but whether it is a direct consequence of the customs levy and the increase in price has not been duly established. It may be due to

various circumstances. The fall in circulation may be due to the general rise in cost of living and the reluctance of people to buy as many newspapers as they used to buy before. It may be due to bad management. It may be due to change of editorial policy. It may be due to the absence of certain feature writers. It may be due to other circumstances which it is not possible to enumerate. Except the synchronizing of time there is nothing to indicate that the slight fall in circulation is directly due to the levy of customs duty. One curious feature of the case is that the Petitioners have made no efforts to produce their balance sheets or profit and loss statements to give us a true idea of how burdensome the customs levy really is. On the other hand, the Government also has made no efforts to show the effect of the impact of the levy on the newspaper industry as a whole. All these years, the very exemption which they granted was an indication that the levy was likely to have a serious impact on the newspaper industry. Even now the exemption given to the small and medium newspapers shows that there is bound to be an impact. No effort has been made on the part of the Government to show the precise nature of the impact. On the other hand the case of the Government appears to be that such considerations are entirely irrelevant, though the outstanding fact remains that for several years, the Government itself thought that the newsprint deserved total exemption. On the material now available to us. while it is not possible to come to the conclusion that the effect of the levy is indeed so burdensome as to affect the freedom of the press, we are also not able to come to the conclusion that it will not be burdensome. This is a matter which touches the freedom of the press which is, as we said, the very soul of democracy. This is certainly not a question which should be decided on the mere question of burden of proof. There are factors indicating that the present levy is heavy and is perhaps heavy enough to affect circulation. On such a vital issue we cannot merely say that the Petitioners have not placed sufficient material to establish the drop in circulation is directly linked to the increase of the levy when, on the side of the Government, the entire exercise is thought to be irrelevant. Hence there appears to be a good ground to direct the Central Government to reconsider the matter afresh in the light of what has been said here.

VII

Is the classification of newspapers made for the purpose of exemption violative of Article 14?

102. We do not. however, see much substance in the contention of some of the Petitioners that the classification of the newspapers into small medium and big newspapers for purposes of levying customs duty is violative of Article 14 of the Constitution. The object of exempting small newspapers from the payment of customs duty and levying 5% ad valorem (now Rs. 275/- per MT) on medium newspapers while levying full customs duty on big newspapers is to assist the small and medium newspapers in bringing down their cost of production. Such papers do not command large advertisement revenue. Their area of circulation is limited and

majority of them are in Indian languages catering to rural sector. We do not find anything sinister in the object nor can it be said that the classification has no nexus with the object to be achieved. As observed by Mathew, J. in the Bennett Coleman's case (supra) it is the duty of the State to encourage education of the masses through the medium of the press under Article 41 of the Constitution. We, therefore, reject this contention.

VIII

Relief

103. Now arises the question relating to the nature of relief that may be granted in these petitions. These cases present a peculiar difficulty which arises out of the pattern of legislation under consideration. If the impugned notifications are merely quashed, they being notifications granting exemptions, the exemptions granted under them will cease. Will such quashing revive the notification dated July 15, 1977 which was in force prior to March 1, 1981 under which total exemption had been granted? We do not think so. The impugned notification dated March 1,1981 was issued in super session of the notification dated July 15, 1977 and thereby it achieved two objects - the notification dated July 15,1977 came to be repealed and 10% ad valorem customs duty was imposed on newsprint. Since the notification dated July 15, 1977 had been repealed by the Government of India itself it cannot be revived on the quashing of the notification of March 1, 1981. The effect of such quashing of a subsequent notification on an earlier notification in whose place the subsequent notification was issued Has been considered by this Court in B.N. Tiwari v. Union of India and Ors. [1965] 2 S.C.R. 421 . In that case the facts were these: In 1952 a ''carry forward'' rule governing the Central Services was introduced whereby the unfilled reserved vacancies of a particular year would be carried forward for one year only. In 1955 the above rule was submitted by another providing that the unfilled reserved vacancies of a particular year would be carried forward for two years. In T. Devadasan v. The Union of India & Anr. [1964] 4 S.C.R, 680 the 1955 rule was declared unconstitutional. One of the questions which arose for consideration in this case (Tiwaris case (supra)) was whether the 1952 rule had revived after the 1955 Rule was struck down. This Court held that it could not revive. The following are the observations of this Court on the above question:
We shall first consider the question whether the carry forward rule of 1952 still exists. It is true that in Devadasan''s case, the final order of this Court was in these terms:

In the result the petition succeeds partially and the carry forward rule as modified in 1955 is declared invalid.

That however does not mean that this Court held that the 1952 rule must be deemed to exist because this Court said that the carry forward rule as modified in 1955 was declared invalid. The carry forward rule of 1952 was substituted by the

carry forward rule of 1955. On this substitution the carry forward rule of 1952 clearly ceased to exist because its place-was taken by the carry forward rule of 1955. Thus by promulgating the new carry forward rule in 1955, the Government of India itself cancelled the carry forward rule of 1952. When therefore this Court struck down the carry forward rule as modified in 1955 that did not mean that the carry forward rule of 1952 which had already ceased to exist because the Government of India itself cancelled it and had substituted a modified rule in 1955 in its place, could revive. We are therefore of opinion that after the judgment of this Court in Devadasan''s case there is no carry forward rule at all, for the carry forward rule of 1955 was struck down by this Court while the carry forward rule of 1952 had ceased to exist when the Government of India substituted the carry forward rule of 1955 in its place.

104. In Firm A.T.B. Mehtab Majid & Co. v. State of Madras & Anr [19631 Supp. 2 S.C.R. 435 at 446 at page 932) also this Court has taken the view that once an old rule has been substituted by a new rule, it ceases to exist and it does not get revived when the new rule is held invalid.

105. The rule in Mohd. Shaukat Hussain Khan v. State of Andhra Pradesh[1975] 1 S.C.R, 429 is inapplicable to these cases. In that case the subsequent law which modified the earlier one and which was held to be void was one which according to the court could not have been passed at all by the State Legislature. In such a case the earlier law could be deemed to have never been modified or repealed and would, therefore, continue to be in force. It was strictly not a case of revival of an earlier law which had been repealed or modified on the striking down of a later law which purported to modify or repeal the earlier one. It was a case where the earlier law had not been either modified or repealed effectively. The decision of this Court in Shri Mulchand Odhavji v. Rojkot Borough Municipality is also distinguishable. In that case the State Government had been empowered by Section 3 of the Saurashtra Terminal Tax and Octroi Ordinance (47 of 1949) to impose octroi duty in towns and cities specified in Schedule I thereof and Section 4 authorized the Government to make rules for the imposition and collection of octroi duty. These rules were to be in force until the City Municipalities made their own rules. The rules framed by the Municipality concerned were held to be inoperative. Then the question arose whether the rule of the Government continued to be in force. The Court held:

The Government rules, however, were to cease to operate as the notification provided from the date the said Municipality put into force their independent bye-laws." It is clear beyond doubt that the Government rules would cease to apply from the time the Respondent-Municipality brought into force its own bye-laws and rules under which it could validly impose, levy and recover the octroi duly. The said notification did not intend any hiatus when neither the Government rules nor the municipal rules would be in the field. Therefore, it is clear that if the bye-laws made by the Respondent-Municipality could not be legally in force for some reason or the

other, for instance for not having been validly made the Government rules would continue to operate as it cannot be said that the Municipality had "put into force their independent bye-laws". The trial Court, as also the District Court were, therefore, perfectly right in holding that the Respondent-Municipality could levy and collect octroi duty from the Appellant-firm under the Government rules. There was no question of the Government rules being revived as in the absence of valid rules of the Respondent-municipality they continued to operate. The submission of counsel in this behalf therefore, cannot be sustained.

106. In the cases before us we do not have rules made by two different authorities as in Mulchand''s case (supra) and no intention on the part of the Central Govt. to keep alive the exemption in the event of the subsequent notification being struck down is also established. The decision of this Court in Koteswar Vittal Kamath v. K Rangappa Baliga & Co. [1969] 3 S.C.R. 40 does not also support the Petitioners. In that case again the question was whether a subsequent legislation which was passed by a legislature without competence would have the effect of reviving an earlier rule which it professed to supersede. This case again belongs to the category of Mohd. Shaukat Hussain Khan's case (supra) . It may also be noticed that in Koteswar Vittal Kamath''s case (supra) the ruling in the case of Firm A.T.B. Mehtab Majid & Co. (supra) has been distinguished. The case of State of Maharashtra etc. v. The Central Provinces Manganese Ore Co. Ltd [1977] I S.C.R. 1002. is again distinguishable. In this case the whole legislative process termed substitution was abortive because, it did not take effect for want of the assent of the Governor-General and the Court distinguished that case from Tiwari's case (supra) . We may also state that the legal effect on an earlier law when the later law enacted in its place is declared invalid does not depend merely upon the use of words like, ''substitution'' or ''super session''. It depends upon the totality of circumstances and the context in which they are used.
107. In the cases before as the competence of the Central Government to repeal or annul or supersede the notification dated July 15, 1977 is not questioned. Hence its revival on the impugned notifications being held to be void would not arise. The present cases are governed by the rule laid down in Tiwari''s case (supra).

108. Hence if the notification dated July 15, 1977 cannot revive on the quashing of the impugned notifications, the result would be disastrous to the Petitioners as they would have to pay customs duty of 40% ad valorem from March 1, 1981 to February 28, 1982 and 400% ad valorem plus Rs. 1,000 per MT from March 1, 1982 onwards. In addition to it they would also be liable to pay auxiliary duty of 30% ad valorem during the fiscal year 1982-83 and auxiliary duty of 50% ad valorem during the fiscal year 1983-84. They would straightway be liable to pay the whole of customs duty and any other duty levied during the current fiscal year also. Such a result cannot be allowed to ensue.

109. It is no doubt true that some of the Petitioners have also questioned the validity of the levy prescribed by the Customs Tariff Act, 1975 itself. But we are of the view that it is unnecessary to quash it because of the pattern of the legislative previsions levying customs duty which authorize the Government in appropriate cases either to reduce the duty or to grant total exemption u/s 25 of the Customs Act, 1962 having regard to the prevailing circumstances and to vary such concessions from time to time. The governmental practice in the matter of customs duties has made the law imposing customs virtually a hovering legislation. Parliament expects the Government to review the situation in each case periodically and to decide what duty should be levied within the limit prescribed by the Customs Tariff Act, 1975. Hence the validity of the provision in the Customs Tariff Act, 1975 need not be examined now. Since it is established that the Government has failed to discharge its statutory obligations in accordance with law while issuing the impugned notifications issued u/s 25 of the Customs Act, 1962 on and after March 1, 1981 the Government should be directed to re-examine the whole issue relating to the extent of exemption that should be granted in respect of imports of newsprint alter taking into account ail relevant considerations for the period subsequent to March 1, 1981. We adopt this course since we do not also wish that the Government should be deprived of the legitimate duty which the Petitioners would have to pay on the imported newsprint during the relevant period.

110. In the result, in view of the peculiar features of these cases and having regard to Article 32 of the Constitution which imposes an obligation on this Court to enforce the fundamental rights and Article 142 of the Constitution which enables this Court in the exercise of its jurisdiction to make such order as is necessary for doing complete justice in any cause or matter pending before it, we make the following order in these cases:

1. The Government of India shall reconsider within six months the entire question of levy of import duty or auxiliary duty payable by the Petitioners and Ors. on newsprint used for printing newspapers, periodicals etc, with effect from March 1, 1981. The Petitioners and Ors. who are engaged in newspaper business shall make available to the Government all information necessary to decide the question.

2. If on such reconsideration the Government decides that there should be any modification in the levy of customs duty or auxiliary duty with effect from March 1, 1981 it shall take necessary steps to implement its decision.

3. Until such redetermination of the liability of the Petitioners and Ors. is made, the Government shall recover only Rs. 550 per MT on imported newsprint towards customs duty and auxiliary duty and shall not insist upon payment of duty in accordance with the impugned notifications. The concessions extended to medium and small newspapers may however remain in force.

4. If, after such redetermination, it is found that any of the Petitioners is liable to pay any deficit amount by way of duty, such deficit amount shall be paid by such Petitioners within four months from the date on which a notice of demand is served on such Petitioners by the concerned authority. Any bank guarantee or security given by the Petitioners shall be available for recovery of such deficit amounts.

5. If, after such redetermination it is found that any of the Petitioners is entitled to any refund, such refund shall be made by the Government within four months from the date of such redetermination.

6. A writ shall issue to the Respondents accordingly in these cases. Parties shall, however, bear their own costs.

111. The petitions are accordingly allowed.