

**‘THE ROLE AND ACCOUNTABILITY OF THE MEDIA IN THE
INDIAN DEMOCRACY- A CRITIQUE.’**

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FOR THE Ph.D. DEGREE IN LAW

SUBMITTED BY
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UNDER THE GUIDANCE OF

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2016

CERTIFICATE

This is to certify that the work incorporated in the thesis entitled '*The Role and Accountability of the Media in the Indian Democracy- a Critique.*' For the degree of Doctor of Philosophy in the subject of Law, carried out by **Mr. S Saleel Indraneel** under the guidance of **Dr. Jyoti Dharm**, faculty of law, New Law College Pune, in the Department of Law, Bharati Vidyapeeth Deemed University Pune, during the period from 2010 to 2016.

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DECLARATION

As required by the University Rules, I hereby state that the work embodied in this thesis titled ‘The Role and Accountability of the Media in the Indian Democracy- a Critique.’ forms my own contributions to the research work, carried under the guidance of Dr. Jyoti Dharm, Faculty, New Law College Pune, Bharati Vidyapeeth Deemed University, Pune. This work has not been submitted for any other degree of this or any other University. Wherever references have been made to previous works of others, it has been clearly indicated and included in the bibliography.

Name and Signature of research student

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This thesis is an attempt to study the role and accountability of the Media in the Indian democracy. The topic selected is very challenging as various aspects are involved herein. The arena of the powers and impact of the media has increased tremendously; and to cover all these counters was not a very easy job for the researcher. The task of thanks giving and expressing deep gratitude is very difficult as the words cannot suffice to do the task; nevertheless the research student wishes to express his heart-felt gratitude and acknowledge all those for the unforgettable and invaluable contribution made in order to complete this research work.

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ABBREVIATIONS

1. A.I.R. – All India Reporter
2. A.C.- Appeal Cases.
3. A.L.D. -Andhra Legal Decisions
4. B.L.R- Bombay Law Review
5. Cr.LJ. –Criminal Law Journal
6. C.A.D – Constitutional Law Debates
7. Lah. H.C. – Lahore High Court
8. Mad. H.C.- Madras High Court
9. S.C.- Supreme Court
10. S.C.C. – Supreme Court Cases
11. S.C.R. – Supreme Court Reporter
12. S.Ct. - Supreme Court Reporter (US)
13. T.L.R.- Times Law Report
14. TRP. – Television Rating Points
15. US. – United States Report

Chapter I

Introduction

Synopsis of the chapter

Introduction

- (a) The scope of research.
- (b) Objectives of the research
- (c) The problem statement of the research
- (d) Hypothesis of the research
- (e) Nature of the research
- (f) Sources of data used in this research
- (g) The applications of the principles of research methods in the present research
- (h) Incorporation of the theories and the principles of Jurisprudence in this research.
- (i) Introduction of the topic of the research
- (j) Scheme of chapterisation
- (k) Review of literature

Chapter I

Introduction

The title of the present research is '*The Role and Accountability of the Media in the Indian Democracy- a Critique.*' As the title reflects the role of the media is assessed; along with its issues of accountability. Today, the word media is used by the general public in all the spectrums of life. It is not a surprise because no industry has grown, expanded and flourished as that of media in the present times. Under the garb of speech and expression, the media has encroached upon all the facets of life of an individual. This fact is not only applicable to the Indian soils, but is global. Not only this, the media has become so powerful that it can make or break the government by influencing the people. The public also heavily depends on the media to secure information. In this scenario the question of the accountability of powerful media arises. Is it that the media has just got a fundamental right of freedom of speech and expression which it can use as per its whim or wish? Is the media answerable at all, and if yes, to whom and how? A humble attempt has been made by the student of research in the present thesis to deal effectively with these issues.

(a) The scope of research.

This research is purely a legal research and all the sources of legislations are included in the ambit of the research. The scope of the research includes the aspects of Jurisprudence, the Constitutional law, Constitutional Assembly Debates (CAD), research methods, statutory enactments, delegated legislation in the form of rules, bylaws, orders, regulations etc, and precedents. All the above mentioned subjects are dealt with only to the extent of which they are related to the topic of the research. The scope also includes the organisations, autonomous bodies, agencies which are related to the different modes of the media. The powers, functions, limitations which are prescribed to these bodies have been included in the research. Further all the aspects which are related to the different modes of the media constitute an integral part of the scope of the research. Some fleeting reflections to the areas of Criminal Jurisprudence, Environmental Law and the International Law are made in this research, but only to the extent of their relevancy to the topic of the research.

(b) Objectives of the research

The following objectives have been identified for the purpose of this research.

- (i) To identify the rights of the media.
- (ii) To assess the limitations imposed upon the rights of the media
- (iii) To find out the methods of transgression of these limitations by the media.
- (iv) To critically analyse the concept of media trial. To assess the impact of media trial upon the public as well as the legal system.
- (v) To find out whether the media is accountable; and if yes, to what extent.
- (vi) To make an endeavour to strike a balance between the two conflicting rights, that is the right to privacy of an individual versus the right of free press to report.
- (vii) To suggest a few steps to curb the dictatorial aspirations of the media.

(c) The problem statement of the research

The main research problem is that what criteria can be evolved in order to strike a balance between the rights of the press versus the right of the individual. This problem includes the issues like what would be the restraints to be imposed upon the free press. In spite of the fact that there are a number of restrictions already prevailing over the freedom of press, but still the press has extended its scope, to such an extent that the day will not be far away when the press will rule through its pen.

(d) Hypothesis of the research.

The tentative solution in the form of hypothesis is that the media should not exceed the limits of its rights for the sake of extraneous considerations, so that the rights of the individuals are secured. It is the hunch of the present researcher, that the media does overstep its limits to gain popularity and publicity. The problem of balancing of conflicting rights can be solved if the media before reporting, itself analyses, whether their reporting is unbiased, free, well informed and neutral. Freedom of press is important for every democratic country. Every organ of the state is accountable to each other and

to the people in general. No one is above law and media shall not be an exception to this. The media should be accountable to themselves and should adhere to the ethical codes, rather than be forced by law making agency all the time.

(e) Nature of the research

Primarily this research is a doctrinal research as the library method is employed while conducting this research. So also primary sources of data collection are not used, hence this research can be classified as a purely doctrinal research. This research is a legal research as only the legal principles or precepts are analysed here. The researcher has followed the analytical and critical method in this research. The researcher has tried his best to analyse all the relevant concepts in an objective manner. The focus of this research is to give a critical evaluation of the role of the media and its impact on the public and the legal system.

(f) Sources of data used in this research

As this research is doctrinal research the sources of data involved in this research are secondary sources of data which are as enumerated below.

- (a) Text books
- (b) Reference books
- (c) Journals
- (d) Index to Indian Legal Periodicals
- (e) C.A.D
- (f) Articles
- (g) Supreme Court Reports (A.I.R, S.C.C, S.C.R)
- (h) News papers
- (i) Internet
- (j) Legislative enactments

(h) The applications of the principles of research methods in the present research

The researcher has tried to incorporate the principles of research method in this research. The steps involved in the present legal research are as follows, the identification of the problem, the formulation of hypothesis, the collection of data through the secondary sources, the organising and arranging of data, the analysis of the data, the interpretation of data and the drawing of the conclusion or the resultant based upon the interpretation of the data. The steps of the sampling techniques are not included in the research, as this research is purely doctrinal. So also the techniques of coding and decoding are not included in the research. The research design includes all the steps from the identification of the problem, till the scheme of chapterisation which are explained in this chapter of introduction.

(i) Incorporation of the theories and the principles of Jurisprudence in this research.

The relationship between fact and theory is undeniable. Every theory has to co-relate to facts and the happenings of the facts can be based upon a theory or can be explained by the theory. It is a universally known fact that the principles of Jurisprudence are the foundation of every legal system. To put it in other words, the entire fabric of laws is based upon the principles of Jurisprudence. The researcher has made an attempt to base the research on the relevant principles of Jurisprudence. The ‘concept’ of the balancing of conflicting interest, which has been evolved by the eminent jurist, Roscoe Pound- Harvard Law University; is the theme of the present thesis. The objective of this research is to provide criteria for the balancing of the conflicting interest of the media’s freedom of reporting information with the individual’s right of privacy and the rights of accused. This aspect has been dealt in detail in the present thesis. The conclusion of this research is based upon the theory of the modern natural law or the revival of the natural law. According to the revival of the natural law theory, the natural law rights should prevail within the sphere of legal limitations. No right is absolute and has to be curtailed reasonably. Hence the rights of the media as well as the

rights of the individuals cannot prevail absolutely that is without restrictions. Each right has to be limited so that another person's right can prevail. So also few other principles from Jurisprudence have been referred where ever it is thought to be necessary and relevant.

(j) Introduction of the topic of the research

The media is regarded as the founding stone of the democracy. This is because it gives to the people requisite channel to express one's own thoughts. The democracy is founded on the principle that the public has a say in the governance of the state, and the press gives them a forum to say what they want. A very different position prevails in the socialist's states which are based upon the Marxian concept, where the people are prohibited from expressing themselves against the government or the government policies. The democracy is founded exactly on the opposite principles of a socialist state, where the democracy rests upon the principle ie the government of the people by the people and for the people. So if the government is going to prevail for the people it is necessary for the government to know what the people desire or aspire. Such desires or aspirations are communicated to the government only and only by the media. That is why it is often said that the media plays a crucial role in the effective functioning of the democracy. The media plays an important role in imparting information to the public. In the absence of the media one cannot imagine the mess caused by lack of information leading to ignorance. In such a situation the public will be unable to know what the government is doing and what they are to do; in which case the society will be in a complete chaos. Realising this situation the media is granted the freedom of speech and expression through which information regarding almost all the aspects of human life should be imparted to the public at large.

The term freedom of press means, the press has the freedom to express its opinion, to inform, to disseminate the information etc. But the freedom of press does not mean that the press has got no limitations. The researcher has tried to distinguish four different but related notions of the freedom of speech,

the freedom of expression, freedom of press, and the freedom of information in the second chapter of the thesis¹.

The researcher before analyzing the different dimensions of the freedom of media has given a cursory glance to the history of the freedom of press. Aspects like the ancient modes of communication and information are briefly dealt with. The history of the freedom of press is divided into two parts:

- (i) Existence of the press in pre British era. Here the nature of the press has been described which was prevalent in the Mughal era. The informal press which prevailed in the mughal era had a very limited role to perform. The information which was gathered, was generally for the King; and the public received only very limited information.
- (ii) The status of press in British era. The role of the press changed and became wider after the East India Company set its foot on the Indian soils. The rulers were the Britishers and the ruled ones were the Indians. The Indians being the ruled ones used the press as an instrument to incite and instigate the people to join the freedom struggle. A remarkable fact to be noted here is that the press for the first time was used to impart and circulate the news. So also the evil of the pre –censorship was started by the Britishers to curtail the freedom of press. The Britishers wanted to crush the attempts of revolts of independence and they used the weapon of censorship to curtail the independence of the press. The Britishers knew that the press was capable of uprooting their rule in India and hence a number of regulations and statutory enactments were passed to curtail the press like the Indian Mirror, Samachar Darpan, Kesari². Battle between the press and British Government has been dealt in the second chapter of the thesis. The Britishers had recognised the power of the media; and this power has not only consistently, but has also rapidly grown in the present times.

¹ *Infra*; p. p.37

² *Infra*; p. 33

The founding fathers of the Indian Constitution were aware of the struggles of the press to gain freedom and were sensitive to the hurdles in the form of censorship which were faced by the press and hence decided to give a firm footing to the freedom of speech and expression.

The Constitution confers the right of freedom of speech and expression in the Article 19(1)(a) The freedom of press is included impliedly in Article 19(1)(a) of the Constitution. Hence the media enjoys the fundamental right of speech and expression. The aspect of this right has been covered in this research³.

Further the researcher has moved on to the components of the press; which includes the correlated aspects of press such as the right of printing, publishing, circulating, disseminating the information⁴.

Apart from these aspects the scope of the press is very broad and includes the right to criticize which is considered as one of the pre requisites of a healthy democracy. If the right to criticize is not incorporated in the freedom of press then the press loses its life and may become only a puppet in the hands of the government. The power to criticize, of the press is very crucial and acts as a deterrent check on the government or its officers⁵. Some other powers of the press which are scrutinised include the power to conduct interview and the power to report court proceedings. Both these powers are very important and subjects of debate. The power to conduct the interview can be exercised only if the interviewee has given the consent⁶. This technique of conducting interviews has been employed by the media on very extensive scale these days. Thus the media conducts and hypes the interviews of the prominent people, just to impart information, or for any other purpose; such issues are dealt in the forthcoming pages. The researcher has dealt with the aspects of merits of the power of the press to conduct interviews. Another most controversial power of the media is to report the court proceedings. Many a times the media while reporting the court

³ *Infra*; p. 35

⁴ *Infra*; p. 42,43

⁵ *Infra*; p. 46

⁶ *Infra*; p. 47

proceedings affects the process of the court thereby causing interference of the smooth functioning of the courts. This aspect is analysed with the relevant case laws⁷. Another controversial power of press is to report the legislative proceedings. Here the power of the press to report the legislative proceedings is in direct conflict with the parliamentary privileges. In such a situation, whether the parliamentary privileges should prevail or should they give way to the democratic right to know, which the press protects and promotes⁸. An attempt has been made to deal with such complicated issues. Aspects like the power of the press to advertise have been dealt with the help of the case laws, which have given a wide meaning to the term advertisement⁹.

Another very important power of the media which constitutes the life and the blood of the media is the power to broadcast. A detailed description of the power to broadcast has been attempted, so also the various types of electronic broadcasting have been dealt along with their impact¹⁰.

The researcher has then moved on to analyse and evaluate the press commissions which were constituted in the year 1954 and 1982; a brief account of their objectives has been outlined. The main purpose of the appointment of the commissions was to seek recommendations from them, for the development of the press. These recommendations have been analysed by the researcher.

Every right in a legal system is demarcated by limitations and so the Indian Constitution on one hand confers the freedom of speech and expression to the individuals; and on the other hand empowers the state to place the restrictions on the said freedom. Again the Constitution does not give a free hand to the state to impose restrictions, but imposes restriction of “reasonability” upon the limitations, which the state can place upon the freedom. That means the state can curtail the right of free press only by imposing reasonable restrictions on the freedom. The question which

⁷ *Infra*; p. 48

⁸ *Infra*; p. *Id*

⁹ *Infra*; p. 49

¹⁰ *Infra*; p. 57

often arises is that whether the restriction is within the purview of reasonability or not; and there are a number of judicial pronouncements dealing with the 'reasonable' aspect of the restrictions¹¹. The researcher has analysed the landmark judicial pronouncements regarding this aspect. Sometimes the judiciary has given a broad aspect to the freedom of press and sometimes, a narrow scope of right has been granted. With the help of the case laws the researcher had tried to cull out the scope of the freedom of press.

But one cannot get the exact scope of freedom of media by just analyzing the Constitutional limits, because the freedom of media is further limited by various enactments. Actually the enactments had started from the censorships which were imposed by the British Government. Some very stringent enactments which prevailed were the Gagging Act and the Vernacular Press Act. After the Constitution many enactments are passed which deal with the limitations of press and the media¹².

For the sake of the convenience, the researcher has evolved the classification of the statutes based upon the nature of the statute. If the statute puts the general restriction on press and the media, it is classified as a general statute such as the Indian Penal Code, Information Technology Act, Monopoly and Restrictive Trade Practices Act etc.

The Information Technology Act 2000 can be considered as a statute which is responsible to bring a structural change in the modes and methods employed by the media to impart the information to the public. This statute has been analysed in depth in this research. Some other statutes which impose general restrictions on the press are also analysed and evaluated herein. Another type of legislations which further curtail the freedom of speech and expression inclusive of freedom of press are the specific legislations. Such legislations are described as specific legislations by the researcher because they deal with specific aspect of restriction imposed upon the freedom of press like The Press and Registration of Books Act 1867. This statute deals with the regulation of the press, related only to the aspect of the printing of books and the

¹¹ *Infra*; p. 61

¹² *Infra*; p. 72

newspapers by the press. The issues like the impact of this statute on the freedom of press have been dealt in depth by the researcher¹³. This part of the research comprises the analysis of many more statutes¹⁴. The Official Secrets Act 1923 was enacted by the British government mainly to protect its secrets against the Indian and other foreign countries. The object of this statute was to penalise any person who leaks the official secret in any way. The question that is raised is of the utility of this statute in today's times; especially after the enactment of the Right to Information Act 2005, which has an overriding effect over the Official Secret Act¹⁵ subject to the provisional condition mentioned in the statute.

One statute which constitutes a high level mark of authoritarian view is the Prevention of Publication of Objectionable Matter Act, 1976 (repealed in 1977). This statute is no doubt repealed but is still analysed for the perusal of academic interest. The analyses of this statute points out the conditions which amount to vast curtailment of freedom and which reflect upon the government's intention to cut the throat of the press.

The Press Council Act 1978 has been dealt in this chapter for the reasons it provides for the establishment of the Press council. The origin of the Press Council has been dealt in brief, along with the powers and functions of the Press Council¹⁶. How far the recommendations of the Press Council are really implemented by the news agencies is a question which requires to be answered. The Prasar Bharati Broadcasting Corporation of India Act 1990 is considered to be the most dynamic and the liberal legislation regarding the press and media in India. This statute is termed as the most crucial statute because it has for the first time granted independence to the media from the control of the government. The main object of this statute is to promote the freedom of the press and to ensure a balanced growth and expansion of the broadcasting of the modes of the media. This statute imposes the regulations upon the modes of the media for the sake of the advancement and development of media itself. It mandates the projecting of such programs which furthers the Constitutional values.

¹³ *Infra*; p. 78

¹⁴ *Infra*; p.p. 78 - 96

¹⁵ *Infra*; p. 90

¹⁶ *Infra*; p. 92

The study on media would be incomplete without analyzing The Prasar Bharati Broadcasting Corporation of India Act 1990.

One of the landmark legislations which ensure the implementations of the principles of democracy in practise is the Information Technology Act 2000. One can state that the freedom of press and media and Information Technology Act 2000 are supplementary and complementary to each other. The Information Technology Act strengthens the right of the media. This statute brings transparency in the governance, because the access to the government records is permissible as a matter of right to the individuals. This statute acts as an indirect check on the government; the function which the media also tries to perform. Since this statute is considered to be very vital, in the protecting and promoting of the freedom of press and media, it finds place in the present study¹⁷.

Many more statutes including The Cinematograph Act 1952 have been scrutinised in this chapter with the focus of assessing the ambit of the freedom of the press guaranteed by these statutes. The Cinematograph Act 1952 seems to be very frequently challenged before the courts of law as the government has made many rules and orders under this Act, which leads to the infringement of this statute. The battle between the press and government regarding the freedom of speech and expression has been incorporated in this research work¹⁸.

The circuit of the regulations imposed on the press and media would be incomplete if the regulations made by the statutory bodies are not included here. The researcher has incorporated a number of statutory bodies, which governs the press and media.

The first and the most important body which is considered to be the fountain head of the media and broadcasting, is the Government department of Information and Broadcasting. The function of this department is to suggest such measures which would promote the imparting of the information and help in broadcasting. Further it has to perform a number of important functions which have been enumerated in this part of the thesis. The issues like whether this government department really allows the media to work independently or not, is dealt here. The statutory body like the Press Council who have been given the powers to control and regulate the press, have

¹⁷ *Infra*; p. 97

¹⁸ *Infra*; p. 108

been discussed here. Whether the Press Council has been given sufficient powers, so that they are really in a position to constitute an effective check on the press is a matter of importance, which have been included in this study. The researcher is clouded with the question as to why the Press Council is created, if it is not armed with the appropriate powers to constitute a check.

The Advertising Standard Council of India regulates the content and quality of the advertisements. The powers, the functions of the council have been analysed and assessed. If the Cinematograph Act 1952 is controversial, the central board of film censors is no exception, the rules and the regulations made by the board has given rise to a number of conflicts.

The exercise to deal with the various legislations and the statutory bodies is undertaken with the focus of finding out how these legislations, the regulations and orders made by the legislators affect the freedom of speech and expression inclusive of press. When one glances at these numerous restrictions, it is felt that the media cannot take undue advantage because its freedom is restricted by the string of legislations. So the question before the researcher is that, in the fabric of restrictions, where is the chance for the media to misuse its freedom. But the reality reveals that the media by misusing its freedom infringes the individual's rights. In such a situation what are the factors which aid and assist the media to misuse the freedom in spite of the various restrictive legislations, remains to be explored.

The crucial part of the present study consists of the role of the media and its impact upon the society. The media is one of the most important agencies in a democratic set up because it plays the crucial role of imparting information to the public. It would not be wrong to say that the taking and receiving of the information mobilises the society.

The role of the media prevalent in the ancient times, as compared to the media of the present times has undergone a tremendous change. It occurs to the mind of the researcher that the development in the other spheres of the community is responsible for the change in the role of media. The role of the media in the ancient times was only to give information regarding the wars and the whereabouts of the enemies. A little later this role of the media was enhanced, as the personal information related to

family was being sent and received. From this marginal role of the media, to the all encompassing role of today is a matter of concern and worry, because one has to see the consequences of the very diverse spectrum of the role of the media today.

The prime and the essential role of the media is to impart information. It is for the performing of this role that the media has come into existence. The media has to inform the public the information regarding the Government policies, intentions, plans and schemes. When it is allowed to do so it can be stated that the freedom of press prevails. Imparting information is a very intricate activity because the informer may project the news in such a manner that it wants the receiver to receive. The researcher attempts to find out whether the media imparts the information in an unbiased manner or not.

The function of the media is not only to impart information but also to educate the masses through information. Hence the function to impart information becomes more important as it also includes education through information. Now it has to be seen what type of education is imparted by the media through information. When the children are continuously glued to the television and watching the programs which project either anti social activities, or immoral activities; one can just imagine the quality of education imbibed by those children. The whole civilised society is founded on good ethical and moral education. The question which props up here is that should not the media be more responsible in imparting education through information. The researcher has also tried to lay down the mandates to be followed by the media when it is imparting educative information.¹⁹

The media not only informs and educates the masses but also acts as a mentor. The responsibilities of the mentor are very heavy as he is responsible for the development and achievements of his ward. The media is a very influential medium and its impact lasts for a longer period. It is for this reason that the media has become powerful and rules the minds of the people through its influence. As a mentor the media should enable the public to make an independent decision or to formulate an independent opinion. The media should perform the role only to this extent and should not indirectly by using its influence dictate to the public its own opinion. But as can be

¹⁹ *Infra*; p 117

seen today the media while imparting information colours it or twists and turns it in such a manner that the public forms the opinion which the media projects. The question is how to prevent the media from moulding the public opinion and imparting information in an objective ethical manner. Another very positive role of the media that it acts as a guardian of the individual's right. The issues which are dealt here is that, what are the modalities the press resorts to in the cases pertaining to the protection of the individual rights.

The role of the media as an informer, educator, mentor and guardian is not only very applauding but is also very beneficial to the society. As this research comprises of the critical analysis of the role of the media, it becomes imperative on the part of the researcher to assess the positive and the negative consequences of the role and the function of the media. Before one criticizes the role of the media one has to see the positive aspects of the media. The positive impact of the media is commendable. The first and the most important aspect of the media is that it makes the democracy effective and meaningful. It is the media which acts as a linkage between the government and the public; as the thoughts are exchanged of each other, only through media. The pros and cons of this aspect have been given a considerable thought in this part of the thesis²⁰. Significant impact of the role of the media is that it helps in the implementation and application of the Doctrine of Rule of Law as propounded by A.V Dicey²¹. Many a times the media assists in enforcing the Constitutional values such as equality, fraternity, nationality etc. The media enforces such Constitutional values by way of imparting information to the masses. So even if the masses are not aware of what has been embodied in the Constitution; such values are imbibed by them just because of the influential projection of the media.

The media acts as a strong agency to formulate organised public opinion. The relevance and importance of the organised public opinion²² has been adequately dealt in this research. It is only through the advertisement and programs like the beti bachao, beti padhao, building and maintenance of clean toilets, swachh Bharat, green

²⁰ *Infra*; p 123

²¹ A.V Dicey; *The Constitutional law* (8t Ed)

²² *Infra*; p 124

India, saving of water and saving of fuel etc, that the media is quite successful in promoting the social values and protecting the environment to some extent. The media is also responsible to grant aid, assistance and help to the needy people in the situations like any other catastrophe. The media provides the help lines in the cases of adverse contingency. All of these issues have been dealt under the relevant chapters

For these activities the media has to be applauded, however unfortunately this is not only the side of the impact of the media. The other dark and unhappy side which prevails as far as the impact of the media is concerned is assessed and evaluated by the researcher. Sometimes the media not only helps in the formation of the public opinion but thrusts its opinion upon the public by imparting information in such a manner that it makes the public believe, what it wants the public to believe. As a result, the society is completely misled by the media. The point to be noted here is that the media has to guide the society but it is doing exactly the opposite. The dangerous consequences of this issue have been dealt in the forthcoming pages. The media sometimes plays havoc with the public's emotions and sentiments by highlighting the scandalous news in a very catching manner. Not only this, but the media sometimes hypes the news for its personal benefits like the Television Rating Points popularly known as the TRP. These grave issues have been tackled and some suggestions have been put forward to minimise this negative impact of the media.

The liberalising policy of 1991 has a dual impact on the media. On one hand it grants independence to the media from the government control while on the other hand it has promoted unfair competition between the different channels of the media. This unfair competition among the different channels of the media has resulted in the race of, which channel projects the news first, and for doing so, the channels adopt unfair means. This unfair practise of the channel jeopardises the public opinion. The liberalising policy of 1991 and the after effects of it have been analysed in the relevant chapter. Another very grave consequence of the liberalising policy is that the media has become commercial. Now it has so happened that the guardian or the mentor or the watch dog, only projects the news in favour of the person who is able to pull the money strings. If the media indulges into 'paid news', one can just imagine

the consequences of this on the democracy, the Constitutional values and the Rule of Law. Such grave and important issues have been incorporated in the present study.

The media trial is the most popular concept which is in vogue today. The researcher has briefly dealt with the origin and the concept of media trial. In order to get exact perception of the concept of media trial in India the researcher first has dealt with the aspects which are related to the media trial in the United States of America and then England. The issues like the origin of the media trial, the extent of the right of the media to hold the media trials which prevail in the United States of America have been dealt in detail. Then what is the position of the media trial which prevails in United Kingdom is also dealt with in the light of legislative enactments. The concept of media trial prevailing in United State of America and England has been incorporated in this thesis for the reason of giving a comparative analysis. After analyzing the concept of media trial in these two legal systems, the researcher has turned his attention to the concept of media trial in India.

At the outset the researcher has dealt with the important issues of the principles of criminal justice which are completely ignored by the media trial. One of the fundamental principles of criminal jurisprudence which is the presumption of innocence unless proven guilty is totally ignored by the media trial. It is the right of the accused that he is presumed to be innocent, unless and until he is proved guilty. In the case of media trial the media without abiding to the legal issues pronounces a person to be guilty. In such a situation, not only the public opinion is created against him but also the judiciary may feel itself under the pressure of public opinion and the overpowering influence of the media. This is a very grave situation as the balance of the case may tilt in favour of the accused or it may go against him. Another important principle of criminal law which prescribes the parameter of the degree of proof is of “beyond reasonable doubt”. It means the guilt of the person shall be proved beyond reasonable doubt. In the case of media trial the person is declared to be guilty even on allegations and the degree of proof of “beyond reasonable doubt” is conveniently forgotten. The consequences of sidelining of the fundamental principles of criminal jurisprudence which endanger the system of criminal justice have been elaborately

dealt with herein²³. The adverse aspects of media trial such as moulding the public opinion, in favour or against any individual are in contravention with the ethical principles of journalism. Further the media trial even contravenes the doctrine of separation of powers and the Constitutional mandates which state that, each branch of the state has to perform the assigned functions. In case of media trial the media tries to perform the function of the judiciary to adjudicate the conflicting matters which is allocated by the Constitution. The pertinent question is who has given the right to the media to step in the shoes of the judiciary? The present researcher has dealt with these complicated issues in the forth coming pages. Further a comparison between a fair trial by the court and trial by the media has been attempted by the researcher, in which the violation of legal issues, the pressure which is imposed upon the judiciary etc are also incorporated in the relevant chapter. The media trial also has a repercussion on the social status and the image of the accused. If the media has declared a person to be guilty and the judiciary has acquitted such a person then the society believing the projections of media is not very willing to attribute the acceptable social status to him; as he has lost image and social status due to the media projecting him as a criminal. This also has another more severe impact which is losing of the faith in the judiciary. If the media has projected a person to be guilty and consequently a competent court has acquitted him then the public may have the apprehension that the person was acquitted due to extraneous consideration. The public imposes a lot of faith in the media, it always feels that media is their spokesman and functions for their rights. So also the influence of the media is so powerful that the public takes the verdict of the media to be correct, fair and objective; nobody questions the intentions and the motives of the media. So many a times it happens that the media misleads the society by conducting the media trial.

The recommendations made by the Law Commission in its 200th report, and the suggestions made by Hon'ble Mr. Justice K.G. Balakrishnan²⁴, Former Chief Justice, Supreme Court of India have been incorporated in this work. The researcher has made a humble attempt to suggest a few guiding principles which if followed by the media, would make the reporting of judicial proceedings more in consonance with the

²³ *Infra*; p 130

²⁴ Law Commission 200th report (2006)

principles of justice. The present researcher feels that there is a difference between two notions, which are media trial and media activism²⁵. The researcher has dealt in depth these two concepts. Today instead of media trial media activism would be beneficial for the society; but the media trial is popular among the public. So one has to see the factors which make the media trial so popular. These factors are elaborated and analysed in the forthcoming pages. An attempt has been made to find out whether the media trial prevails only for the commercial gains for the media or it is the public demand for such trials. One query which arises is that, is the media responsible to create the public demand. Why media trials are in demand and what alternatives can be forwarded, are the challenges faced by the present researcher.

The crucial aspect of this research work constitutes the issues and challenges of the media. The media is regarded as indispensable postulate of the society. One can compare media to a mirror which reflects the realities. The media should not twist or distort information, but merely should reflect the reality as it is. No other medium is as influential as the media, so one ponders to think as to what are the reasons for the media's highly influential powers. The researcher has analysed and accessed the theories of the media influence. Ideally the culturist theory should prevail, however in the reality; the class dominant theory of media influence prevails.

The challenges faced before the media today are very complex. The concept of paid news goes grossly against the very foundation of the democracy, as it cheats the people by giving them false or incorrect information for some monetary or other consideration. In a democratic country like India, the people rely on the media while making their choices. When the media itself misguides the people for some selfish gains, then the entire democracy is endangered. The researcher has tried to throw light on this aspect.

Cross media holdings is another impediment to democracy. Multiple channels are encouraged so that the multiple views can be appreciated, but when one person or a particular agency holds multiple channels, then the view of that person or that particular agency is projected in different ways and people tend to accept it without appreciating the other side. Few other challenges which are dealt are the glorification of crimes, low literacy rates, aliteracy etc. Some aspects of the social media is also

²⁵ *Infra*; p 149

dealt in this research. The advantages and the disadvantages of the social media along with the social implications of the social media are dealt in detail. Further aspects of criminal activities on the social media are dealt with in brief. An important aspect involved in social media is violation of right to privacy. It can be stated that the social media channels are innocently or neutrally conducting their functions, and only when their applications are misused the danger of violation of right to privacy arises.

After elaborating and evaluating all the aspects mentioned above the researcher comes to the conclusion that the media should perform its function neutrally, objectively and ethically. Only then the adverse impact on the media will be minimised.

(k) Scheme of chapterisation

This research is divided into six chapters, and the scheme of chapterisation is as follows :

Chapter I - Introduction²⁶ of this research deals with the research methodology, which is followed while conducting this research. The objectives, the research problem along with the hypothesis the nature of research, the sources of data are mentioned in this research. It is a well known fact that the principles of jurisprudence are not only very important, but are considered as the fundamental postulates of every legal system. Hence any concept from a legal system has to be based or is originated from the arena of jurisprudence. Keeping this in mind the researcher has tried to apply the research aspects to some of the principles and theories of Jurisprudence. The relevant principles and theories and principles of Jurisprudence, which have been incorporated in this research, have been mentioned in this chapter.

Chapter – II Freedom of Press: The Constitutional Perspective²⁷. The nucleus of this research is the role of the media. Over the years the media has developed as a significant tool to effectively exercise the freedom of speech and expression. To analyse the role of the media, it becomes imperative for the researcher, to deal with the history of the press. The history of the press has been analysed into two segments (A) the pre British era (B) and the British era. Through the historical angle one can easily appreciate as to how the press has performed the various roles from the Mughal period to the British period. After dealing with the history, the researcher has dealt in depth, with the constitutional status of the freedom of press. The researcher has made

²⁶ *Supra* p 1-4

²⁷ *Infra* p 29

a humble attempt to deal with the constitutional provisions, which deal with the press, the rights of the press, the powers of the press. It is a well known principle that no right can be absolute and the scope of the right can be elucidated by demarcating the restrictions imposed on that right, and hence the restrictions are dealt in this chapter. This chapter also contains the reports of the Press Commissions. Lastly the chapter deals with judicial activism, which give an insight as to how the judiciary time and again have protected the press, when the rights were being encroached upon, and also has imposed reasonable restrictions upon the press to uphold the spirit of justice.

Chapter III - Important Legislations Relating to Media in India, the researcher has stated briefly about the some important legislations which govern or control the media. Apart from the constitutional provisions there are number of statutes which deals with the press. It becomes imperative on the researcher to deal with these statutes exhaustively (only the provisions related to the press) to make his research comprehensive and complete. Sixteen statutes have been divided according to their content into two groups, namely general legislations and specific legislations. Further some statutory bodies which deal with the aspects of the press are also dealt in this chapter.

Chapter IV- Role of Media in Democracy, the researcher has tried to examine the role of media in a democratic set up, especially in a country like India, where the people rely heavily on the media, and the media plays a pivotal role in forming the opinion of the people. This chapter is one of the most important limb of this research. The researcher has dealt in detail the various counters of the role of the media, to mention a few, role of a informer, mentor, guardian, educator etc. As the media dispenses a central, conspicuous and the vital role, it is said to be the oxygen of the democracy. To put it in other words, the democracy survives only because of the effective and the objective functioning of the press. After dealing comprehensively with the role of the press, the researcher has turned his attention to another crucial aspect of the research that is the impact of the media upon the society. In today's times no agency is as influential as the media as it has tremendous potential to influence the masses on the large scale in all walks of life; which is why, the media is regarded as omnipotent. The impact of the media is dual; on one hand there is positive impact of the media upon the society, on the other hand there is a negative impact of the media on the society. The positive as well as negative impact of the media, upon the society has

been dealt exhaustively in this chapter. Further the researcher has also projected as to how the media sometimes in a quest to provide spicy news, ends up infringing the rights of the accused, paving way for media trial. In order to study the impact of the media trial, the researcher has also done a comparative analysis of the position of media trial prevalent in the United Kingdom, United States of America, and India.

Chapter V- Issues and Challenges before the Media, the researcher has tried to analyse the responsibilities of the media. The media is not only bridled with the task of shouldering a very heavy, important and crucial duty in the present times; but also has to face stiff challenges. At the outset of this chapter, the researcher has dealt with the issues, like the responsibilities of the media and the theories of the media influence. Further, the researcher has tried to deal with the challenges which are faced by the media, such as problem of paid news, cross media holdings, neglecting important issues, aliteracy etc. Later the researcher has also dealt with the concept of social media, its development and its legal implications. Another important aspect of social media vis a vis the right to privacy has also been dealt in this chapter. However the vast and diverse subject of the social media, the researcher has only given a brief overview of the concept of the social media and has refrained from dealing with the minute details of the concept of the social media.

The final chapter of this research deals with the concluding remarks, a few suggestions in the light of the objectives of this research are also made, so also the researcher has tried to state that his hypothesis is correct.

(K) Review of literature

- (i) Manoj Ranjan; *Media in Modern Law* (Deep & Deep Publication 2011)
- (ii) Ram Jethmalani, D.S. Chopra *Cases and Materials on Media Law* (Thomson Reuters 2012)
- (iii) Madhavi Goradia Diwan; *The Facets of Media Law* (Eastern Book Company 2013)
- (iv) Dr. S.R. Myneni *Media Law* (Asia Law House 2014)
- (i) The book '*Media in the Modern India*' written by Dr. Manoj Ranjan consists of 318 pages and is divided into five chapters. The first chapter is the introduction, which introduces the topic and deals with the pioneers of Indian Journalism. Further the author has dealt with the types of journalism such as print journalism, advocacy journalism, yellow

journalism, environmental journalism etc. The second chapter consists of Media in Indian perspective: the Gandhian era. This chapter deals less with the concept of history of the media and more with the Gandhiji's journey to journalism. Each and every minute details of Gandhiji's freedom movement and the role of the media in the freedom movement have been dealt elaborately in this chapter. Media and the Globalised world is the title of the third chapter of this book. Initially in this chapter, author has commented on the impact of the globalisation and the technology upon the media. Further the author has analysed the journalism freedom in twenty five countries altogether. So also the comparative analysis of the legal restraints prevalent in various countries has been dealt with, along with the problem of the global journalism.

The fourth chapter deals with the concept of media trial. Issues like the political expedience, ethics of the sting operations, violation of the law and the sting operation, impact of the pre-trial publicity etc, has been dealt with. The author is of the view that the media should be regulated by evoking the courts power to punish for contempt. Further he has expressed that the media trial has more negative impact than the positive.

The last chapter is titled as the impact and analysis. In this chapter the author has analysed the role of media from pre independence till to date. The author is very critical about the role of the media and has stated that the media should not indulge in shallow reporting for any personal or professional gains, but only be a neutral messenger.

- (ii) The book, *Cases and Material on Media Law*, authored by Ram Jethmalani and D.S. Chopra, consisting of 1675 pages, and ten chapters; is a very exhaustive and informative text on Media Law. The authors of this book have analyzed not only the constitutional provisions, but also almost all the statutory provisions relating to the media law. The endeavor of the authors was to analyze the judicial pronouncement which falls under the legislative enactments related to media law. In this book, first and foremost, the constitutional provisions related to freedom of speech and expression is discussed in detail with ample case laws. The complicated

counters of freedom of speech and expression have been explained with the help of case laws. A whole chapter has been devoted to the limitations on the freedom of speech and expression. The term reasonable restriction is discussed at length in the light of case laws. The authors have dealt with some of the restrictions on the freedom of press at great length. The act of defamation which occupies, a conspicuous place in the restrictions on the freedom of speech and expression is dealt comprehensively. A whole chapter has been devoted to defamation including the provisions of the Indian Penal Code relating to defamation. As compared to defamation the author has dealt with the concept of contempt of court, more exhaustively. How contempt of court is a limitation on the freedom of press has been illustrated by the Supreme Court cases. The restriction of the obscenity has also been dealt in brief by the author. The concept of Trial by Media has been handled by the authors with the help of illustrations in a very objective manner. Further the authors of this book have explained and analyzed no less than twenty five legislative enactments pertaining to media law. Each statute is systematically and comprehensively dealt with. Each provision of the statute has been stated and the amendment by which it was inserted in the statute has been stated in the book. Even the original statutes and the amended versions are included in the book. The exhaustive text pertaining to the statutes reflects upon the author's efforts taken to write in detail the content, the sections, the substituted and amended versions of the parts of the states.

No doubt that this book is very a comprehensive study material for the students of Media Law. It contains the case laws as well as the statutes which are related to media law. The remarkable aspect of this book is that it contains most of the statutes related to Media Law. The students of Media Law can at one glance and in one text book can find the case laws as well as the statutes pertaining to media law.

- (iii) The Book *Facets of Media Law*, is authored by Madhavi Gorakh Diwan. The book deals with the multiple dimensions of the various media laws and consists of 638 pages and seventeen chapters.

This book in its first chapter deals with various dimensions of freedom of press, like Right to circulate, right to receive information, right to report legislative proceedings, right to report judicial proceedings etc. The right to freedom of speech and expression is considered to be the offshoot of the Article 19(1)(a) of the Indian constitution. There is a lot of scope of judicial activism, and the judiciary has from time to time protected the freedom of press and media, whenever there was an attempt by the legislature to wrongfully curtail the same. This book also provides various cases laws where the judiciary has successfully protected the rights of the press and media.

However no right is absolute and the right of freedom of speech and expression also comes with certain limitations. In the very same chapter the limitations imposed on the media, under Article 19(2) are also mentioned. Sometimes, the need arises, where the judiciary has to restrict or limit the right of the press and media in the interest of justice, a glaring example of which is the pre censorship on cinematograph film. In the second chapter a very sensitive issue like the morality, obscenity and the censorship is very well handled by the author. The author does not prefer the rigid standards of the morality as laid down by the law or by the traditional tenets. She further states that the attempts to prohibit a publication because of indecency or immorality have adverse effect. It is difficult in today's era of technology, to abide by the traditional parameter of morality and decency. The author further has given guideline to the judiciary to interpret the laws in a liberal manner so as to expand the scope of the terms indecency and immorality.

A number of cases regarding the contempt of court have been very well analysed in this third chapter, the author has stated that a few criticisms on the judiciary, will not hamper the reputation of the judiciary and its high respect. The fourth chapter deals with the defamation. The author has dealt this chapter in great detail. All the ingredients for the offence of defamation are mentioned. The chapter is rich with case laws.

With the development of media, one of the most affected legal rights is, the right to privacy. The fifth chapter deals with this aspect. According to the author, in today's age of communication and information, the right against which a heavy

prejudice is caused is the right to privacy. In other countries there are several legislations which are intended to protect the privacy of the individuals, the law in India to that effect is not yet developed. In this chapter, the sting operation is also dealt with considerable detail, along with its legal implications.

The concept of Copyright has been adequately dealt in the sixth chapter. The author has dealt with almost every aspect of copyright law concerning the media. There are immense judgements of various High Courts on the issues of copyright.

The seventh chapter deals with cinema. In this chapter the author has dealt with the Cinema as an instrument of exercise of right of speech and expression, right to portray the historical events etc. The author has also dealt in detail about how the visual medium is more influential. Various judgements and the opinion of the judges have been analysed in a remarkable fashion. The author has not only dealt with the Cinematograph Films Act 1952 in considerable detail, but also has at length dealt with the concept of censorship. Madhavi Gordia Diwan has also mentioned the regulations of the cinema halls, and has concluded the chapter with the self regulations.

The rights of publicity have been dealt in a concise manner in the eighth chapter of this book. The right to information constitutes the spirit of the press and the media which occupies an important place in the book. Several statutes, which deal with the right to information, have been briefly dealt with. The salient features of Right to Information Act 2005, has been dealt in lucid manner. Apart from these aspects, right to information in United Kingdom and European Court has also been mentioned. The aspect of hoarding political advertisements and paid news etc has been covered under the chapter of advertising.

The eleventh chapter consists of a very controversial aspect – that is the hate speech. The comparative analysis of the legal provisions of hate speech has been incorporated in this chapter. The issues of the parliamentary privileges along with the leading case laws have been dealt in chapter number twelve. The author have urged for the need for codifications in this respect. The reporting of the judicial process has been discussed in the light of the importance of open justice rules, which includes the concept of media trial in chapter thirteen. Media cannot function without the system of broadcasting; hence the concept of broadcasting is

dealt in detail in chapter fourteen of this book. Each and every aspect of the broadcasting from the evolution of the broadcasting till the TRAI recommendations has been dealt exhaustively. A cursory glance has been given to the concept of taxation on the media including the impact of taxation on the circulation of the newspapers.

The sixteenth chapter can be considered as the highlight of the book, which contains the emerging trends, media ethics and regulations. The last chapter that is chapter seventeen deals with the number of statutes which can be considered as the historical foundation of the right to media and the press

(iv) The book '*Media Law*' written by Dr. S.R. Myneni consists of 560 pages and is divided into five units and further sub divided into twenty three chapters.

The first unit deals with the meaning, characteristics and history of the mass media. It also deals with the classification where the media is classified as print media, books, magazines, newspapers etc. Even the media such as mobiles, video games, blogs etc are discussed. The organisational structure and management of the mass media are also dealt here in. Along with the impact and importance of the mass media on the people, the author has pointed out the difference between the visual and the non visual media. The last part of the unit consists with the number of self regulation codes.

The second unit begins with the meaning and the concept of the press. The constitutional provision of the freedom of speech and expression, inclusive of freedom of press, has been dealt in detail. The entire unit has been devoted to analysing of thirty one statutes. Some statutes are dealt in detail such as The Press and book Registration Act 1867, The Press Council Act 1978, The Contempt of Courts Act 197. Whereas the other statutes are only dealt partially to the extent of their relation to the concerned unit, such as the Official Secret Act 1923, Civil Defence Act 1968, Indian Penal Code 1860 The Criminal Procedural Code 1973 etc.

The entire third unit is devoted to 'films'. Aspects such as origin and impact of film, role of dramas, film censorship, are dealt herewith. The Cinematography

Act 1952, along with the rules and orders 1961 are dealt extensively in this unit. Further the author has dealt with cine workers welfare, many other rules and orders related to this statute in the same unit.

Electronic broadcasting media radio and television constitute the content of unit four of this book. The concepts of electronic broadcast media, effects of television on the people etc are dealt here with. Government policies along with the freedom to telecast are also dealt upon. The Prasaar Bharati Act 1997 and the rules made there under are also dealt in the same unit.

The fifth unit deals with the right to information. The salient features of the Right to Information Act 2005 are discussed exhaustively and extensively under this unit.

CHAPTER—II

FREEDOM OF PRESS: THE CONSTITUTIONAL PERSPECTIVE.

“Freedom of Press is an article of Faith with us, sanctioned by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation.”

: Former Prime Minister Rajiv Gandhi

Synopsis of the chapter

1. Introduction
2. History of press
 - (a) Aspects related to the freedom of press
 - (b) Existence of Press in Pre- British era
 - (c) Status of press in British era.
3. Freedom of press – Constitutional status.
 - (a) Preamble
 - (b) Constitutional provision – Article 19(1) (a)
 - (c) Importance of Freedom of Speech and Expression and Freedom of Press
 - (d) Rights of press
 - (e) Scope of powers of the press
 - (f) Restrictions on freedom of press and media.
 - (g) Press Commissions
4. Judicial activism and the press.
5. Concluding remarks.

Introduction

For the democratic functioning of a society, freedom of expression has always been emphasized as an essential and fundamental base of the society. Freedom of speech and expression which includes the freedom of press²⁸ is considered as the backbone of the democratic society. The extent of the freedom press enjoyed by the press is regarded as the parameter or credentials of democracy of a state. The Press plays an important role because it provides all comprehensive and objective information of all aspects of the country's Economic, Political, Social, and Cultural aspects.

If the democracy has to be meaningful and function effectively, then a free press is a *sine qua non*. Which is why very often the freedom of press is described as the oxygen of democracy; and without which a democratic society cannot survive. It is visibly evident, especially since Independence, a free and vigilant Press has acted as a vital agency to curb corruption and injustice. In addition, another important role, the press plays is to formulate the public opinion which helps on one hand imparting the knowledge to the society and on the other hand restraining the tyrannical actions of the government.

Right of freedom of speech and expression is incorporated in Article 19 of the Universal Declaration of the Human Rights, 1948. It states that everyone has a right to hold opinion without interference. This right of freedom of expression includes the right to hold opinions to receive and impart information either orally or in writing or in any other form through any of the agencies of the media. Article 19 of the International Covenants on Civil and Political Rights 1976 also incorporates the right of freedom of speech and expression. In India the right of freedom of speech and expression is incorporated in 19(1)(a) of the Indian Constitution. This right of freedom of speech and expression is a fundamental right in the Indian legal system. The right to free press does not exist independently and is incorporated in the right of freedom of speech and expression; and hence the right to free press is regarded as a fundamental right.

The press is regarded as the fourth pillar of democracy, as it is a potent check on the policies of the government, which are formulated with malafied intentions. The press also acts as a means for keeping the elected officials responsible to the people who are

²⁸ *Infra*; p. 37

supposed to serve. The press not only brings to the notice of the society, the crimes, which otherwise would have gone unnoticed; but also plays a crucial role in initiating legal proceedings in such crimes, thereby ensuring justice²⁹.

The literal meaning of 'Freedom' means absence of control or lack of interference from any authority; so also it means no restrictions. Here freedom of press means the right or the liberty to print, publish, or paint without any interference from the state or any other public authority. But according to the principles of Jurisprudence, no right or freedom or liberty can exist absolutely without restrictions; hence freedom of press is also demarcated by number of restrictions.³⁰ So here freedom of press means the liberty to print, publish, or paint within the ambit of rational and reasonable restrictions. The whole game is that, what should be the sphere or area of freedom and what should be the demarcating lines of that freedom. When it is said that the freedom of press prevails, then it means that liberty of the press exists within the brackets of restrictions. The crucial aspect is where one should draw the demarcating lines of restrictions; and how much sphere should be allowed for the freedom of press.

1. History of the press

(a) Aspects related to the freedom of press

Expressing oneself is inherent in a human being, which is beyond the scope of any legal parameters and hence the freedom of press in a crude form has always prevailed since ancient times. To put it in other words freedom of press has not prevailed because of any legal sanctions, but is born with the human being. The very first signs of the press are visible in the writings and paintings on stones, woods and walls several centuries before Christ. In India many great Emperors had carvings, like Emperor Ashoka's edicts on stone which are seen even today. After the invention of paper, freedom of press started getting a concrete shape in the form of state records pertaining to the messages from the spies. However this was a rudimentary form of press. Later not only the messages were being sent, but important messages were being sent throughout the region with the help of some crude method of communication. Letters, bringing news are considered to be the first form of

²⁹ *Infra*; p. p.136-149

³⁰ *Infra*; p. 59

newspapers. Such letters bringing news were called as 'Newsletters' and were regularly issued during the Mughal and the Hindu regime. This practice has continued until the East India Company arrived on the soils of India.

(b) Existence of Press in Pre- British era

In India the first reference of press can be traced to the Muslim era. The Mughal rulers used to select efficient people and hire them for reporting to them the position of their kingdom. Such hired reporters had to send to their king, the messages regarding the grievance of the masses and the expectations of the people. They also had to inform to their king about the corruption and injustice prevailing in his court and region. Even the wants, needs, necessities, desires, aspirations had to be reported to king by such informants. So the king became aware of these issues through the messages sent by those informants. This can be regarded as the form of press prevailing in India. Even in those times independency of the informants (press) needed to be secured, and hence these people were directly appointed by the king. They were not only highly paid but also their tenure was secured as they could be removed only by the king himself and no one else. Hence they could not be influenced by any court officer, irrespective of his rank, and could report freely and fearlessly. This policy played a significant role in maintaining the empire for centuries and can be regarded as the foundation of free press.

If compared to the modern era, the press prevailing in Mughal period can be termed as an in house circulation rather than public circulation. This in house circulation served an important function that is, to give guidelines to the king for better administration. Giving guidelines to the government for better governance is the most essential and fundamental function of the press, which was fulfilled by the role of informants during that era.

Here it is important to note that this informal press in pre-British period was not intended for the circulation of the general public. The only purpose of this system was to provide information to the king, and enable him for better administration. The major difference was that such reports were not accessible to general public but were prepared exclusively for the king.

(c) Status of press in British era.

It is already been seen in the previous pages that the essence of press prevailed even before the Britishers came to India. Nevertheless, the Britishers developed the concept of press to a great extent. The establishment of the system of press became more refined after the industrial revolution. In 1674, the first printing press was established in Bombay. In 1772 the second printing press was established in Madras.

In 1776 William Bolts, a former employee of the East India Company had simply expressed his intention to start a newspaper. To further his intention he only pasted a notice on the gates of the Council Hall intimating the people, that he had in his possession 'in manuscript', and had many things to communicate which were of utmost concern to every individual. William Bolts had to face the axe of censorship, even before he actually started the newspaper since he was asked to leave Calcutta and proceed to Europe.

In Calcutta first printing press was started in 1779, and the first newspaper was started in 1780 by James Augustus Hickey, an Irish person. Hickey wanted it to be known to the society that this paper was free from any political influence and hence he named it as "A Weekly Political and Commercial Paper open to All Parties but Influenced by None". In his weekly, Hickey had criticized the policies of Lady Warren Hastings. Warren Hastings was the then Governor General of India. He immediately used his powers and issued an order for seizure of the printing types. Thus in March 1782 the paper was closed. The life of this paper was very short because the executive authority had cut the throat of freedom of press. The battle between the free press and its suppression by the executive authority has become the bone of contention since then till to date.

For the first time the censorship was introduced in the year 1795. The classic example of the pre censorship can be seen in the case of the 'Madras Gazette', wherein it was asked to submit to the Military Secretary all the general orders of the Government for censorship before publication. The British Government resorted to three methods to curb the right of free press.

- (i) Pre-censorship
- (ii) The denial of postal privileges
- (iii) Deportation of the editor and publisher.

The first Regulations of censorship were promulgated by Marquess of Wellesley which continued until 1799. The Wellesley regulations involved the following aspects

- (i) It required the newspapers to print the names of the printers, publishers and editors.
- (ii) It also required to submit all the material for pre-censorship by the Secretary to Government of India.

Warren Hastings abolished all these above regulations.

The Bengali newspaper Samachar Darpan was published in 1818. The year 1822 is a landmark year because the Bombay Samachar was published in this year. The Bombay Samachar is very famous and is still prevalent today and is the oldest newspaper in Asia.

The main focus of the Indian newspapers was in those days was mainly the following

- (i) To unite the Indians and form groups
- (ii) To awaken the notions of nationalism among the Indians.
- (iii) To inspire the people to join the freedom movement.
- (iv) To highlight and criticize the discriminating policies of the British Government.
- (v) To demand the civil rights for the Indians.

The paper Indian Mirror was in line with the above objectives and was popular. Girish Chandra Gosh started the newspaper, Hindi Patriot which strongly demanded the appointment of Indians at high posts. The proprietors of Amrita Bazaar Patrika which was a weekly, were tried and convicted for sedition because it was very critical of the policies of the government.

British rulers imposed a number of legal restrictions on the press mainly to curb the freedom movement. As J. Natrajan says, “the first two decades of the 19th century saw the imposition of a rigid control of the press by Lord Wellesley and Warren Hastings³¹.” The newspaper regulations not only controlled the circulations but even a strict watch on the content of newspapers was kept for example the Adams Regulations of 1818 controlled the content of the newspapers. Crown rule in India also imposed restriction on newspapers.

³¹ Jain M.P ., *Legal History*

Gangadhar Bhattacharya started the first Indian owned newspaper, the Bengal Gazette. Inspired by this newspaper, several newspapers were published, and hence the press had started making rapid strides. Vernacular papers started receiving wide appreciation and readership like Urdu and Persian papers in north-west India, the Marathi in Maharashtra, and Gujarati in Gujarat press had started to make their presence felt. By 1850, newspapers in Hindi and Malayalam, Kannada, Tamil, Oriya, Assamese and Punjabi appeared.

The 1857 revolution had tremendous limiting impact on the freedom of press in British India.

Lord Lytton, knew that the foundation of the freedom movement was the press and was worried over the increased impact of the writing in the press, especially the language press. Hence he passed the draconian legislation to almost uproot the right of free press. With this view he enacted the Vernacular Press Act on March 1, 1878. This Statute came down heavily on the press. Under this regulation, any District Magistrate or a Police Commissioner was empowered to take any of the following action

- (i) To force the printer and publisher of a newspaper to agree not to publish certain kinds of material,
- (ii) To demand security,
- (iii) To confiscate any printed matter, if it was deemed to be objectionable.

Because of such wide powers granted to the District Magistrate and also to police commissioners, The Vernacular Press Act, 1878 was the greatest blow to the freedom of the Press in India. This is why the Vernacular Press Act has been nick named as the Gagging Act, as it gagged the voice of the free press.

In the later years the freedom of press had to face a lot of hurdles because of many legislations passed by the British government. To name a few - Sections 124-A and 505 of the Indian Penal Code, 1860, the Press and Registration of Books Act, 1867 the Indian Official Secrets Act, 1889.

A famous leader of Maharashtra, Mahadev Govind Ranade, awakend the consciousness of downtrodden masses by writing in *Gyan Prakash* as well as in *Indu Prakash*. In 1881, Bal Gangadhar Tilak started another Marathi weekly, *Kesari* which became very famous. Another weekly journal, *Maratha* in English, was started

by Tilak along with Agarkar and Chiplunkar. Nam Joshi the editor of the '*Daccan Star*' also joined them and his paper was incorporated with *Maratha*. In his paper, Tilak wrote very strongly against the British government and Diwan of *Kolhapur*. Hence Tilak and Agarkar were convicted for such writings. Tilak's *Kesari* became one of the leading newspaper to propagate the message of swaraj movement. *Kesari* highlighted the anti-partition movement of Bengal and presented it as a national issue. The Sedition ordinance was also opposed in 1908 by Tilak, and hence he was exiled from India for six years. Later Hindi edition of *Kesari* was started from Nagpur and Banaras³².

As the revolts against the British government were on the rise the British government wanted to put its axe on the ambit of freedom of speech and expression. With the object to curb the revolution movement, Lord Morley Minto had promulgated the Newspapers (Incitement to Offences) Act 1908. This ordinance empowered the local British Authorities to penalise the editor of a newspaper who published such matter which would constitute an incitement to rebellion.

From the above discussion it is evident that the British government exercised stringent control on the freedom of press to retain their power and to restrain the freedom movement. It is to be noted that the British Government was in the favour of curtailment of freedom to press; because it wanted to curb, prohibit and suppress the independence movement.

2. Freedom of press – Constitutional status.

Every legal system is founded on constitutional principles. The same is true with the Indian legal system, as it is based upon the Indian Constitutional law. To put it in other words, every right, liberty, power, immunity or liability has to be rooted in the constitution, only then, it can be invoked. Similarly freedom of press has been incorporated in the constitution and hence this right can be invoked by the citizens of India.

The constitution of India incorporates the freedom of press in two aspects.

- (i) Preamble
- (ii) Article 19(1)(a)- Right to freedom of speech and expression

³² <http://www.congress.org.in/new/role-of-press.php>

(a) Preamble

The Indian Constitution opens with the preamble. The preamble is considered to be the essence and the spirit of the Constitution, and hence it is considered to be a very vital part of the Constitution.

The citizen is guaranteed the liberty of expression by way of Preamble of the Indian Constitution. It states that the citizen has the liberty of thought, expression, belief, faith and worship. The liberty of thought and expression includes the right of free press. The right to free press is impliedly included in the ambit of liberty of thought and expression. The aspect of human liberty is regarded as the cardinal principle of human life, hence liberty occupies a special place in the Indian Constitution.

Similar provision regarding the freedom of the press was already included as part of freedom of speech and expression under the Article 19 of the Universal Declaration of Human Rights (1948). The heart of the Article 19 says that everyone 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.³³The freedom of press in India is on similar lines of Article 19 of the Universal Declaration of Human Rights (1948). It is to be noted that freedom of press was considered to be so important by our founding fathers that it found place in the preamble itself.

(b) Constitutional provision – Article 19(1) (a)

After independence when the new constitution was being framed, the question before the framers of the constitution was that, whether to have a separate legislation just like the first amendment of USA³⁴, or to follow the English way, where freedom of press is included in freedom of speech and expression. Chairman of the Drafting committee Dr. Babasaheb Ambedkar strongly argued that *“The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editors of press or the manager*

³³ Manoj Kumar Sadual, Freedom of Press in Indian Constitution: A Brief Analysis, International Journal of Applied Research 2015; 1(8): 194 -198

³⁴ The First Amendment guarantees freedoms concerning religion, expression, assembly, and the right to petition

are all citizens and therefore when they choose to write in news paper they are merely exercising their right of freedom of speech and expression and in my judgment therefore no special mention is necessary of the freedom of press at all."³⁵

In India therefore there is no separate law relating to the press prevails, and the same is protected under Article 19(1) (a) of the Constitution of India.

Article 19(1) (a) guarantees six freedoms in all, which are as follows.

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) Right to property (deleted) now incorporated in Article 300A.
- (g) to practise any profession, or to carry on any occupation, trade or business³⁶

One of the fundamental principles of jurisprudence states that for any right to be effective has to be bridled with limitations, and so is the case with six freedoms. So Article 19(1) confers six freedoms on the citizens, and from Article 19(2) to 19(6) limitations are imposed on the six freedoms mentioned in Article 19(1)³⁷.

Freedom of press is impliedly included in the freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. Some legal experts have opined that there is a hairline difference between the four notions of, right to speech, right to expression, right to freedom of press, and right to information.

For the perusal of academic interest let us examine the subtle difference between these four aspects.

³⁵ Constituent Assembly Debates, Vol. VII p 780 (2nd December 1948)

³⁶ <http://indiankanoon.org/doc/1142233/>

³⁷ *Infra*;p 59

(i) Freedom of speech

Freedom of speech essentially denotes the ability to communicate the ideas and information to other persons. The wide meaning of freedom of speech includes freedom of writing, speaking, printing, or publication.

(ii) Right to expression.

Right to expression is a very broad term and includes many aspects such as all actions of expression which include speaking, writing, printing, singing, dancing, painting, carving etc. It is true that right to expression is very broad, and may include right to speech.

(iii) Freedom of press

Freedom of press includes right of printing and publishing. It means that individual expresses his views in the form of printing. Hence freedom of press includes freedom of speech which is expressed in the form of printing and publishing. The essence of freedom of press lies in the wide circulation and its access to mass media. In the cases of newspapers, or journals, television or radio network, the managers or the proprietors have the last word in the broadcasting or publishing the contents.

(iv) Right to information

Right to information is at right angle with the freedom of speech and expression. The right to information is not concerned with the aspect of expressing that is giving but emphasis on gathering or taking information. So the right to information deals with the aspect of getting access to information. The term “Freedom of information” was invented by United States. The right to information is incorporated in the freedom of information Act. A similar provision prevails in Canada under the Access to Information Act. In India, the right to information is an upcoming right, incorporated in the Right to Information Act 2000.

These four terms are neither synonym of each other nor are they completely distinct from each other; but they are correlated to one another. The core is the

freedom of speech, and the fringe is freedom of expression which includes freedom of speech. The freedom of press includes both freedom of speech and expression, whereas the right to information overlaps to a certain extent over the right to freedom of press.

(c) Importance of freedom of speech and expression and freedom of press.

Freedom of speech and expression is an essential aspect of liberty as stated in *Maneka Gandhi v Union of India*.³⁸ The founding fathers of the Indian Constitution have laid much importance on the fact that freedom of speech and expression should be one of the fundamental rights of an individual. So they have placed the freedom of speech and expression in the Article 19(1)(a) which is a constituent part of the chapter on fundamental rights incorporated in the Indian Constitution. There are six freedoms secured in the Article 19(1)(a), and the freedom of speech and expression is ranked first among the six freedoms incorporated in the said Article of the constitution. To express oneself, is an inborn instinct of every human being, and it would not be wrong to say that deprived of freedom of speech and expression a human being would not be a human being. Speech and expression is not only the liberty of an individual but it is one of the basic necessities of the human being. It is because of speech and expression that the human being can not only be developed but also are capable of expressing other emotions and feelings. The freedom of press is one of the most important agency of communicating one's speech and expression. Hence the freedom of press performs very vital functions of the society.

- (i) The freedom of press is denoted as the backbone of the democracy. This is the most basic functions performed by the freedom of press. It is because of the freedom of press that the democracy survives. Democracy means the government of the people, by the people and for the people. The press makes it possible for the government to know the moods and necessities of the people. Simultaneously the press communicates to the whole society, the intention, policy and measures of the government.

³⁸ AIR 1978 SC 597

- (ii) The press is considered to be the most influential medium of communication, because of its very wide horizons. That is why freedom of press is a very precious freedom.
- (iii) The freedom of press assists to uncover the truth.
- (iv) The press today is considered as an instrument of imparting education.
- (v) The press helps in creating, moulding and commuting public opinion. That is why the press is considered to be an instrument of change.
- (vi) As the press makes the government action public, it is responsible to make the government officers responsible and accountable.
- (vii) The press plays the role of public vigilance and acts as effective checks on the malpractices and corruption, not only on the government officers but also on the private individuals.
- (viii) The language press strengthens the bonds of the community within the state and thus helps in achieving stability and solidarity in the nation.
- (ix) The press and the digital media are very useful and popular because they deliver and circulate accurate news at a lightning speed.
- (x) Last but not the least the press and the media act as an eye opener of the society.

(d) Rights of press

Before one moves to the intricate issues of the freedom of press, one has to have clear understanding of the word press. The word press has got two meanings as follows:

- (i) The core or common meaning – strict interpretation
- (ii) The wider horizon of the word press.
- (i) The core or common his meaning – strict interpretation.

The core meaning or the common meaning of the word press means the printing press. It includes all the physical aspects of the printing press. It is clear from this meaning that is very narrow meaning or a very strict interpretation of term press. This meaning is not sufficient to understand the various aspects of the freedom of press; so one has to turn to the wider meaning of the term press.

- (ii) The wider horizon of the word press

The word press in its wider perspective includes all printed material printed in the printing press, like newspapers, journals, magazines, periodicals, pamphlets, leaflets, books, handbills, documents or any other printed material. Further the term press includes within its ambit agencies, feature agencies, press and syndicates,

Newspaper constitutes a major part of the term press. Newspaper is sometimes used as a synonym for press. The tussle between the freedom of press and the restrictions imposed by the state is due to this newspaper which is considered as a vital ingredient of press.

The term 'Newspaper' includes "any printed periodical work. It includes the following;

- (i) Public news
- (ii) Criticism, comments or analysis of public news
- (iii) Statements of facts or the interpretation of facts
- (iv) Opinions of various people or opinion through editorials
- (v) Advertisements

Newspaper performs extremely important functions in the society such as

- (i) Imparting and circulating news
- (ii) Creating and moulding of public opinion
- (iii) Imparting education and is considered to be a source of enlightenment.
- (iv) It is source of entertainment
- (v) It is considered as a medium of advertisement and publication³⁹.

Since the newspaper performs these vital functions it is considered as the life of the society. As the newspaper creates and moulds the public opinion, it is considered to be a very very powerful instrument in the hands of the editor or the publisher. So the first aspect of the press is occupied by the newspapers.

Since freedom of expression includes the freedom to proliferate one's own views as well as of others.⁴⁰ It also includes communicating those views to others. Freedom of the Press includes the following rights;

³⁹ Dr. S.R. Myneni, *Media Law*, (Asian Law House,2013),pp.32-37

⁴⁰ *Express News papers v. Union of India*. AIR 1958 SC 578 (614)

- (i) Printing and publication of news. In *Re Daily Zemmeedar*⁴¹, it was stated by the judiciary that the printing and publication of the news was the essential right of the press. Further it was also stated by the court that it is the right of the press to print the facts of contemporary history⁴²
- (ii) The second right of the press includes to print views or opinions. The Supreme Court of India has laid down in *Gopal Dass v. D.M*⁴³ the freedom of press includes printing of editor's or author's views. Further the Supreme Court has also held in *Sharma v. Srikrishna*⁴⁴ that printing of views not only includes the editors or authors views but also the views of any other people who have printed the views under the directions of the editor, author or the publisher.
- (iii) The right to free press not only includes to publish views but it also includes to dispense and circulate those views in the entire society as was decided in *Romesh Thappar, v. State of Madras*⁴⁵
- (iv) The freedom of press includes within its ambit the right to discuss and publish the views pertaining to such information which is necessary for the members of the society to cope up with any urgent need or demand of that period. This information may not be related to any political or public matter or issues⁴⁶.
- (v) Another dimension of the right to press includes the right to comment on public affairs as was stated by the Supreme Court in *Bennett Coleman v. State of J. & K.*⁴⁷ This right to comment on public affairs includes the right to criticize people holding public post and also to criticize the public policies.⁴⁸ This right also includes the right to analyse and to criticize not only the Government, but also its policies such as the defence policies and even the conduct of the Armed Forces⁴⁹. However this right of criticizing the

⁴¹ AIR 1947 Lah 340

⁴² *Ibid.*

⁴³ AIR 1974 SC 213.

⁴⁴ AIR 1959 SC 395

⁴⁵ (1950) SCR 594

⁴⁶ *Thornhill v. Alabama*, (1950) 310 US 88 (102); *Time, Inc., v. Hill*, (1967) 385 US 374 (388)

⁴⁷ (1975) Cr LJ 211

⁴⁸ *Baumgartner v. O.S.*, (1944) 322 US (673-74)s

⁴⁹ *Hartzel v. U.S.* (1944) 322 US 680 (690).

government policies has got a severe limitation that is , it should not endanger the national security.⁵⁰ Now dealing with the Indian situation, this right is not permitted in ordinary situations, in other words it is reserved by virtue of section 124A, of the Indian Penal Code.

(vi) The corollary right of gathering information is the right to get access to the sources of such information. The Supreme Court has clearly stated in *Prabha v. Union of India*⁵¹ that the right to collect information would be meaningless if the right of access to the sources of such information would not be granted. The right of access to the sources of such information is not without limitation and it has been stated by the judiciary in *Branzburg v. Hayes*⁵², that the press does not have a constitutional right of access to secret information. Further the court in *Pell v. Procunier*⁵³ held that the government is not under any duty to give access to the sources of such secret information to any person from the press.

(vii) The press also enjoys one very potent right that is to collect the diversified information from hostile sources on the ground of competitive market. In such a situation press is free from any monopolistic control from the government as has been reiterated by the Supreme Court of India in many cases⁵⁴.

(viii) The last is the residuary right of the press which includes refraining from publishing any news or any matter or any other co related matter to any news. The freedom to publish any news includes the freedom not to publish. So also this right includes declining to publish any news under the dictation of any authority. It also includes the right to publish any matter according to the newspapers policy and plan. This residuary right also includes the power of

⁵⁰ *Gravel v. United States*, 408 U.S. 606 (1972)

⁵¹ AIR 1982 SC 6

⁵² (1972) 408 US 665

⁵³ (1974) 94 S Ct 2800

⁵⁴ *Express Newspapers v Union of India*, (1959) SCR 12: *Himmat Lal v . Police Commr.* AIR 1973 SC 87: *Associated Press v. US.* (1945) 326 US 1

the press to organize its activities and formulate its plan for publication in respect of its readers, its address and to set the price of the paper.

However the government does not allow the press to use its residuary power very often, and tries to impose some restrictions or limitations.

The rights which are enumerated above can be regarded as very essential rights of the press. For the press to survive and healthily flourish, the rights of the press have to be protected. It must be remembered that a free press is a sign of a good, progressive and democratic society. Hence the press and all its attributes must be secured and protected to the maximum extent. But it is also true that the press must not be left without fetters on its freedom otherwise the chances would be that the press oversteps its powers and causes injustice.

(e) Scope of the powers of the press

According to Hohfeld⁵⁵, rights in the wider sense include powers, immunities, privileges and liberties. These powers which are enumerated in the forthcoming pages can be describes as rights or immunities, privileges or liberties

It is true that there is no separate freedom for press in the Indian constitution. But it is not the case that the press and media do not get any rights. On the contrary, various rights of press are not only recognized, but also protected. It is the judiciary who protects the rights of the press and media through its various thoughtful judgments. The judiciary has time and again upheld the freedom of expression of media from the arbitrary actions of the state who has tried to curtail the freedom of press taking various defences.

The difficulty in protecting the press is that, there are various components of press, these components cannot be limited, and the new components keep on evolving with the development in technology. Though it is not possible to discuss all the components, a few are discussed.

(i) Power to circulate the information:

This right is the cornerstone of freedom of press. The freedom of press will not be of any significance without this right. Without the right to circulation,

⁵⁵ Dias RMW; *Jurisprudence.*,(Butterworth&co.1994)

one cannot say that the freedom of expression is being enjoyed at all. For the press this right is of great significance. It is through circulation that the press reaches to the masses. The right to circulation was implied in the right to press and no specific mention was felt necessary, till the case of *Romesh Thappar v State of Madras*.⁵⁶ Romesh Thappar, the publisher, editor and the printer of an English Journal called Cross Roads had printed in his journal very critical appraisals of the policies of the Nehru government. So also the journal Cross Roads was known for its critical and leftinian approach. At the same time the Madras Government had declared the Communist parties illegal. In this background the government of Madras under section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposed a ban on circulation of 'Cross Roads'. Romesh Thappar filed the petition in the Supreme Court of India. He stated that his right to freedom of speech and expression guaranteed under 19(1)(a) of the Indian Constitution was violated by the Madras Government by imposing the ban on his movement of circulation of his journal. The question before the Court was:

- (i) Whether the freedom of speech and expression of the petitioner was violated by the Madras Government's actions of imposing the ban?
- (ii) Whether the ban imposed by the Madras Government was justified under the limitations enumerated in Article 19(2) of the Indian Constitution?
- (iii) The Madras Government could issue a ban on the circulation only for public safety under the Madras Maintenance of Public Order Act, 1949; however Article 19(2) does not contain the phrase public safety or public order. Hence whether the ban falls within the purview of Article 19(2) of the Indian Constitution.

The Argument of the government was this that the 'public safety' mentioned in the Madras Maintenance of Public Order Act, 1949 was relating to the security of the province, thereby meaning the security of the state. Hence it would be covered by the ambit of Article 19(2) which also speaks about the security of the state.

The Supreme Court held that the state within the meaning of Article 12 does include the provinces, but the phrase public safety would not fall

⁵⁶ AIR 1950 SC 124

within the scope of security of the state. Public safety would deal with much minor matters and cannot be said to include grave issues relating to the security of the state. It further stated that, for a law to be valid according to Article 19(2) should be to protect and preserve the security of the state and not just for public safety. Therefore it follows that the Act imposing the ban falls outside the scope of the restrictions mentioned in Article 19(2). The consequence being that the action of the government to impose the ban was hit by Article 19(1) and hence was void and unconstitutional. The Supreme Court further clearly stated that the freedom of press includes the right to circulate. It is opined here that first of all the freedom of press is implied in the freedom of speech and expression and secondly the right to circulation is implied in freedom of press. Therefore *Romesh Thappar's* case becomes the landmark judgment as it makes the right to circulation somewhat explicit.

This was further endorsed by the Supreme Court in the *Sakal News papers v Union of India*⁵⁷ wherein the court has expressly held that any law which curtails the sphere of circulation of papers would be deemed as a clear cut violation of the fundamental right of freedom of speech and expression incorporated in Article 19(1) (a). The court in this case struck down the Newspaper (price and pages) Act 1956 as this Act empowered the government to regulate the space for advertisement. It further stated that such an action of the government would have disastrous effect on the circulation of the paper and is violative of Article 19(1) (a) of Indian Constitution.

(ii) Power to project criticism.

The right to criticize is of such a nature that one cannot survive without it and neither can one bear it. This right is a very potent right and has to be exercised with utmost care and caution. On the basis of this right the press gets the authority to criticize the government, its officials, its policies or its plans. However the press cannot take undue advantage of this right and cannot entice

⁵⁷ AIR 1962 SC 305

the people against the government or cannot lay foundation for any rebellion or mutiny or insecurity of the state or the government. In such a case the press would be acting outside the scope of its constitutional right of freedom of speech and expression.

On the other hand the government should be open and appreciate the criticisms projected by the press. So also the right to criticize of the press helps the society to know the demerits, faults or the shortcomings of the government. In other words, this right acts as an eye opener to the society. In a healthy society on one hand the right to criticize should be exercised fairly, rationally, and objectively by the press and on the other hand the government should accept the criticisms with an open mind and make an attempt to improve upon them.

(iii) The power to receive information

The entire spirit of the Article 19(1)(a) will collapse if the right to receive the information is not granted. The role of the media is to empower the masses by knowledge, but if the right to receive information is taken away then, the press cannot empower the citizens with knowledge and the society will fail to keep pace with the changing world.

(iv) The power of press to conduct and hold interviews.

The press has this right to conduct interview. However this right is not absolute. There are three limitations imposed on this right

- (i) The interview will only commence if the interviewee gives his consent.
- (ii) The interview shall stop on the will of the interviewee. After the famous Ramleela Maidaan episode where Baba Ramdeo was lathi charged, when he gave the interview for the first time after the incident, after some time, Baba wanted to stop, but the interviewer had some questions. The interviewer could not ask because of this limitation.
- (iii) The interviewer cannot compel the interviewee to give any answer, which the latter does not want to answer.

(v) The power to report the court proceedings.

According to Bentham ‘publicity is the very sole of justice’⁵⁸. Bentham has said this because he felt that, if the government is allowed to function in a secretive manner then there is lot of scope for the miscarriage of Justice. Therefore all the actions of the government including the judicial proceedings have to be made public or transparent. When the court proceedings are held in the open there is less scope for any bias to prevail. Hence any individual as well as the press can attend the court proceedings. The only difference between the individual and the press is that the press enjoys more liberty or rights as compared to the individuals. The press enjoys the privilege of sitting in the press bench and also receives any information regarding any proceedings on account of the citizens right to be informed on matters of public importance. The Supreme Court in *Sahara India Real Estate Corpn ltd v SEBI*⁵⁹ has held that there is no doubt that it is the media’s right to report the proceedings of a case and the superior courts could not postpone the said reporting of the case for some duration without reasonable cause or in the interest of justice.

In *Saroj Iyer v Maharashtra Medical (Council) of Indian Medicine*⁶⁰, the court held that the right to publish a faithful report of the proceedings witnessed is available even against quasi judicial tribunals.

As far as the proceedings in camera are concerned the judiciary is of the firm opinion that the power to exercise the proceedings in camera has to be sparingly used and that too with great care and caution. So also the court in *Naresh Shridhar Mirajkar v State of Maharashtra*⁶¹ has held that the power to hold the proceedings in camera should be invoked only if the court is satisfied; that, it would result in injustice if the matter was tried in the open court.

(vi) The power to attend and report legislative proceedings.

Article 361 of the Indian Constitution confers the right of publishing a true report of the parliamentary proceedings. The limitation of this right is that the

⁵⁸ *Scot v. Scot* 1913 AC 417

⁵⁹ AIR 2012SC 3829

⁶⁰ AIR 2002 Bom 97

⁶¹ AIR 1967 SC 1

publication of these legislative proceedings he should not be done with malicious intentions. This right of reporting the legislative proceedings has been frequently curtailed by the legislative privileges and contempt of parliament. Hence right of reporting the legislative proceedings is circumscribed by the legislative privileges as is evident in the *Searchlight case*⁶². In this case the editor of the searchlight had published the portion of proceedings of the Bihar state assembly. The Supreme Court held that the publication amounted to the breach of parliamentary privileges and hence the publication was held to be illegal and malicious. Further in *re powers, Privileges, and Immunities of State Legislatures case*⁶³ The Supreme Court held that the parliamentary must be subject to the fundamental rights of the citizens. Where the right of speech and expression which includes the right of reporting of legislative proceedings is in conflict with legislative privileges, the right of speech and expression shall prevail over the legislative privileges. Today in the scene of mandatory live telecast of the legislative proceedings, the concept of legislative privileges really remain a question.

(vii) The power to act as an advertising medium.

The businessmen or traders who advertise are no different than the newspaper or media who also work with profit motive.

However in *Hamdard Dawakhana v Union of India*⁶⁴ The Supreme court held that advertisement were made with intention to have commercial gains hence they cannot avail the benefit of freedom of speech and expression. The Court observed: *Freedom of speech goes to the heart of the natural right of an organized freedom loving society to' impart and acquire information about that common interest'. If any limitation placed which results in the society being deprived of such right then no doubt it would fall within the guaranteed freedom under Article 19(1) (a). But if all it does it deprives a trader from commending his wares, it would not fall within that term*⁶⁵ Hence it was held

⁶² AIR 1959 SC 395

⁶³ AIR 1965 SC 745

⁶⁴ AIR 1960 SC 554

⁶⁵ *Ibid*, para 18, p 564.

that the right of advertisement was not covered by the right of freedom of speech and expression.

Till the case of *Tata Press v Mahanagar Telephone Nigam*⁶⁶ the advertisements were kept out of the purview of free speech. One thing is noteworthy here is that the advertisement was just like a newspaper or other media which is involved in profit making. Still the right to advertisement was not granted the protection of Article 19(1)(a). However after the *Tata Press* case, it was acknowledged by the Supreme Court that even advertisements were covered under Article 19(1)(a) of the Constitution.

In the instant case it was the MTNL who was publishing and circulating the telephone directory with white pages up to 1987. After 1987 the contracts were given to outsiders to publish its directory, the outsiders were allowed to publish their advertisement in directory and earn income.

The Tata Press Ltd also published the Tata Press Yellow Pages. The MTNL and the Union Government filed a case before the Bombay Civil Court that it has a monopoly in printing and publication of list of telephone subscribers and that Tata Press Ltd. has no right to do the same. It was pointed out that Tata Press was violating the provisions of the Indian Telegraph Act, 1885. The court rejected the MTNL plea and an appeal reached the High Court. The High Court ruled in favour of MTNL, following which Tata Press Ltd challenged the High Court's decision before the Supreme Court. The Supreme Court ruled that the MTNL has no right to hold back Tata Press Ltd. from publishing 'Tata Yellow Pages.'⁶⁷

This case changed the approach of the court towards the advertisements. The courts then incorporated the right to advertisement as a part of freedom of speech and expression.

⁶⁶ (1995) 5 SCC 139

⁶⁷ <http://www.lawisgreek.com/constitution-india-advertisements-and-freedom-speech>

(viii) The power to Broadcast

21st century witnessed the rapid growth of the technology and along with the technology the concept of broadcasting also emerged. Right of broadcasting was also considered to be the part of free speech and expression.

In general, to broadcast means to cast or throw forth something in all directions at the same time. A radio or television broadcast, is a program, they are transmitted over airwaves for public reception by anyone with a receiver tuned to the right signal channel.

The term is sometimes used in e-mail or other message distribution for a message sent to all members, rather than specific members, of a group such as a department or enterprise.⁶⁸

Types of electronic broadcasting

There are different types of electronic media broadcasting, some of them are mentioned below.

- One of the earliest forms of electronic broadcasting was the telephone broadcasting. The telephone broadcasting had started somewhere around the year 1881. In 1881 a French inventor Clément Ader invented a system of Théâtrophone ("Theatre Phone"). By this system the subscribers listened to the live opera and theatre performances over telephone lines. This was a very elementary method of broadcasting. Later in the year 1890, newspapers were also were broadcasted with the help of telephones. Such telephones-based subscription services were the first examples of electrical or electronic broadcasting. This telephone-based subscription offered a wide range of programming.
- The radio broadcasting on experimental basis started from 1906 and started operating on commercial scale from 1920. the radio broadcasting is an audio (sound) broadcasting service, broadcast through the air as radio waves from a transmitter to an radio antenna and, thus, to a receiver. Stations can be linked

⁶⁸ <http://searchcio-midmarket.techtarget.com/definition/broadcast>

in radio networks to broadcast common radio programs, either in broadcast syndication, simulcast or sub channels.

- The experiments regarding the televisions had commenced from 1925 and after about six years that is in 1930s the production of television on commercial scale started. The medium of television was long awaited by the people and soon it became very popular among the general public. In short span of time the television was competing with its older sibling that is radio-broadcasting.
- In the year 1928, the Cable radio also termed as "cable FM", started. In the year 1932 cable television commenced. Both cable radio and cable television were transmitted via coaxial cable. Both served principally as transmission mediums for programming produced at either radio or television stations. At that time the production of cable-dedicated programming was limited.
- Before 1974 there was no direct-to-home broadcasting, and studio network uplinks and downlinks had to be used. In 1974 Direct-broadcast satellite (DBS) came into vogue. It was a mixture of traditional radio or television station broadcast programming and the internet radio-webcast programming.

In today's time the electronic broadcasting has made tremendous progress and visible in the forms of cable television, direct to home telecast, mobile networks, wifi etc. These forms of electronic broadcasting are serving the society by receiving and imparting the information and hence have tremendous utility.

Even the films were the part of freedom of speech and expression. In *Bobby Art International v Om Pal Singh Hoon*⁶⁹ The Court held that the film must be judged in its entirety from point of view of its overall impact.

The Court however has clearly accepted the fact that though the motion picture is nothing but a medium of speech and expression, still it has to be kept on different footing. In case of *K.A Abbas v Union of India*⁷⁰ The petitioner had challenged the validity of prior censorship of the films. Under the Cinematograph Act the films are

⁶⁹ (1996) SCC 1

⁷⁰ AIR 1971 SC 481

divided into two categories, one is 'U' and other is 'A' 'U' is for general public, while 'A' is for adults only. The petitioner's movie was given 'A' certificate. The contention of the petitioner was that, the film was nothing but a medium of speech and expression. There are other means of speech and expression also but none of them have any prior restraint, and hence there should be equality of treatment.

The court rejected the contention of the petitioner and held the pre- censorship of the films valid; the court was of opinion that the films have to be treated separately as the motion pictures could stir the emotions more deeply in the heart than any other art.⁷¹

(f) Restrictions on the freedom of press and media.

According to Hohfeld every right has a corresponding duty. It means that if 'A' has the right of freedom of speech and expression, then others have the duty not to commit any act which would prohibit 'A' from exercising his speech and expression. This is absolutely true because if the duties are not performed then the rights cannot prevail. Another parallel principle of jurisprudence which prevails is that no concept can exist without limitations. To put it in other words every legal concept is demarcated by limitations or restrictions. The role of restrictions is very important for the individuals as well as the state. The functions of limitations or restrictions are twofold.

- (i) When the scope or the sphere of the right is demarcated by limitation then the individual gets a clear idea about the extent of his right. That means he knows what he can do and what he cannot do.
- (ii) The second function of the limitation is that the state can restrict the individual's action which is beyond the scope of the right. The limitations or the restrictions in such a case amount to the power of the state to curtail the right which is exceeding its scope.

Under the Indian Constitution right to six freedoms are enumerated in Article 19(1), and the restrictions are mentioned from Article 19(2) to 19(6). So actually Article 19 on one hand confers the rights to the individuals under Article 19(1), and on the other hand Article 19 confers power to the state to

⁷¹ <http://en.wikipedia.org/wiki/Broadcasting>

curtail these rights under 19 (2) to 19(6). So Article 19 simultaneously confers the right and powers to take away the right. The best method to understand the nature and scope of a right is to understand the restrictions or limitations placed on that right.

Reasonable restriction

The right to freedom of speech and expression is limited by the restrictions imposed by that right, and the restriction imposed by the state is also curtailed by the factor of reasonability. So even if the state is empowered to restrain the freedom, this restraintment is not absolute and is subject to the limitation of reasonability. So every restriction has to be reasonable restriction to be valid under the constitution.

The Supreme Court in *Papnasam Labour Union v. Madura coats Ltd*⁷² has laid down the reasonability of the restrictions under Articles 19(2) to 19(6).

- (i) The restriction in order to be reasonable must not be excessive that is, it should not go beyond the need to avoid the mischief or injustice. It should not be arbitrary.
- (ii) The restriction should have a direct or proximate or reasonable connection or link between itself and the object sought to be achieved.
- (iii) The restriction to be reasonable should not be abstract. But no fixed principles can be laid down and the standards of reasonability would vary from case to case and time to time.
- (iv) While interpreting the term reasonable, the court should keep in mind the complex issues of the society and the intention of the legislature of the statute in question.
- (v) The term reasonable is of dynamic nature and hence the judiciary should keep an elastic and practical approach while interpreting the term.
- (vi) It is imperative for the court to analyse the social control before any restrictions can be imposed on the fundamental rights.

⁷² AIR 1995 SC 2200

- (vii) For the interpretation of term reasonable, it is necessary for the court to examine the social welfare and the need of prevailing social norms and values.
- (viii) The word reasonable has to satisfy the test of procedural reasonability as well as substantive reasonability.
- (ix) For a restriction to be reasonable must be in conformity with the test of Article 14 of the Constitution. It means the restrictions should not be excessive or discriminatory.
- (x) While interpreting the term reasonability the courts have to keep in mind the Directive principles of the state policy.

The restrictions mentioned under Article 19 (2) are as follows:

(i) *Sovereignty and integrity of the state.*

This ground was inserted by an amendment to curb the tense reaction of the people, who were demanding separate entity of the different regions of India.

Any speech or any expression made in any form which tries to damage the sovereignty or integrity of the state would be covered by this restriction. The right of speech and expression cannot be exercised to prejudice the sovereignty or integrity of the state. It is important to make a note of an important fact that ‘sedition’ is not a ground of reasonable restrictions incorporated in Article 19(2) of the Indian Constitution.

(ii) *Security of the state*

The freedom of expression cannot be exercised in such a manner so as to endanger the security of the state in any way. Any speech which incites the people to be rebellious or to cause a mutiny would be hit by this restriction.

In *State of Bihar v Shailabala Devi*⁷³ The Supreme Court held that the speeches made by individuals which encouraged and incited the people to commit crimes like murder, dacoity, robbery etc would definitely endanger the integrity of the state.

⁷³ AIR 1952 SC 329

Hence such a speech would amount to prejudicing the sovereignty or integrity of the state, and the order of ban would be covered by reasonable restrictions.

(iii) Public Order.

The word public order was inserted by Constitutional (First Amendment) Act 1951. This clause was inserted to reduce the effect of *Romesh Thappar v State of Madras*⁷⁴, where the court had held that the right to circulation is a part of Right to freedom of Speech and expression.

The term Public order has a wide meaning and includes a variety of acts which may endanger the security of the state. In *Madhu Limaye v Sub Divisional Magistrate Monghyr*⁷⁵ the Supreme Court held that public order means absence of insurrection or riot or disturbance to public peace.

In *Ramji Lal Modi v State of UP*⁷⁶ The validity of the section 295A of the Indian Penal Code was challenged. It was contended that this section violates the right to freedom of speech and expression guaranteed under Article 19(1)(a) under the Indian Constitution. The petitioner who was the printer, publisher and the editor was convicted under section 295A of the Indian Penal Code. He further contended that section 295A of the Indian Penal Code was not covered by the reasonable restrictions of the Constitution. The court rejected this argument and stated that if a person by exercising his right of the freedom of speech and expression caused public disorder could be penalized under the said section which fell within the ambit of reasonable restrictions.

(iv) Decency or morality:

Decency or morality is a ground for the state to limit the right of freedom of speech and expression. The elaboration of this ground is reflected in Sections 292 to 294 of the Indian Penal Code. These sections enlists some acts as offences such as selling obscene books or things to young persons, making indecent gestures in Public places

⁷⁴ *Supra*; p. 45

⁷⁵ AIR 1971 SC 2486

⁷⁶ AIR 1957 SC 620

etc. In *Ranjit Udeshi v State of Maharashtra*⁷⁷ the Supreme Court stated that the section 292 of Indian Penal Code is Constitutionally valid as it prohibits obscenity and promotes public decency and morality. Further in *Chandrakant Kalyandas Kakodkar v state of Maharashtra*⁷⁸ the court held that while dealing with the question of decency and morality, the court has to give emphasis as to whether the indecent or immoral action was capable to corrupt the mind of the young people or there is a possibility that they would become depraved or their minds would become impure.

(v) Contempt of Court:

There is no denying the fact that freedom of speech and expression is very vital for the society, but at the same time securing and preserving justice is equally important. So the freedom of speech and expression prevails but it cannot be exercised to undo an action of the court of justice.

The Supreme Court under Article 129 and the High Court under Article 215 of the Indian Constitution are empowered to punish for contempt of court. So also in *C.K. Daphtary v O.P. Gupta*⁷⁹ it was held that the section 228 of the Indian Penal Code and Article 129 of the constitution are valid and fall under the ambit of reasonable restrictions mentioned in Article 19(2) of the Constitution. So the freedom of speech and expression are subject to Articles 19(2), 129, and 215 of the Indian Constitution.

(vi) Defamation:

The right to freedom of speech and expression does not include in any way to cause harm to the reputation to a person. Causing harm to a person's reputation is called as defamation and is a severe limitation on the right of freedom of speech and expression.

No person can by expression signs or gestures can expose a man to hatred, ridicule or contempt. Defamation is considered to be a very serious act and hence is prohibited by the civil law of torts, it is also a criminal offence under section 499 of the Indian Penal Code and defamation is also covered within the reasonable restrictions of Article 19(2) of the Constitution.

⁷⁷ AIR 1965 SC881

⁷⁸ AIR 1970 SC 1390

⁷⁹ AIR 1971 SC 1132

Friendly relations with Foreign states.

This ground was inserted in the Article 19(2) of the Constitution by way of 1st Amendment in 1951. This ground of restriction was inserted to prevent the hostile and malicious propaganda against any foreign state which has friendly relations with the state of India. Such an activity may tend to jeopardize the efforts of the government of India to promote and maintain friendly relations other nations. In *Jagan Nath v Union of India*⁸⁰ the Supreme Court held that any Common Wealth country is a foreign country for the purpose of Article 19 (2) of the Constitution

However it shall be noted that members of common wealth including Pakistan is not a member of foreign state for purpose of this constitution.

(vii) Incitement to an offence:

According to the criminal jurisprudence incitement and abetment to an offence is an independent offence itself. Freedom of speech and expression by way of incitement to any offence would endanger the public order. This ground of reasonable restriction was inserted in the constitution by way of 1st Amendment in 1951. In *State of Bihar v Shailabala Devi*⁸¹ it was decided that any speech which amounts to incitement of any offence could be banned and the order of ban would fall within the reasonable restrictions mentioned in Article 19(2) of Indian Constitution.

These seven grounds of reasonable restrictions act as line of demarcation of the right to freedom of speech and expression inclusive of right to free press. So one can say that, the right to free press prevails within the four corners of reasonable restrictions mentioned in Article 19(2) of the Indian Constitution.

(g) Press Commissions

The law relating to the press is a very ancient law and a need was felt to update these laws with the help of independent body. After 1947 the need was felt that the state of the press should be examined by an authority. With this object the Press Commission was appointed in India. This Press commission had to scrutinize the structure, the

⁸⁰ AIR 1960 SC 675

⁸¹ *Supra*; p. 55

organs, powers and functions of the press and had to submit the report to the parliament.

The First Press Commission Report, 1954:

The first Press Commission was established in the year 1952. The Secretary of the first Press Commission was Mr. S. Gopalan who was an eminent scholar. Along with Mr. S. Gopalan ten other members were also appointed in the Commission. This first Press Commission took two years to table its report before the Parliament, and the report was submitted on July, 17, 1954.

The objects of the first Press Commission were the following;

- (i) Enquire into the status of the press in India
- (ii) Suggest measures for the future development of the press.
- (iii) To scrutinize the ownership and financial structure of the press.
- (iv) To assess the control and management of press, periodical press, news agencies and press syndicates.
- (v) This Commission had to analyse the functioning of the monopolies; and also assess their impact on the accuracy and fairness of the news.
- (vi) The impact of holding companies on fair news.
- (vii) Assess the distribution of advertisements
- (viii) Suggest methods to control the external influence on the development of healthy journalism.

The highlights of the first Press Commission are as follows

- (i) It was suggested that the press council shall be established so that it could look into the problems and the other related aspects
- (ii) The Commission had observed that there was a decline in the status of the editors of the daily newspapers. It had suggested steps to improve the status of the editors.
- (iii) It recommended the appointment of the Wage Board for fixing the wages of the journalists.
- (iv) It also recommended the registrar of news papers.
- (v) It also suggested some steps to encourage the growth of the sense of responsibility among the journalists.

Many of the suggestions made by the first Press Commission were accepted and incorporated by the parliament of India.

Second Press Commission

The Second Press Commission was appointed in 1977. The esteemed and renowned Justice P.K. Goswamy was appointed as the Secretary of the Second Press Commission. During this time there were many disturbances in India as there was a change in the government. Due to some internal differences he resigned. The Commission was reconstituted in 1980 with Justice Mathew as Chairman. The report was published in 1982 with the following suggestions.

- (i) It suggested the codification of parliamentary privileges. It was of the view that the parliamentary privileges were a threat to the free functioning of the press and was of the opinion to curtail some of these parliamentary privileges.
- (ii) It was of the view that the publication of corrupt or improper judicial conduct should be non punishable. If this corrupt or improper judicial conduct was the true fact then truth should be a valid defence available to the press.
- (iii) The present law of defamation should be amended and should be parallel to the British Defamation Act 1952. It also suggested that unintentional defamation should not be made punishable.
- (iv) It also recommended the establishment of Newspaper Development Commission. This Commission should aid and assists the small newspaper agencies. It should also distribute fairly and equitably the government advertisements as well as the private advertisements.

The recommendations made by the Second Press Commission were only partially accepted by the parliament of India. One can say that the appointment of the commissions is definitely one step ahead in the direction of development of the press. The press commission at least ensures an objective parameter to assess the pros and cons of the press. The present researcher humbly puts forwards following suggestions regarding the press commission.

- (1) The appointments of press commissions should be free from the political influences. The press commission should have an independent status; so that the press commission can function impartially and fearlessly.
- (2) The reports submitted by the press commission should be implemented by the government to the maximum extent. The submission of the report of the press commission should not be regarded merely fulfillment of a technical formality.

4. Judicial activism and the press.

The freedom of speech and expression is no doubt a fundamental right incorporated in Article 19(1)(a) of the Indian Constitution; but it has been developed and tailored by the judiciary. The free press many a times is considered to be a thorn in the throat of the government. Hence the government is constantly scheming to clip the wings of the press by various orders and statutes. It is this judiciary which has to act as the guardian of the free press and protect it against the arbitrary action of the government. But sometimes it also happens that the press in its zeal and enthusiasm crosses its limits of freedom; then also the judiciary has to keep the press within its prescribed ambit of freedom. The judiciary thus plays a pivotal role in protecting and limiting the right of free press. This aspect has been elaborated with the help of some of the landmark judicial precedents.

In *Naresh Mirajkar v State of Maharashtra*⁸² the Supreme Court held that, an order of the court prohibiting the publishing of the evidence in the newspapers is not an infringement on the fundamental right of freedom of press.

In the famous case of the *Sakal papers v Union of India*,⁸³ the legislature had enacted the Newspaper (Price and Pages) Act 1956, under which the government enacted the Newspaper (Price and Pages) Order 1960. By this order the government regulated the price and printing of the newspaper,

- (i) By fixing the maximum number of pages that might be published by a newspaper.

⁸² *Supra.*, p. 48

⁸³ *Supra.*, p. 46

- (ii) Fixed the price according to the number of supplements and number of pages of the newspapers.

By this order the circulation of the paper was hampered, as a result of enhanced price in relation to the number of pages of the newspaper.

This order of the central government was challenged on the ground that, it violated the fundamental right of speech and expression as the speech and expression incorporated in the newspaper whose circulation was curtailed due to the price fixation by the said order. The government's defence was that the said order was covered under Article 19(2) of the Indian Constitution which empowered it to place a restriction on right of freedom of speech and expression. Further it stated this order was in pursuance to protect the general interest of the public.

The Supreme Court in its judgment stated the following aspects

- (i) The right of free press is an implied right in Article 19(1)(a) of the Indian Constitution. Freedom of speech and expression is a genus and the freedom of press which flows from it is the species of it. As the freedom of press flows from the freedom of speech and expression, enjoyed by any citizen, the freedom of press is on the same footing of the freedom of speech and expression. Thus the press is not placed on either a higher pedestal, or on a lower pedestal as compared to any citizen enjoying his freedom of speech and expression.
- (ii) The Supreme Court stated that the regulation of the price which curtailed the pages of the Sakal newspapers was definitely an infringement on the right to freedom of speech and expression. The defence of the government of the regulation being based on the public interest was not accepted by the court. Hence the said order was not within the purview of the restriction of Article 19(2) of the Indian Constitution. The court therefore struck down the order.

In *K.A Abbas v Union of India*⁸⁴ the constitutional validity of the censorship of the films was challenged. It was contended that the film was a medium of speech and expression. No other medium of speech and expression had a prior restraint. Only the movies or the films had a prior restraint in the form of pre censorship. The court rejected the petitioner's contention and stated that the pre censorship was very much necessary because the movies have a very deep and lasting influence on the young mind as compared to any other mode of speech and expression. The characters in the movie are very glamorous and are very potent source of imitation. Hence the need of pre censorship to access and evaluate and categorize the film is necessary. Hence it was decided that pre censorship was constitutional, and so did not infringe the fundamental right of freedom of speech and expression incorporated in Article 19 (1) (a) of the Indian Constitution.

Further in *Bennett Coleman and Co. v Union of India*⁸⁵ In order to meet the requirement of the shortage of news print, the government enacted a policy to regulate the pages of the newspapers in accordance with its circulation. Thus the big newspapers could not increase their page area or periodicity in order to meet with the quota of the newsprint. This policy was challenged in the Supreme Court. The majority bench of the Supreme Court has laid down the following principles related to the right of freedom of speech and expression.

The Supreme Court stated that the policy of allotting the newsprint was certainly violating the right of freedom of press, as it was clearly out of the scope of the restrictions mentioned in Article 19(2) of the Indian Constitution. Further the court stated that this policy was actually a garb or coverage to curtail the circulation of the newspapers. The government evolving a policy of allotting the news print should be fair, reasonable and equitable. The said policy of limiting all the newspapers without any consideration of their size was held to be discriminatory and also this restriction had hit the root of the freedom of speech and expression. Freedom of speech and

⁸⁴ *Supra.*, p. 52

⁸⁵ AIR 1973 SC 106

expression involves the aspects, circulation and content. So only it is said that the freedom of press is both qualitative as well as quantitative.

A very important aspect in the light of preservation of Human Rights was laid down by the Supreme Court in *Smt. Prabha Dutt v Union of India*⁸⁶. It has been held that the journalists can interview a prisoner who has been sentenced to death punishment, if he has given his consent to be interviewed. If the conducting of the interview is prohibited by the prison authorities, then, the prison authorities have to record the reasons in writing, and it for the court to justify those reasons.

In another very significant case, *Indian Express Newspapers (Bombay) Pvt. Ltd. V. Union of India*⁸⁷ The central government issued a notification of March 1st 1981, by which it imposed auxiliary duty on the news print which was imported by the various categories of the newspaper. This was an additional levy of duty which was to be paid by the press. The Indian Express along with several other newspapers challenged the validity of the notification in the Supreme Court.

The Supreme Court has made certain observations regarding the right of freedom of press. It has stated in crystal clear words, that the press constitutes the Fourth Estate of the Country and hence the government cannot curtail the right to freedom of press by any unreasonable and arbitrary action. Levying a duty or imposing a tax on the newsprint amounts to imposing tax on the knowledge and information which would be a burden on an individual for being literate. The Supreme Court has highlighted the importance of the press in a socially developed democratic state. Further the court has stated that ‘in fact’ the freedom of press is the heart of social and political intercourse.⁸⁸ However the court did not squash the impingent notification, but directed the government to consider the question of levying the auxiliary duty within the period of six months.

⁸⁶ AIR 1982 SC 6.

⁸⁷ AIR 1986 SC 515

⁸⁸ *Ibid*;527.

Here the Supreme Court has followed Roscoe Pound's theory of balancing the conflicting interests. The Supreme Court has protected the right of freedom of press by saving the press from not paying the duty; and simultaneously, by not governments notification, has protected the government's interest also. By this way, the Supreme Court has beautifully balanced the two conflicting interests.

In *R Rajagopal v State of Tamil Nadu*⁸⁹, a very unique aspect was settled by the Supreme Court. The court has broadened the horizons of the freedom of press and by allowing the press to criticize and comment on the acts of the public officials. It has stated that the freedom of the press extends to engaging in an objective and candid debate of public issues and events of public figures. However an important caution has been stated by the Supreme Court that in this intricate matter one has to maintain a proper balance of freedom of press and the right to privacy of the public figures.

The verdict of the Supreme Court in *Hindustan Times v State of UP*⁹⁰ The court has stated that the executive action of deduction of 5% of the bills payable to newspapers was hit by Article 14 of the Constitution, and hence such an order was void.

As far as the protection of advertisements in a newspapers under Article 19(1)(a) of the Constitution, has changed its traditional view. In the *Hamdard Dawakhana v Union of India*⁹¹ the court had emphatically stated that a commercial advertisement has an intention of promoting trade and commerce and hence does not falls strictly within the ambit of freedom of speech and expression. A commercial advertisement does not in any way circulate, any social, economical or political ideas or views, and neither does it offer any nourishment to the literate minds of the humans. Later on in the *Indian Express Newspapers* case, the Supreme Court has diluted the ruling of *Hamdard Dawakhana*. The court has stated that commercial advertisement is a part of freedom of speech and expression because of the fact that the advertisements fetch subsidies and in the absence of such commercial advertisements the price of the newspapers will rise, and hence the circulation will be affected.

⁸⁹ AIR 1995 SC 264

⁹⁰ AIR 2003 SC 250

⁹¹ *Supra.*, p49

Still further the Supreme Court has developed the same line of thought in *Tata Press v Mahanagar Telephone Nigam Ltd*⁹². It was held here that the commercial speech is also a part of freedom of speech and expression.

From the above cases it is evidently clear that the government in some way or the other is constantly in an attempt to curb the right of the press, and hence the constant intervention of the judiciary becomes mandatory. The right to free press is the founding stone of the democracy and the judiciary has to preserve, protect and promote it.

3. Concluding remarks

The researcher has made an humble attempt in the preceding pages to give a bird's view regarding the meaning of freedom of press, the historical aspect of press, (pre British era, and the British era.), the constitutional status of freedom of press, the rights and the scope of powers of the press, the restrictions on the scope of freedom of press, the recommendations of the press commissions and the role of the judiciary in protecting and circumscribing the scope of freedom of press. The freedom of speech and expression inclusive of freedom of press has secured a coveted place in the chapter of fundamental rights in the Indian Constitution. The importance and significance of the press is profound. The press is considered as the fourth estate of the democracy. In fact the freedom of press reflects the credentials of democracy. The press performs a twofold duty because on one hand it communicates to the government the mood, aspirations, thoughts, and needs of the people; and on the other hand it communicates to the society the intentions, actions, and measures of the governments to the people. The press is considered to be the most effective medium, to feel the pulse of the society and communicate it to the government. The press is considered to be a link between the different regions of the entire nation as the freedom of speech and expression knows no geographical boundaries. The freedom of speech is the core and freedom of expression is the fringe; and freedom of press includes both these aspects.

⁹² AIR 1995 SC 2438

It is the cardinal principle of jurisprudence that no right can prevail in absolute terms; and the freedom of press is no exception. Some restrictions are placed on this right as well. The right to speech and expression prevails within the demarcation of restrictions placed under Article 19(2) of the Indian Constitution. The government by various statutes, orders, regulation has tried to clip the wings of the press. In fact the battle between the free press and its suppression by the executive authority has become the bone of contention. The judiciary being the guardian of the fundamental right of the citizens has tried to protect them zealously. Sometimes it also happens that in its over enthusiasm, the press goes beyond its prescribed arena and then the judiciary has to reprimand it, not to overstep its limitations. A humble attempt has been made to give a brief account of the judicial activism related to the freedom of speech and expression inclusive of freedom of press.

After the perusal of the Constitutional provisions and the restrictions placed upon them as far as the freedom of speech and expression is concerned the researcher has tried to assess and evaluated the role of media in the forth coming chapter.

CHAPTER III

IMPORTANT LEGISLATIONS RELATING TO MEDIA IN INDIA

Synopsis

1. Introduction

2. Types of legislations
 - (a) General legislations
 - (b) Specific Legislations

3. General legislations
 - (a) The Indian Penal Code 1860
 - (b) The Indian Telegraph Act 1885
 - (c) The Unlawful Activities (Prevention) Act 1967
 - (d) Monopolies and Restrictive Trade Practices Act 1969
 - (e) Information Technology Act 2000.

4. Specific Legislations
 - (a) The Press and Registration of Books Act 1867
 - (b) The Official Secrets Act 1923
 - (c) The Cinematograph Act 1952.
 - (d) Drug and Magic Remedies (Objectionable Advertisement) Act 1954.
 - (e) The Newspaper (Prices and Pages) Act 1956
 - (f) The Copyright Act 1957.
 - (g) Prevention of Publication of Objectionable Matter Act, 1976 (repealed in 1977)
 - (h) Press Council Act 1978
 - (i) Prasar Bharati Corporation Act 1990.
 - (j) Cable Television Networks Act 1995.
 - (k) Right to Information Act 2005

5. Statutory bodies
 - (a) Ministry of Information and Broadcasting
 - (b) Press Council Board
 - (c) Press Information Bureau
 - (d) Registrar of Newspaper for India
 - (e) Telecom Regulatory Authority of India
 - (f) The Advertising Standard Council of India
 - (g) Directorate field publicity
 - (h) Central Board of Film Censors

6. Concluding remarks

1. Introduction

In the preceding pages a brief account of the legislations pertaining to the freedom of press are dealt with. The noteworthy fact is that no legislation specifically granted the right to press; as those legislations merely curtailed the freedom of press. A landmark in the history of press, was when for first time ever, the right to press was recognized and secured by the Indian Constitution. The freedom of press does not enjoy an independent status as it is incorporated in the freedom of speech and expression but one should not be misled by this fact, that freedom of press does not enjoy the same status as that of any other fundamental right⁹³. Freedom of press is one of the most coveted right in the entire chapter of Fundamental Rights of the Indian Constitution. This is so because the freedom of press is the backbone of the democracy.

Actually the term “freedom” means no restraint. This means that when we speak about freedom of press there are no restraints on the press. However this is not the meaning of freedom, here the meaning of freedom of press has to be taken in the sense of right to press with reasonable restrictions. Freedom of speech and expression like any other right is circumscribed by restrictions placed under Article 19(2) of the Indian Constitution⁹⁴. History has shown that the government is sometimes very apprehensive of the press and hence tries to curtail the freedom of press. With this object the government has passed a string of legislations which have to fulfill the requirements of Article 19(2). So eventually there are two categories of restrictions placed upon the freedom of speech and expression inclusive of freedom of press, (i) Constitutional restrictions under Article 19(2) (ii) Acts passed by the legislators.

The preceding chapter deals with the Constitutional restrictions under Article 19(2) and the present chapter deals with the legislations which are related to the freedom of press. Some legislations act as limitations on the freedom of press, whereas some legislations protect and promote the press. A few legislations have been analysed in forthcoming pages.

⁹³ *Supra.*, p. 37

⁹⁴ *Supra.*, p 53.

2. Types of legislations

To demarcate the exact nature, scope or the extent of the freedom of press one has to know the limitations or the restrictions which are imposed upon that freedom. Hence the limitations on the freedom of the press are very crucial for culling out the scope of the freedom of press. Apart from the restrictions mentioned in the Constitution, the freedom of press is subjected to restrains by various legislations.

A scrutiny of various legislations points out to the fact that the legislations can be classified into two categories. The criteria used for the classification is the content of the legislation. Based upon this content the legislations are classified into (a) general legislations and (b) specific legislations.

(a) General legislations

When a particular legislation deals with the aspect of freedom of press in totality or generally it can be classified as a general legislation. It means this type of legislation deals with the freedom of press in a general manner imposing general restrictions. To put it in other words, this type of legislation does not deal with any particular or specific aspect related to the press. For example the Indian Penal Code imposes a general limitation of defamation on the freedom of speech and expression inclusive of freedom of press.

(b) Specific legislations

When legislation deals with a specific aspect of the freedom of press, it can be classified as a specific legislation. In this type of legislation the legislature's intent is to deal with a particular or a specific object related to the freedom of press. It means that such a specific legislation deals with explicit elements in the form of restrictions imposed upon the freedom of speech and expression inclusive of freedom of press. For example, the Cinematograph Act 1952 deals with the restrictions imposed upon the cinema that is it deals with a specific aspect of freedom of speech and expression that is cinema.

A few legislations have been analysed according to these criteria.

(3) General legislations

(a) The Indian Penal Code 1860.

The Indian Penal Code is regarded as the substantive criminal law of the land. The object of this code is to identify the offences which are prohibited and prescribe penalties for them. Some of the offences prohibited by this code amounting to misuse of the freedom of speech and expression are sedition and defamation. Section 124 A of the Indian Penal Code states if any person by any words written or spoken or by making any visible signs attempts to bring the feeling of hatred or contempt against the government shall amount to sedition and will be punishable with imprisonment fine or both. This section places a general restraint on the freedom of the speech and expression inclusive of freedom of press. Freedom of press does not include the freedom of projection the feeling of hatred or contempt towards the government. The right to reasonable criticism prevails which does not amount to sedition. The second general restriction imposed by the Indian Penal Code is in the form of defamation. The common misuse of the freedom of the speech and expression which prevails is the offence of defamation. Right of freedom of speech and expression through press does not include the right to injure a person's reputation by making false statements or by visible representations or gestures. Right to freedom of the speech and expression through press does not include the right to defame even a deceased person or company or an association or likewise. Though it seems a general restriction, it is a very vital restriction imposed on the freedom of speech and expression of the press. Further the Indian Penal Code under section 501 prohibits the printing or engraving of defamatory matter. So also selling of such a printed or engraved defamatory substance is an offence under section 502 of the Indian Penal Code.

So it can be stated that the Indian Penal Code imposes two restrictions in the general form on the freedom of speech and expression through press.

(b) The Indian Telegraph Act 1885

The Indian Telegraph Act 1885 is a statute whose main object is to deal with all aspects of telegraph and also to empower the government or any licensed company or person to adopt such measures which are necessary to expedite the telegraph

communication. According to the object and statement of reasons of this statute, it may not have any bearing upon media. To put it in other words, this statute does not have any link with the different aspects of media. However, in the year 2003 the Parliament made an amendment to The Indian Telegraph Act. The amendment of this Act was made to define the term telegraph. The said amendment inserted clause 1(AA) in section 3 of the statute. This amendment was considered to be very important and hence it had retrospective application. According to this amendment, clause 1(AA) which was inserted in clause 1 of section 3, deals with the definition of the term telegraph. The telegraph includes any piece of equipment, appliance or apparatus used to transmit or receive any signals or writing material or images or pictures or any other electromagnetic emissions or radio waves or hertzian waves or any electric or magnetic waves. This clause has broadened the meaning of telegraph so as to include radio within its ambit. The radio is considered to be the most popular agency of media. Hence The Indian Telegraph Act 1885 becomes applicable to freedom of press as far as radio is concerned. The application of this Act to media and press is limited as only the radio is covered under this statute.

(c) The Unlawful Activities (Prevention) Act 1967

The objective of this Act is to secure and promote solidarity, integrity and stability of India. The National Integration Council appointed the Committee on National Integration and National Regionalism, to deal with the national integrity of the state. The Constitutional Sixteenth Amendment Act 1963 empowered the parliament to enact a statute which would contain reasonable restrictions on the fundamental rights, incorporated in Article 19(1) of the Indian Constitution. The reasonable restrictions were to be imposed mainly on the freedom of speech and expression and freedom to assemble peacefully, and form associations and unions. This amendment sought to achieve the object of protecting the sovereignty and integrity of India. In pursuance to the Constitutional Sixteenth Amendment 1963, The Unlawful Activities (Prevention) Act 1967 was enacted.

The object of this statute is to declare any activity in grab of freedom of speech or freedom of association unlawful if it endangers the integrity, or the solidarity or the stability of the state. As this statute prohibits freedom of speech and expression which

hampers the integrity of the state; it acts as a reasonable restriction on the freedom of speech and expression.

The Section 2(f) of the Unlawful Activities (Prevention) Act 1967 deals with the meaning of the term 'unlawful activity'. It states that any individual or association by any act or by words spoken or written, or by any visible representation, endanger the security or the integrity of the state would constitute unlawful activity. The Act further prescribes punishments in the form of imprisonment with or without fine for such unlawful activities.

This piece of criminal legislation is very stringent as it bars the jurisdiction of courts and imposes heavy penalties; but constitutes as reasonable restrictions under 19(2) of the Indian Constitution. According to this statute, freedom of speech and expression does not include the freedom to endanger the security, solidarity, stability and the integrity of India.

This statute has become very important because of the rising terrorist activities. In order to deal with the more severe situation of terrorism the parliament has enacted Unlawful Activities (Prevention) Amendment Act 2008. Unlawful Activities (Prevention) Amendment Act 2008 deals with more serious activities of terrorism and prescribes penalties for them. This statute does not bear a direct relationship with freedom of speech and expression, but deals with unlawful activities; and the term unlawful activities is dealt in Unlawful Activities (Prevention) Act 1967. Both these statutes affect the freedom of speech and expression inclusive of freedom of press and media as they impose restriction on the arena of the said freedoms.

(d) Monopolies and Restrictive Trade Practices Act 1969

India is a welfare state and hence the government has to undertake multifarious activities to promote the welfare of the people. The Indian legal system believes and incorporates equality, the second principle of rule of law as propounded by A.V

Dicey⁹⁵. The essence of equality demands that there should be absence of capitalism. To prevent capitalism monopoly should be prohibited and a market of free competition should prevail. To fulfil this objective the Monopolies and Restrictive Trade Practices Act 1969 was enacted. This statute imposes a reasonable restriction on the freedom of speech and expression. Section 36A of the Monopolies and Restrictive Trade Practices Act 1969 defines unfair trade practice. Among other things unfair trade practice includes any false or misleading representation either orally or in writing or by visible representation. This statute restricts the freedom of speech and expression which misleads a fact by way of false advertisement. The false advertisement is regarded as an unfair trade practice; hence this statute restricts the freedom of speech and expression through advertisement in a general manner.

(e) Information Technology Act 2000.

Today there is a dire need to protect the environment. The press requires a lot of printing and publishing which means a lot of paper is required to carry on the activities of the press. Paper comes from the bark of the trees and many trees have to be cut down in order to procure the required quantity of the paper. If many trees are continuously cut, then definitely the balance of the environment will be tilted. Hence a need was felt to invent alternative approaches to the paper based methods of communication. With the main objective to recognize the alternative approaches to the paper based communications and to legalize the electronic transactions, The Information Technology Act 2000 was enacted. The following are the objects of the Act

- (i) To introduce alternative approaches to the paper based methods of communications.
- (ii) To provide legal protection to electronic commerce.
- (iii) To authenticate the method of electronic records.
- (iv) To legalize electronic governance.
- (v) To provide a legal recognition to digital signatures
- (vi) To attribute and acknowledge the electronic records.

⁹⁵ Dicey A.V; *The law of the Constitution*; 198 (8th edition)

- (vii) To provide the method and procedure for the dispatching of such electronic records.

The Information Technology Act 2000 can be considered as a revolutionary legislation in the history of methods of communication and storage of information. The statute has recognized the technologies to gather and store information. A lot of paper work has been reduced by the introduction of this electronic medium of communication. The said statute has changed the mode of speech and expression and hence it circumscribes the freedom of speech and expression inclusive of press and media.

The Information Technology Act 2000 provides penalties regarding the misuse of any mode of modern technology in the following manner;

- (i) Imprisonment with or without fine for the act of tampering with the computer source document, according to section 65 of the said statute.
- (ii) It imposes heavy fines and imprisonment for the hacking of computer system.
- (iii) Publishing obscene information in the electronic form is also an offence punishable with imprisonment with or without fine.
- (iv) Breach of confidentiality and privacy is also punishable under this statute.
- (v) A person may be punished with or without fine for making misrepresentations or for suppressing any material fact intentionally.

The statute further empowers the controller to issue directions to a subscriber to extend facilities to decrypt information.

The Information Technology (Amendment) Act, 2008, inserts section 69A and 69B in the Information Technology Act. According to section 69 A the government can block the public access of any information through the computer resource if it is against the interest of sovereignty, solidarity and integrity of India.

Section 69B authorizes the government to monitor and collect the traffic data through any computer resource.

To incorporate the provisions of The Information Technology Act, four statutes had to be amended

- (i) By the amendment to the Indian Penal Code 1860. Sections 29, 172, 173, 175, 192, 204, 464, 466, 468, 469, 470, 471, 474, 476 477A were amended.
- (ii) By the amendment to the Indian Evidence Act 1872 sections 3, 17, 22, 22A, 34, 35, 39, 47, 65A, 65B, 67A, 73, 73A, 81A, 85A, 85B, 85C, 88A 90A and 131 were amended.
- (iii) By the amendment to the Bankers Book Evidence Act 1891, sections 2, 2A, were amended.
- (iv) By the amendment to the Reserve Bank of India Act 1934 section 58 was amended.

The point to be made here is that, the amendment of four statutes show the range of wide applicability of The Information Technology Act.

The Information Technology Act 2000 does not deal with the nature and scope or the restrictions on the freedom of speech and expression, inclusive of press and media. But the said statute has changed the mode of speech and expression, inclusive of press and media; and hence the prescribed permissions and limitations placed on this mode are applicable to the freedom of speech and expression. Hence it is stated that the Information Technology Act has brought a revolutionary change in the freedom of press and the media.

All the statutes discussed above do not deal with any particular or specific aspect of freedom of press and hence they are classified as general statutes. These statutes have influenced the freedom of press in an indirect or general manner. The said statutes have either dealt with the nature and scope of the press, or have created a right, or have given a different dimension to the freedom of press, or have changed the mode of expression or have placed a restriction or limitation on the freedom of speech and expression inclusive of freedom of press and media.

So one can safely say that freedom of speech and expressions prevail, only subject to the constitutional restrictions as well as the general statutory restrictions. But these

are not the only restrictions and more restrictions placed by specific statutes are yet to be analysed.

4. Specific Legislations.

Some statutes deal with a particular aspect of the freedom of speech and expression and freedom of press that is such a statute deals with only one dimension or facet of the freedom of press. To put it in other words, it does not deal in totality or with general aspects of the freedom of press. For example The Press and Registration of Books Act 1867 deals only with the regulations related to the printing and publication of the books. It does not deal with any general conditions or aspects of the freedom of press, but deals with a specific aspect of printing and publication of the press. Hence such legislations which deal with a particular condition or aspect related to the freedom of speech and expression inclusive of freedom of press and media are categorized as specific legislations.

(a) The Press and Registration of Books Act 1867

This statute was enacted to regulate the press and newspaper's printing activities. Another important object of the statute was to compel registration of books and printed material in order to make a compilation of the collections of the books. The statute makes the following provisions regarding printing and publishing books and newspapers.

- (i) According to section 3, any printed material including book, or a paper shall contain the name and the place of the printer and the publisher. In *re: G Alavander*⁹⁶, it was stated that the identification clause incorporated in section 3 was not violative of Article 19(1)(a) of the Indian Constitution. If a person violates section 3, he is subjected to punishment under section 12 of the Act with simple imprisonment or fine.
- (ii) Any person who has in his possession the printing press has to make a declaration to the magistrate of the fact of possessing a printing press. If he fails to do so such a person may be subjected to penalty under section

⁹⁶ AIR 1957 Mad 427

13 of the said Act. The punishment is in the form of imprisonment or fine or both.

- (iii) If a person ceased to be a printer or a publisher then he has to make a new declaration that he is not a printer or a publisher any more under section 8 of the Act. If he fails to make a new declaration, he shall be penalized under section 15A of the Act.
- (iv) Section 14 of The Press and Registration of Books Act 1867, a person is penalized for making false or untrue statements regarding the declarations to be made under section 4 and section 8 of the Act.
- (v) Section 11A of the statute demands that the copies of the printer should be delivered to the government as soon as they are published. Section 11B states that the copies of the newspapers should be delivered to press registrar.
- (vi) The press registrar should be appointed under section 19(A) of the Act. The function of the press registrar was to observe a general superintendence and control over the press. Under section 19(B) the registrar is empowered to maintain a register of newspapers.
- (vii) Every publisher of a newspaper had to furnish returns and reports to the registrar under section 19 E of the Act. Omitting to do the person could be punished under section 19 K of the Act.
- (viii) Section 19L imposes penalty for disclosing improper information to the registrar.
- (ix) This Act incorporates the provision for delegated legislation to be made by the state government under section 20. The state government to make necessary rules to bring into effect the objects of The Press and Registration of Books Act 1867.
- (x) Section 20 A of the Act empowers the central government to make the rules for regulating the activities of printing or publishing of newspapers and books. When the rules were made they are to be laid before the parliament for affirmation.

As seen from the above discussion this statute deals in detail with the procedure of printing and publication of newspapers and books. The salient features of The Press and Registration of Books Act 1867 is the

theme of identification of printers and the publishers of the newspapers and books.

It is to be remembered that this statute was enacted by the Britishers, in the pre independence era. The object of the then British Government was to curb and suppress the activities of the press. It was necessary for them to do so because of the rising revolts and tremendous incitement and instigation for the movement of freedom. By this statute the British Government wanted to put check through identification clause on the press. As it would be easier to take action when the names of the printers and publishers known.

The critics of this statute opine that this statute is outdated and the object of this Act to suppress the freedom movement in the pre independence era is not applicable in the post independence era, where India is sovereign democratic state. As the object of the statute is no longer applicable, thus the statute should cease to exist.

The arguments in favour of retaining the statute are as follows,

- (i) The statute does not restrict the freedom of press.
- (ii) The identification clauses incorporated in the statute only protects the interest of publishers and printers. So also the identification of the printers and publishers acts as a check on printing any defamatory, false, seditious or obscene matters.
- (iii) The other procedures related to printing and publishing of the books is merely regulatory and does not in any way curb the ambit of freedom of press.

In the humble opinion of the researcher the object of the statute has no doubt changed, nevertheless the statute is relevant and applicable even in today's times. Another important aspect is this that the statute is not imposing any pre censorship on the press which is a very important aspect in today's times. Apart from putting a few regulatory restraints the statute does not amount to the curtailment of the freedom of press.

(b) The Official Secrets Act 1923

The Official Secrets Act 1923 was enacted in the British era by the British Parliament. Prior to this Act various statutes relating to official secrets prevailed in British India. The first statute enacted was the Indian Official Secrets Act 1889. Its amended version prevailed in the Indian Official Secrets (Amendment) Act 1904. Later the Official Secrets Act 1911 prevailed. Lastly the Official Secrets Act 1923 was enacted which was the cumulative effects of all the above statutes. It seems that the British rulers were very apprehensive regarding the protection of their official secrets. Every now and then, because of the freedom movements and revolts, regarding independence strengthened their fears of their official secrets being leaked; so a series of statutes regarding official secrets were introduced. It appears that the British rulers have given more time and weight age to the protection of secrets rather than to any other issues. This shows that they knew their rule in India was unstable and constantly becoming weak.

The Official Secrets Act 1923 imposes restrictions upon the freedom of speech and expression inclusive of press to a certain extent. The statute states that the following activities will not fall within the scope of the freedom of speech and expression.

- (i) Any act which is prejudicial to the safety and interest of the state which amounts to spying is prohibited under section 3 of the Act. Section 10 of the statute imposes penalties for even harbouring of spies.
- (ii) Any communication with any foreign agents for the commission of certain offences is prohibited and punishable under section 4 of the statute.
- (iii) Any wrongful communication or information amounting to official secret to any person with the view of endangering the sovereignty and integrity of India is Punishable under section 5 of this statute.
- (iv) Any interference or obstruction with the view to mislead the members of police or the armed forces is prohibited and punished under section 7 of the statute.
- (v) Section 8 of the Official Secrets Act 1923 restricts the freedom of speech and expression in a very different manner, that is, it restricts the freedom of

speech and expression, which is in the form of silence. This section makes it a legal duty to impart information regarding the commission of any offence committed by guard, sentry or any patrolling officer. If a person, knowing such a fact does not give information, he is punishable under section 8 of this Act.

- (vi) Section 9 of this Act prohibits incitement to any offence.
- (vii) Another important restriction on the freedom of speech and expression is placed by section 14 of The Official Secrets Act 1923. It states that the proceedings of the court are prohibited from being published in public. So also any publication of any evidence or statements made in the course of the proceedings cannot be published for the sake of security and the safety of the state.

The Official Secrets Act 1923, as analysed above demarcates the ambit of freedom of speech and expression to a considerable extent, for the sake of the protection of official secrets of the state. This statute suffers from a few loopholes.

- (i) The most glaring loophole of the statute is that the word secret is not defined in the statute. The absence of the meaning of the term 'secret' makes it next to impossible to interpret and apply the whole statute. Many a times very vague or a very broad meaning is attributed to the term secret, which causes severe difficulties in knowing the exact scope of freedom of speech and expression in relation of The Official Secrets Act 1923.
- (ii) Another very grave demerit of the statute is that, any information covered under Official Secrets Act 1923 is exempted from The Right to Information Act 2005. This complicates the matter because the term secret is not defined in The Official Secrets Act 1923 and the same secret information is exempted from The Right to Information Act 2005.
- (iii) Lastly it has to be remembered that this statute was passed by the Britishers, whose utmost endeavour was to protect their official secrets to stop the growth of mutiny. But today India is a democracy wherein there is people's participation in the government, and there is

no question of mutiny. So also all the secret information regarding defence forces are protected under the various defence statutes; hence there is no point in protecting the official secrets under a separate statute. It is humbly submitted that The Official Secrets Act 1923, is not applicable in present times, and hence should be repealed.

(c) The Cinematograph Act 1952

Cinemas are considered to be very important means of speech and expression, because cinemas have profound and retaining impact upon the public. This mode of speech and expression is subjected to limitations by various statutes. The major statute which governs the cinemas is The Cinematograph Act 1952. The objects of this statute are the following;

- (i) To certify the movies
- (ii) To classify the movies according to its contents into ‘A’ for adults ‘U’ for unrestricted audience, and ‘U/A’ for universal but under the supervision of adults.
- (iii) To scrutinize the movies
- (iv) To establish a censor board.
- (v) To censor any portion or part of the movie that is deemed to be obscene or immoral, according to the provision of the statute.
- (vi) The statue provide for pre censorship of the films.

According to the Act the Central Government may, by notification in the official Gazette, constitute a Board to be called the Board of Film Certification. This board is constituted of a Chairman and not less than twelve and not more than twenty five other members appointed by the Central Government. This board views the film and certifies the film. The censor board, being a statutory authority has the authority to authorize the film for public viewing.

The constitutional validity of the Act was challenged in *K Abbas v Union of India*⁹⁷, stating that both press and motion pictures derive the right through Article 19(1)(a) of the Constitution. There is no pr censorship on press, then how can there be a

⁹⁷ *Supr.* , p. 52

ensorship on motion pictures, the court answered that the motion pictures have the ability to stir the emotions more than the ordinary press, and hence the censor is needed.

There is also an appellate tribunal to challenge the decision.

However the problem is that the authority of this board is always challenged by the self declared authoritarians of the society. The films despite being passed through the scissor of censors and then was certified for public viewing, still it faces ban either by the state government or due to violent protest made by self declared authoritarians of the society.

The film Water which was based on the poverty and impoverishment of young widows of Varanasi, during 1938 was also the prey for such authoritarians. As per the actual schedule the film was to commence its shooting in 2000. However due to strong protest and the death threats to the producer Deepa Metha, from Hindu fundamentalists, the film was shot on secret locations in Sri Lanka. After the completion of film in 2003, the acquired wide international recognition, but was only released in India in 2006.

The movie Da Vinci Code, even after getting the nod from the Censor board was banned by various states as the Christian community protested, stating that their religious sentiments were hurt. A point here is to be noted that the film did very well in Western Christian countries.

In *Sree Raghavendra Films v Government of Andhra Pradesh and others*⁹⁸ The Telgu Version of the film Bombay was banned by the state government in spite of getting the clearance from the censor board. It was later found out that the authorities, who banned the movie, did not even watch the movie. The court raised the ban on the movie.

⁹⁸ 1995(2) ALD 8

The case of *Life Insurance Corporation of India v. Prof. Manubhai D. Shah*⁹⁹ is no different; here a short film was based on Bhopal gas tragedy. The film was certified as 'U' by the censor board, and had won Golden Lotus award, being the best non-feature film of 1987. Despite of this the Supreme Court the Doordarshan did not telecast it. The reason offered by Doordarshan was that various political parties were raising the objection and claims of the victims were still pending in the court of law. The Supreme Court held that merely, because it is critical of the State Government...is no reason to deny selection and publication of the film.

The same was the fate of kamal Hassan's film, 'Vishwaroopam'. The film was released after it was passed by the censor board. The board had suggested few cuts with which Kamal Hassan had complied. The film was not however released in the state of Tamil Nadu. A special screening was made before the representatives of the state government and further cuts were suggested.

An obvious question which arises now is that about the constitutional validity of the Censor board. The question so posed is because the government and the self declared authoritarians keep on overruling the Censor board.

It is true that the motion picture are capable of stirring the emotions more than the press, and a pre censorship regarding the motion pictures is necessary, but this does not mean that it can be done at whim and wish of the government or the self declared authoritarians. To censor the films there is a proper statutory authority and if it passes the film then it should be displayed without any undue delay.

This statute falls within the restrictions of the Article 19(2) of the Indian Constitution, and hence is regarded as permissible, reasonable restrictions on films.

Apart from the Cinematograph Act 1952, few other statutes also deal with the films and film industries and it would not be out of place to mention a few of them here.

⁹⁹AIR 1993 SC 171

One of them is the Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act 1981. This Act deals with the conditions of the service of the workers of the cine theaters. It imposes certain obligations on the producers and the owners of the theaters and mandates them to comply with certain conditions for the betterment of the cine workers.

Some other similar legislations dealing with the Cine workers is Cine Workers Welfare Cess Act, 1981, and the Cine workers Welfare Fund Act 1981. Both these statutes were enacted to secure the financial support to the cine workers.

The film industry being very seasonal, unpredictable and unstable many a times causes hardships to its employees. The cine workers get remuneration only when the films are made, and in the slack period they are deprived of income. These two legislations secure financial aid and assistance to these cine workers in the form of compulsory income and funds available throughout the year.

The Bombay Police Act 1951 empowers the police to regulate and curtail the exhibition of films under certain circumstances mentioned in the statute.

There are number of legislations which regulate and restrict the production and publication of films in certain circumstances; and such legislations fall within the reasonable restrictions under Article 19(2).

(d) Drug and Magic Remedies (Objectionable Advertisement) Act 1954

The object of the Drug and Magic Remedies (Objectionable Advertisement) Act 1954 was to govern and regulate the advertisement to drugs. Medicine is a profession and cannot be evaluated in the commercial terms and hence a need was felt to regulate the activity of the advertisement related to drugs. At the outset it is important to note that this statute was challenged in *Hamdard Dawakhana v. Union of India*¹⁰⁰ The Supreme Court had given a narrow interpretation of the term speech and expression in

¹⁰⁰ *Supra.*, p. 49

relation with the advertisement; and the commercial advertisements were not included in the freedom of speech and expression- Article 19(1)(a) of the Indian Constitution. Later in the *Tata Press Ltd. v Mahanagar Telephone Nigam Ltd*¹⁰¹, the Supreme Court held that advertisement was a mode of defusing and broadcasting information regarding any product, hence advertisement fell within the ambit of Article 19(1)(a) of the Indian Constitution.

The Drug and Magic Remedies (Objectionable Advertisement) Act 1954 prohibits the advertisement to drugs in the following manner;

- (i) Advertisements related to the curing or treatment of certain deceases, ailments or disorders are prohibited by section 3 of the said statute.
- (ii) Misleading or false or untrue advertisements related to the drugs are prohibited under section 4 of the Act.
- (iii) The advertisement related to any magic remedies pertaining to any ailment, disease or disorder is prohibited under section 5 of the statute.
- (iv) Importing or exporting certain advertisements mentioned under section 3,4 and 5 of the Drug and Magic Remedies (Objectionable Advertisement) Act 1954 are prohibited under section 6 of the same statute.

If any act is committed in contravention to the provisions of the Drug and Magic Remedies (Objectionable Advertisement) Act 1954, the offender is penalized under the section 7 of the same statute.

No doubt that the Drug and Magic Remedies (Objectionable Advertisement) Act 1954 curtails the freedom of speech and expression in relation to advertisements, still the prohibition is only in relation to advertisement relating to the drugs for diseases or misleading or untrue advertisements. Hence this statute is considered as a reasonable restriction falling under Article 19(2) of the Indian Constitution.

Apart from Drug and Magic Remedies (Objectionable Advertisement) Act 1954, an autonomous body viz. Advertisement Standard Council of India controls and regulates the activity of advertisement.

¹⁰¹ *Supra.*, p66

Advertisement Standard Council of India was set up in 1985 to perform the following functions.

- (i) To access and ensure the truthfulness or an honest claim of an advertisement.
- (ii) To prohibit false and misleading advertisements and also to provide safeguards against such advertisements.
- (iii) To scrutinize the advertisement in relation to the offending public standards.
- (iv) To scrutinize whether the advertisement is in conformity with the public decency.
- (v) To provide safeguard against indiscriminate and arbitrary use of advertisements.
- (vi) To prohibit the promotion of hazardous or dangerous products through advertisements.
- (vii) To ensure fair and objective competition in the market of advertisements which give correct and true information to the public and hence such a public can make their choices through the advertisements.

This Advertisement Standard Council of India regulates and governs the advertisements in a reasonable manner, and hence the restrictions placed by them are constitutional.

(e) The Newspaper (Prices and Pages) Act 1956

The Newspaper (Prices and Pages) Act 1956 is the most famous statute in the history of the press. The rules made under this statute was challenged in *Sakal News papers v Union of India*¹⁰² case as well as in *Indian Express Newspapers (Bombay) Pvt. Ltd. V. Union of India*¹⁰³. This statute confers powers on the central government for the following aspects;

- (i) It empowers the central government to regulate the prices of the newspaper in relation to the number of pages.

¹⁰² *Supra.*, p.46

¹⁰³ *Supra.*, p. 64

- (ii) It empowers the government to make rules for the prevention of unfair competition among the newspapers.
- (iii) It also empowers the government to make rules in order to provide fuller opportunities of the freedom of speech and expression of the newspapers that have a smaller or limited circulation.

The object of the statute are no doubt appreciable, however the government chose to make arbitrary rules which were challenged time and again. As clearly seen, this statute confers a wide range of powers to the government. Now it was for the government to use these powers in a wise, reasonable and fair manner. But the history has shown that the government has used the powers conferred by The Newspaper (Prices and Pages) Act 1956, to pursue its own goals, and hence the rules made by the government came in conflict with the freedom o speech and expression incorporated in the Article 19(1)(a) of the Indian Constitution and were declared unconstitutional by the Supreme Court.

(f) The Copyright Act 1957

The Copyright Act 1957 was enacted with the object to prevent the unauthorized economic exploitation of the work done by others, without the consent of the owner of the copyright. This statute is applicable to literary, dramatic, artistic, musical work, sound recording and cinematograph film. This statute deals with wide range of contents, but the present researcher is confining his research only to the limited area of The Copyright Act 1957 which is related to the freedom of speech and expression inclusive of press and media.

The broadcasting is protected under Copyright Act 1957 section 2dd, and hence it acts as a restrictive legislation. However with certain clauses of the section 52, of the said Act, which speaks about the circumstances which do not constitute as the infringement of copy right, the section can in no way is an impediment for right of the press and media.

This balance was clearly shown by the Supreme Court when it came hard on Prasar Bharati and ordered them to stop the live telecast of the matches. However covering the incidence on news channels and few clips are shown, would not amount to the infringement of the copyright.

The copyright law protects the freedom of Speech and expression as it allows the news channels to cover any event as news. However it prohibits any wrongful gains or any wrongful loss for any party in the event the party tries to exploit the work under the garb of freedom of speech and expression.

(g) Prevention of Publication of Objectionable Matter Act, 1976

The Press Commission recommended the establishment of Press Council. It stated that the function of the Press Council were to safeguard and protect the liberties of the press. So also it was the duty of the press Council to evolve and maintain a standard of journalistic ethics. This means that the press council had to lay down the parameters for the printing and publication of any matter. The Press Council would permit the printing and publication of only that matter which was ethical and hence any objectionable matter would be prohibited by the Press Council. So the press Commission was of the opinion that the job of the then The Press (objectionable Matter) Act 1951 would be performed by the Press Council. Hence the Press Commission recommended the repealing of The Press (objectionable Matter) Act 1951; and consequently in 1956, the said statute was repealed.

In years later it was proved that the Press Council was not efficient in prohibiting the printing and publication of objectionable matters. Neither had it laid down any standard of journalistic ethics. The press council had failed to impose a deterrent check on the printing and publishing matter in an undesirable way. Consequently an urgent need was felt to curb the printing and publication of objectionable matters. In pursuance to this need an Ordinance was issued by the President on the 8th December, 1975. The Prevention of Publication of Objectionable Matter Ordinance, 1975 prohibited the printing and publication of following matters.

- (i) Any matter which was against the sovereignty, security, stability and integrity of India.
- (ii) Any matter which would disturb the friendly relations of any foreign state.
- (iii) Any matter which is indecent or immoral in nature.
- (iv) Any matter which is in the form of incitement to offence.
- (v) In the necessary cases if it was in the opinion of the authority's then security could be demanded from the publishers.

In the year of 1976, the said Ordinance was repealed and the Prevention of Publication of Objectionable Matter Act, 1976 was enacted. This statute again acts as a restraint on the freedom of speech and expression inclusive of freedom of press and media.

Section 2 of the Prevention of Publication of Objectionable Matter Act, 1976, states that it includes within the scope of the said statute any book newspaper, newsheet press, document etc.

Section 3 of Prevention of Publication of Objectionable Matter Act, 1976 defines objectionable matters as follows;

- (i) Any visible representations or verbal response which brings hatred or contempt.
- (ii) Any actions or word to constitute incitement to an offence.
- (iii) Any printed material in order to seduce any member of the armed forces.
- (iv) Any printed material which promotes disharmony or injects the feeling of enmity or ill will among the different religious or linguistic sections of the society.
- (v) Any matter which tends to causes fear or alarm among the public or disturbs the public peace or public tranquillity. The freedom of speech and expression inclusive of freedom of press does not extend to the activities mentioned above.

Further the statute empowers the central government any other authority constituted under the Act to prohibit any matter which can be described as

objectionable or prejudicial. If such a matter is already published, then the statute authorizes the government to forfeit such objectionable publication.

The statute further authorized the government to demand security from the press.

As it is clearly evident, this statute conferred very wide sweeping powers on the government. This statute marks a high level mark of censorship. There never had been such a draconic statute enacted before in the history of free press. The fate of such a statute was short lived and the press once again survived freely when this statute was repealed in 1977 by the Janata Government.

(h) Press Council Act 1978

The concept of Press Council has ancient roots, and was established in Sweden in 1916 known as the 'Court Of Honour For Press'. Today this concept is worldwide, and the Press Council prevails in some form or the other in almost all the nations.

In India the Press Council was first established by The Press Council Act 1965. It was established with a view of raising the journalistic standards. During the emergency period, the Press Council Act was repealed and the Press Council was abolished. The Press Council Act was once again enacted, after the Janata Party came into power, immediately after the emergency, in the year 1978. This Act was based on the structure of the Press Council Act 1965.

The functions of the press council are as follows

- (i) To improve the standard of journalism.
- (ii) To inculcate ethics in journalism.
- (iii) To protect and promote the independence of journalism.
- (iv) To improve the standards of news papers and news agencies
- (v) To safeguard the freedom of press.
- (vi) To foster the good taste among the public by improving the standard of journalism.

The Press Council of India enjoys twofold powers

- (i) It enjoys the powers equivalent of the civil court
- (ii) It has the power to censure. By virtue of this power, it can warn, admonish, or censor any content, which the Press Council thinks is violating the journalistic ethics.

The distinct feature of the press council is that it functions independently of the government and keeps the government totally out of the purview of its functioning.

(i) The Prasar Bharati (Broadcasting Corporation of India) Act, 1990

The Prasar Bharati (Broadcasting Corporation of India) Act, 1990 is a milestone in the history of press and media. For the first time in the history of Independent India the government proposed to free two important channels of media (radio and Doordarshan) of the government control. This was a very big step in making these channels independent of government control. In fact this was such a big step that this statute was not implemented for seven years. In 1997 the government actually implemented the statute and provided independency to radio and doorshan the two very influential mediums of broadcasting. Before 1997 the government could influence the news as the broadcasting channels of radio and doordarshan were under the government control. So it is but natural that these channels could not impart free and objective views which were against the government policies. After the independency the radio and the doordarshan channels can broadcast freely and fearlessly any news or program.

The highlighting feature of the Prasar Bharati Act is the establishment of the corporation. The corporation known as Prasar Bharati is established under section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990. The functions and powers of the Prasar Bharati Corporation are enumerated in section 12 of the Act as follows;

- (i) The essential function of the Prasar Bharati is to organize and regulate the public broadcasting.

- (ii) It has to strike a balance between the broadcasting the radio and television regarding development.
- (iii) The Prasar Bharati has to promote the unity and integrity of the nation.
- (iv) The Prasar Bharati has to inculcate the values enshrined in the Indian Constitution while broadcasting.
- (v) It has to ensure that the broadcasting is done objectively freely and fairly in the matters of public interest as well as the national interest.
- (vi) While broadcasting the citizens right to know and information has to be protected.
- (vii) It has to give weightage to the fields of education, agriculture, environment, science and technology and overall development while broadcasting.
- (viii) While broadcasting it has to give ample coverage to diverse cultural activities and linguistic programs.
- (ix) It also has to give due coverage to sports and games so as to encourage healthy competitive aspiration of the public.
- (x) It has to provide appropriate programs to cater to the special needs of the youth, minorities, and the tribal communities.
- (xi) It has to broadcast program to solve the problem of women and help in women empowerment.
- (xii) It also has to promote and secure social justice to the weaker sections of the society. So also it has to help to eradicate exploitation of the weaker section inequality and evils such as It has to protect the interest of the weaker or the backwards sections of the society and also the people staying in remote areas.
- (xiii) It has to take special efforts to protect the interest of the children and abolish child labour. Further it has to protect the vulnerable sections of the society such as the physically and mentally handicapped people.
- (xiv) It has to broadcast the program in such a manner that the national integrity is promoted.
- (xv) It has to ensure the best utilization of the broadcast frequency and high quality reception.
- (xvi) It has to promote the research program to update the broadcasting technology.

- (xvii) It has to expand the broadcasting facilities by establishing additional channels of transmissions at various levels.
- (xviii) It has to take steps to ensure that the broadcasting is conducted as public service.
- (xix) It has to provide a system for gathering news for the radio and television.
- (xx) It has to help in negotiating the purchase or acquiring the rights and privileges in respect of sports events, films serials etc.
- (xxi) It has to establish and maintain libraries of radio and television programs and materials
- (xxii) It has to conduct programs regularly for audience research or for technical services.

These functions of the Prasar Bharati Corporation are evolved by the Corporation in the form of broadcasting code applicable to the All India Radio and all the broadcasting and the television organizations. This code exists in the form of the cardinal principles which have to be ideally followed by all the public communication channels.

This statute is considered as an important landmark for conferring independency on two very important channels of media. Television and radio have the tremendous impact or influence on the public, and hence they are considered as a very potent medium of communication. Prior to 1997, that is the implementation of The Prasar Bharati (Broadcasting Corporation of India) Act, radio and television were under the control of the government; the consequence which is that these mediums of communication were deprived of expressing their views or opinions freely and fearlessly against the government or its policies. Not only this but these channels had to project only the government's views and had to paint the government in a positive angle. After the implementation of The Prasar Bharati (Broadcasting Corporation of India) Act, these channels of public communications became free from government control and therefore were able to freely criticize the government policies. So one can say that The Prasar Bharati (Broadcasting Corporation of India) Act is the real foundation of a democratic state within which a free press exists.

(j) Cable Television Networks (Regulation) Act 1995

Before 1990 the Doordarshan enjoyed the monopoly as far as the broadcasting was concerned even though it was under government control. In 1990 the policy of liberalization was implemented due to which the foreign duties were abolished; because of which the gates were opened to foreign channels. Due to which the Indian viewers got access to foreign channels by satellite transmission. This gave rise to another problem which was that there was no law to regulate either foreign channels shown from satellites or the new channels started in India. On public demand the cable operators telecasted only the foreign channels or the newly started Indian channels. Due to which the programs of Doordarshan were completely sidelined and hence Doordarshan lost its monopoly. To combat this situation The Cable Television Networks (Regulation) Act 1995 was enacted to regulate the cable television. Cable television is not only an important channel of public communication but has wide publicity; its presence is felt in nearly every house. The registering authority constituted under this statute is not only empowered to regulate the cable television but it also has to control, govern and deal with the incidental matters there in.

The term ‘cable operator’ is defined in section 2(aa) of the Cable Television Networks (Regulation) Act; and the term cable service is defined in section 2(b) of the same statute.

Section 3 of the same statute makes the registration of the cable operator mandatory. It also lays down the procedure for registration of the cable operators. Failing to register the cable operator may be subjected to punishment. The compulsory registration is a reasonable restriction on the freedom of communication.

The Cable Television Networks (Regulation) Amendment Act 2008 has amended Section 8 of the said statute as follows;

It states that the cable operators should compulsory re- transmit the programs of Doordarshan channels;

- (i) Two terrestrial channels
- (ii) One regional channel.
- (iii) Both these channels should be broadcasted in prime band.
- (iv) No deletion, or alteration, or modification is permitted while transmitting the said channels.
- (v) According to section 3 the Prasar Bharati Corporation has the power to specify the number and the name of every Doordarshan Channel to be re-transmitted.

This amended section 8 of the said statute puts restriction on the freedom of press and media by way of compulsory transmission of prescribed channels.

Further the section 9 of The Cable Television Networks (Regulation) Act 1995 imposes another reasonable restriction by way of using only the equipments and instruments which are prescribed by Indian Standards Act 1986. This section debars the use of any other sub standard equipments and instruments. If such sub standard equipments and instruments are used then they may be seized and confiscated according to the section 11 of the said statute. Another restriction on the public communication is placed under section 10 of the statute; which prohibits the interference of the cable television network with any authorized telecommunication system. The last restriction placed on the press and media and public communication is mentioned in the section 20 of the statute which prohibits the operation of the cable television network in public interest. As it is known that the concept of 'public interest' is coloured by various dimensions, it becomes difficult to figure out, which dimension it is. But time and again the Indian judiciary has pointed out that the public interest is one of the most important reasonable restrictions falling under Article 19(2) of the Indian Constitution.

(k) Right to Information Act 2005

The very essence of the executive to work in closed chambers has been done away for good with the implementation of Right to Information Act 2005. This statute has put the last nail in the coffin of the doctrine of denial of government records and documents in the so called 'public interest'. Now this very statute opens the gates of

information in public interest. The objects of this statute are very weighty for the prevalence of the healthy democracy.

- (i) The first and foremost object of this statute is to bring transparency in the government operations. Once all the government operations and modes of functioning are put under the public scanner, automatically the government official becomes accountable for their actions. Once the actions of the government officials through the access of the government records and documents are made public, the scope of corruption naturally reduces.
- (ii) The statute not only opens the access to information through the government records, but very importantly confers a legal or a statutory right to information on the citizens. So now getting information from government departments is the legal right of the citizens.
- (iii) This statute was enacted for the prime purpose of the disclosure of the government documents. Up till now there was no access to the government documents, and hence information regarding the government documents could not be scrutinized by public and they had to take the word of the government officer regarding such documents. Now because there is access to government documents, an individual can check, whether any of his right or liberty has been violated.
- (iv) The statute makes the provision for the establishment of the Central Information Commission and the State Information Commission.

Section 3 of the Right to Information Act 2005 confers a legal right on the citizens that is the right to information. The consequence thus being that if the information is denied to the citizen his right is violated and such an individual can take recourse to legal remedies available under the statutes. Further the statute not only confers the right to information on the individual but imposes an obligation on the government authority to furnish the required information under section 4 of the Act. According to section 4 of the Act the authority has to maintain and publish all its records within one hundred and twenty days, after the enactment of this Act. The authority also has to maintain the records stating the particulars of the organs, its functions and duties

Section 6, of the Right to Information Act 2005, states that a request through the electronic media can be made for obtaining the required information and the section

has incorporated a detailed procedure for doing so. The right to information under this statute is circumscribed with the exemptions mentioned under section 8 of the said Act. Disclosure of the information can be denied on following grounds;

- (i) If the information endangers the solidarity and integrity of India.
- (ii) If the publication of the information is denied by the courts of law.
- (iii) The information cannot be revealed if it falls in the doctrine of parliamentary privileges.
- (iv) If the information is regarded as a confidential matter related to commerce or trade secrets.
- (v) Information received from any foreign government related to a national or international issue may not be disclosed.
- (vi) Information which endangers the physical safety of any person or puts a person's life in peril may not be disclosed.
- (vii) Any information which causes hurdle or interference in the process of investigation may not be disclosed.
- (viii) Any cabinet records or records of the secretary or any other related matter will not fall within the scope of this Act.

The disclosure of any document which is prohibited by the Official Secrets Act 1923 may be disclosed under the Right to Information Act. As it is accepted that the public interest of the disclosure of such a document will prevail over the protected interest of not disclosing the same. Here the protected interest has to give way to the public interest as it is of paramount importance and has to prevail over the protected interests.

Section 21 of the Act provides the defence of good faith for any action done in consequence of it. An overriding effect of the Right to Information Act 2005 has an overriding effect over the Official Secrets Act 1923.

The Right to Information Act, 2005 has tremendous impact on the freedom of press and media. This Act has cleared all the impediments which were present in securing, gathering and disseminating information. Barring a few exceptions the media can get

access to any information and communicate it to the public. It can be stated that The Right to Information Act, 2005 has made things easier for press and media. By the virtue of this Act, now it is possible for the media not only, to project more news, but also to give specific and correct information regarding the government policies and action. As a result of this the public can get a clear picture regarding the whereabouts of any public officer. So in the real sense, this Act helps to bring transparency in the governance.

Another important impact of this statute is that it acts as an indirect check on the public authorities. As all its information relating records and documents can be accessible to the public. This makes it compulsory for them to maintain their documents and records according to the prescribed procedure and order.

Another essential feature of this Act is that it has brought accountability of the public authorities.

One more welcome advantage of this statute is that the procedure prescribed there under is very cheap and expedient.

One can say that the Right to Information Act, 2005 has really brought a revolution in the functioning of the government and other public authorities.

The statute in a way acts as a supplementary asset to the press and the media for the broadcasting of news. In the present era of public news it can be said that the Right to Information Act, 2005 is the happening statute of the present times.

5. Statutory bodies

The freedom of press and media is restrained by, first the constitutional reasonable restrictions prevailing in Article 19(2) of the Indian Constitution, secondly by legislative enactments, and lastly by certain autonomous bodies created under those

legislative enactments. Some of these self regulating bodies are empowered to put reasonable restrictions on the press and media, by way of imposing rules or by prescribing procedure to be followed by the press and the channels of the media.

(a) Ministry of Information and Broadcasting

This Department of Information and Broadcasting is not an autonomous body, and is a part of the government but it is regarded as fountain head of media and broadcasting. This is the apex or the head authority for the information and broadcasting service; because of this fact, the Department of Information and Broadcasting is included in this part of the research. This body has to perform many vital functions as follows,

- (i) It has to implement such steps which are necessary for helping the people to have access to information.
- (ii) It has to regulate the channels of mass communications such as the radio, television, press and other publications to communicate information effectively.
- (iii) It has to strike a balance between the public interest and the commercial interest. It has to give equal weightage to both.
- (iv) The foremost function of this department is to make rules and regulations for information and broadcasting of news.
- (v) It has to regulate the services of the All India radio and Doordarshan news.
- (vi) It has to categorize and classify the films which are to be exported and imported.
- (vii) It has to take measures to ensure the rapid growth, progress and development of the film industry.
- (viii) In order to promote cultural exchange in thought and values, the department of information and broadcasting has to conduct and organize film festivals.
- (ix) This department of Information and broadcasting in order to further the government policies has to aid and assist in advertising and visual publicity.

- (x) A very crucial task of this department is to manage the press relations and the government policies which may not be in conformity sometimes. It has to make an attempt to make the government policies acceptable. It also has to get a feedback on the said government policies.
- (xi) For the purpose of The Press and Registration of Books Act 1867 the ministry of the information and broadcasting is a competent authority to regulate and administer the press and newspapers.
- (xii) The main function of this department is to disseminate information of the national importance in relation to India, outside the state as well as within the state.
- (xiii) This department has to hold programs for research and training of the people related to the field of media communication, information and broadcasting.
- (xiv) This department has to promote the methods of communication pertaining to traditional folk art forms in furtherance of publicity related to issues of public interest.
- (xv) This department also has to take steps to promote international cooperation, in respect of information and mass media.

By performing the enumerated functions the Ministry of Information and Broadcasting governs and regulates the press.

(b) Press Council.

The press council is constituted by the Press Council Act 1978¹⁰⁴.

In a way it can be regarded as quasi judicial authority as it has the power of civil court and also has the power of censure. The Press Council governs and regulates the press in a following manner;

- (i) It can make rules to preserve, promote and ensure the freedom of press. It has to maintain the independency of the press.
- (ii) It has to lay down the guiding principles to improve the standard of the newspaper and the news agencies.

¹⁰⁴ *Supra.*, p 92

- (iii) It has to lay down a code of ethical conduct to be followed by the people involved in the news agencies.
- (iv) It has to help and promote the journalists to inculcate professional standards of journalism.
- (v) The Press Council has to undertake such measures so that there is a rise in the standards of public taste and newspapers have to cater to it.
- (vi) It has to create a sense of awareness and responsibilities among the journalists as well as the citizens.
- (vii) It has to promote a sense of fair and an objective value among the journalists so that they regard imparting news is a public service.
- (viii) To scrutinize any activity that is likely to restrict the dissemination of news; which is of public interest and importance.
- (ix) It has to keep vigilance over the newspapers taking any financial assistance from a foreign source, so that the integrity or sovereignty of India is not endangered.
- (x) To keep a watch on the circulation of a foreign newspaper and also has to study the impact of such a circulation.
- (xi) It has to promote a congenial and professional relationship between all the people who are engaged in the printing, and publication process of the newspapers.
- (xii) It has to keep a strict watch on the formation of any monopoly of a newspaper which acts as a threat to the independency of the press.
- (xiii) It has to study and express its opinion in such cases where the central government has asked its opinion on any important matter.
- (xiv) It also has to perform any other duty which is incidental to the above activities.
- (xv) It has the power to warn, admonish, or censure the newspapers.

Under section 8 of the Press Council Act 1978, the Press Council is considered as an Appellate Authority. Under the statute an Appellate Board comprising of the Chairman of the Press Council and other members is constituted. The press council has been given very wide powers and one can get the impression that it is a very powerful body. Howsoever it has been proved, that it is more of an advisory body. It

is like a roaring lion (Press Council) that is set free in the universe of the press, however this lion is deprived of the attacking teeth and hence it only roars.

(c) Press Information Bureau

The Press Information Bureau is another authority which acts as a subtle check on the public communication and the media. The office of its headquarters is situated in New Delhi. The Press Information Bureau comprises of a Director General along with eight other additional Director Generals, headed by the Principal Director General of the department of media and communication. As the Press Information Bureau is constituted of members from the government department, it can be considered as an extended limb of the government.

The following are the functions of the Press Information Bureau

- (i) To communicate to the press and the electronic media, the information related to the government, its policies, plans and schemes.
- (ii) The main function of the Press Information Bureau is to act as a link between the government, media and the public. It has to give a feedback to the government regarding the media's activities and the people's mood and reactions, regarding any of its policies and plans.
- (iii) The Press Information Bureau has a separate and the distinct unit to deal with the issues of the publicity of the Prime Minister's Office. This unit has to compile and supply information regarding the Prime Minister's office, and the Cabinet Secretariat; to the media and press. This separate unit of the Press Information Bureau has to continuously work for all seven days.

It appears that this Press Information Bureau plays a minimal role in governing and regulating the media and the press but plays a major role in acting as a link between the government, media and the public.

(d) Registrar of Newspaper for India

A registrar of the newspapers is constituted under the Press and Registration of Books Act 1867. Registrar of the newspaper is constituted under section 19(a) of the statute. The Registrar of newspapers for India is appointed by the central Government. Other

officers under the general superintendence of the Press Registrar may be appointed by the central government. These officers have to assist the Press Registrar in performing the functions and duties of the office. Such officers who are appointed by the central government have to function in accordance with the orders issued by the Press Registrar; and have to perform the allocated functions.

The main function of the Registrar is to maintain a register of newspapers in the prescribed manner.

The Registrar for newspaper for India regulates the press only to the extent of maintaining the identification and the details of the news papers in the register. The Registrar does not make any rules for the governance of the press.

(e) Telecom Regulatory Authority of India

Telecom Regulatory Authority of India was established under the Telecom Regulatory Authority of India Act 1997 on 20th February 1997. The main object of the Telecom Regulatory Authority is to govern and supervise the telecom services. The following are the functions of the telecom authority.

- (i) It can issue directions regarding tariff and interconnections and Direct to Home services.
- (ii) It can make recommendations regarding the terms and conditions of a license of a service provider.
- (iii) It also has the power to revoke the license.
- (iv) It has the power to regulate the telecom services including the power to fix and revise the tariff regarding the telecom services.
- (v) It has the power to compel the compliance of the terms and conditions of the license.
- (vi) It can also fix the terms and conditions of interconnectivity between the service providers.
- (vii) It also has to take measures to secure the technical compatibility between different service providers.
- (viii) It can also make norms to regulate the revenue derived from the telecommunication services among the different service providers

- (ix) It has to lay down the guidelines to improve the standards of quality with respect to service provided by the service providers.
- (x) It has to check by conducting a survey whether the service providers, provide quality service to the consumers.
- (xi) It has to lay down the rules regarding the period of time of local and long distance circuits of telecommunications.
- (xii) It has to maintain a register containing all the issues related to the interconnectivity agreements
- (xiii) It has to take steps to see that the universal service obligations are effectively complied with.
- (xiv) It may also levy fees and other charges in respect of telecommunication services.
- (xv) It may have to perform any other additional administrative or financial function as may be directed by the central government.

This Telecom Regulatory Authority of India puts reasonable restrictions on freedom of speech and expression by way of telecommunication; by imposing regulatory norms and conditions.

(f) The Advertising Standard Council of India

The Advertising Standard Council of India was established in 1985 with the object to ensure the honesty and truthfulness of the advertisements. It has to ensure whether the advertisement of the product really matches with the characteristics or the contents of the product. The functions of The Advertising Standard Council of India have already been dealt in detail in foregone pages.¹⁰⁵

(g) Directorate of Field Publicity

The office of the Directorate of Field Publicity was established in 1953. It was established to give publicity to the five year plan and hence it was known as “Five Year Plan Publicity Organization”. Later the scope of the functions of this “Five Year Plan Publicity Organization” widened and hence it came to be known as Directorate

¹⁰⁵ *Supra.*, p. 88

of Field Publicity. The powers and the functions of the Directorate of Field Publicity are as follows;

- (i) To inform and publicize the five year plan of the government.
- (ii) To educate the people through the information regarding the plans of the Government.
- (iii) To motivate and ensure the involvement of the people in the role of development.
- (iv) To give special attention to the people who are at the grass root level by informing to them the policies of the government.
- (v) To take those measures which will help to achieve the horizons of development which were set by the founding fathers of the Indian Constitution.
- (vi) To formulate and gather public opinion regarding the government programs.
- (vii) To promote and mobilize public participation in the process of development.
- (viii) To take special efforts to inform the government policies to the weaker sections of the society.
- (ix) To take such measures to ensure the participation of those people who are remotely situated in the society, or those who belong to the marginal section of the society; to help them to be aware and participate in the government program.
- (x) To create a sense of awareness about issues which are of national importance.
- (xi) To communicate information regarding the issues of social relevance to the various sections of the society.
- (xii) To communicate to the government the public opinion regarding its programs and policies. This helps the government implement its programs and policies and also to take some corrective measures if required.

The role of the Directorate of Field Publicity is very crucial as it acts as a two way channel of information; because the government is informed of the public opinion and the public is informed of the government policies. So it can be said that its role is to

act as a bridge or a linkage between the government and public at large. Thus the office of the Directorate of Field Publicity helps in bringing public awareness, education, and abridging the gap between the government and the people.

(h) Central Board of Film Censors

The Cinematograph Act empowers the central government to appoint the Central Board of Film Censors. The original name of this board was 'Central Board of Film Certification,' but in 1983 this name was changed and the board was given a new name and was called as the 'Central Board of Film Censors'. The central board of film censors consists of not less than twelve and not more than twenty five members. The central government appoints the Chairman of the Central Board of Film Censors, and with his advice the central government appoints other members of the Board. Sometimes the central government may appoint honorary members. It is the general practice that such honorary members are remunerated with allowances for attending the meetings of the Censor Board. The Censor Board offices are currently situated at Mumbai, Chennai, Kolkata, and Trivandrum. The headquarters of the Censor board is situated at Mumbai.

The main object for the constitution of this board is to categorize, classify and impose censorship on the films; as well as to certify the films for public exhibition.

The Censor Board classifies the films into four groups of classification

(i) Certification 'U'

The films which are categorized as 'U' are open for public at large, including children to be viewed. Such films are categorized as unrestricted for public exhibition.

(ii) Certification 'U/A'

These types of films are also to be viewed by all the sections of the public, but in cases of children below the age of twelve, they can view the film, but with parental guidance.

(iii) Certification 'A'

Such types of films are open to be viewed only by a particular section of the society. Only those members of the society who are in the adult group that is above the age of eighteen years.

(iv) Certification 'S'

This certification 'S' is granted by the board in very rare cases. Such types of films are opened to be viewed by a very limited section of the society for example a film may be opened to be viewed by a particular class of a society, for example only doctors may be allowed to view the film.

These certifications are issued through the regional offices of the censor board which are located in Mumbai, Bengaluru, Kolkata, Chennai, Cuttack, Guwahati, Hyderabad, Trivandrum and New Delhi.

Appeal against the decision of the Censor Board lies with the Film Certificate Appellate Tribunal.

There are many cases relating to the certification of the film which have been discussed earlier. The point to be noted here is that the Censor Board imposes restrictions on the freedom of speech and expression through films, but these restrictions are again falling in the ambit of Article 19(2) of the Indian Constitution.

6. Concluding Remarks

The Indian Constitution under Article 19(2) empowers the government to impose restrictions on freedom of speech and expression. This power to make restrictions is limited by the doctrine of reasonability. That means the restriction on the restrictions to be imposed by the government is the doctrine of reasonability.

The government by invoking its Constitutional authority has enacted a number of legislations which have been dealt in this chapter. These series of legislations by imposing restrictions define the scope and the ambit of right to freedom of speech and expression inclusive of freedom of press.

The right of press is considered to be one of the most crucial rights on which the principle of democracy survives. It is this press which acts as a linkage between the public and the government. The press communicates the public opinion to the government; and communicates to the public the plans, intentions, schemes, program of the government. The government is in a continuance attempt to see that the press communicates to the people only what it wants. The press on the other hand wants to expose the government's political schemes or arbitrary intentions if any. It is because

of this aspect that the government tries to curtail the scope of freedom of press. Some legislations in fact confer and promote the freedom of press, but sometimes a draconian legislation which strips the press of its freedom, for example as in the case of Prevention of Publication of (Objectionable Matter) Act 1976; the fate of such legislations is very short lived and the said the statute had to be repealed the very next year.

The scope of the freedom of press is no doubt demarcated by a number of legislations, but nevertheless, freedom of press is protected and survives freely in the Indian Legal System. Now, one has to see what the press and media do within the prescribed freedom. Hence the next chapter deals with this aspect which is this aspect that what role does the press and media perform within the prescribed fear.

CHAPTER IV

ROLE OF MEDIA IN DEMOCRACY

“The media's the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power; because they control the minds of the masses.”

—Malcolm X

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2. Role of the media in a democratic society.
 - (a) The role of the media as an unbiased informer.
 - (b) Media's role as an educator.
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1. Introduction

The media is considered as the backbone of the democracy. The media disseminates the unbiased information and empowers the masses with the power of knowledge. The media imparts knowledge regarding various subjects like political affairs, cultural affairs, world events, crimes, policies of the government, sports entertainment, environment, science technology and development. The media reveals each and every aspect of life on this universe, as there is no aspect which is not touched upon by the media. Media plays a very crucial and intricate role in a democratic setup, as the voters on the basis of the information projected by the media, frame their opinions and elect the government.

The people also make up their mind as to which people the power should be vested in. The media identifies the problems in a society and serve as a medium for deliberation. The media is also considered as a watchdog and is relied upon for uncovering errors and wrongdoings by those who are in power. It is therefore a reasonable assumption that the media adheres to certain objective, fair and ethical standards while performing their functions. It is on this assumption that the views projected by the media are true, and objective that the democracy thrives upon.

In generating a democratic culture that extends beyond the political system and becomes engrained in the public consciousness over the time, the role of the media is vital. It is through this media that people share their experience, learn and become aware of the happenings of the society. It is because of the constructive political debates held by the media, that various options and policies are opened, which are responsible for the development. Another very important aspect is that, the media functions in open public and therefore has greater effect vis-à-vis to a person who functions or makes a statement in a private chamber. The media to function effectively and efficiently, it must be objective. So also the journalist should necessarily be an impartial and unbiased observer who is not engaged or connected in any way with events or the issues; but merely records them impartially. This requisite

can be considered as the most indispensable founding stone for a healthy media industry to exist in the democracy¹⁰⁶.

2. Role of the media in a democratic society.

Media has occupied the most vital position in a democratic setup and constitutes the very bedrock of democracy. The democracy in absence of the media will be democracy which would be an aimless, futile exercise of attempting to be a democratic set up. The democracy will never meet the expectations of the people if media is eliminated. This means in absence of media there cannot be a democracy in true sense. One cannot undermine the role of media in a democratic set up. The most essential and fundamental function of the media is to project before the society only the bare truth, and should not tamper the facts without fearing or favouring any one. If the media has to fear, it should be afraid only of the God.¹⁰⁷ The role of media in a democratic society has various dimensions. In this chapter the researcher has made an humble attempt to analyse the dimensions of the media.

(a) The role of the media as an unbiased informer.

In any country for the smooth functioning of the democracy, it is essential that the media should be given a free hand. The media should report freely, it should be able to comment fairly, and if needed it should be in a position to criticize without any fear, in the interest of the general public.

According to Hohfeld every right has a corresponding duty. There can be no right which is not correlated with the corresponding duty. Similarly the media is no exception, and has rights as well as duties. All the time only the rights and powers of the media are focused upon; however there are very duties imposed upon the media. The duty is to act as an informer of the society. This is a very demanding, taxing, and

¹⁰⁶ Sivakumar S. Halsbury's Law Monthly, February 2009.

¹⁰⁷ Altheide DL, Michalowski RS (1999) Fear in the News: A Discourse of Control. The Sociological Quarterly 49: 475-503

a very intricate duty imposed upon the media. It is on this information that the public formulates the public opinion or the crosscurrent of the public opinion flows. On the other hand it is very important that media stick to their duty, because if they fail in their duty the democracy will suffer heavily. If media does not discharge its responsibility independently in any democratic country, the politicians are bound to behave like dictators or even worse than them. As Benito Mussolini had once rightly said, "Democracy is a kingless regime infested by many kings who are sometimes more exclusive, tyrannical and destructive than one, if he be a tyrant".¹⁰⁸ The fear of being exposed will keep the politicians on their toes and they will be accountable to some extent. This will prevent them from being rash, corrupt, as they will realize that if they behave in such way their days in powers will be numbered. So the media while playing a role of an informant also acts as a deterrent check on the tyrannical or the corrupt aspirations of the politicians or any other public figure.

The first and foremost duty of the press is to be unbiased informer. The main function of the media is to equip the masses with information. When the term 'information' is used, it has to be assumed that the information so provided by the press shall be unbiased. One thing here has to be noted that the role of press is not reporting, but unbiased reporting. The biased reporting will kill the democratic spirit itself, while the unbiased reporting will enable democracy to blossom or flourish.

It therefore becomes essential to understand the concept of the term 'unbiased'. Any information will be deemed to be unbiased only if it fulfils the following criteria

- (i) Information should be true, and it should be verified to be true.

True information means that the facts or the interpretation of those facts are in existence. Any facts or the interpretation there of which does not exist is said to be untrue or false. If the information is untrue or false then it is liable for two consequences. One, that the agency of media who gives false information will be caught in a network of libel or slander. The other grave consequence which is more dangerous is that the foundations of the democracy will be

¹⁰⁸ Wählberg Anders, Sjöberg L (2000) Risk perception and the media. *Journal of Risk Research* 3: 31-50

shaken as the public will not be able to know and understand the real facts. The other aspect of this criterion is that the information should not only be true but should pass the test of verification. That means the information which the media passes on to the public should be supported by evidence. The media cannot project the information based upon some vague assumption or wishful thinking.

- (ii) The information should be projected in public interest.

The very cause for the media to survive is to protect the public interest. Any information which the media wants to gather, collect, disseminate and broadcast should necessarily be to protect the public interest. It should be remembered that the media exists and functions only to protect the public interest. Hence the media cannot impart any information which is contrary to public interest. To put it in other words the media should not impart such information to promote its selfish gains. Regardless of whatever is the nature of the news, the media should project it only in the interest of the public. While reporting any sensational matter, the media should report it in such a way that the peace and tranquillity is not affected. Further the media should remember that it plays a very important role of informant, public interest is of paramount importance and is to be protected at any cost. The creation and the existence or the survival of the media is only to protect, promote and secure the public interest.

- (iii) Information to be imparted in good faith that is without any malice,

This criteria is supplementary and the complementary aspect of public interest. As the media plays the role of the informant, it is mandatory upon the media to impart the information only and only in good faith. The activity of imparting the information should not be tainted with malice. The media should not convey any information to the public at large, with feeling of jealousy or hatred. Neither should the media communicate any matter for spiteful reasons, nor should it cover any news rashly only for the sake of gaining popularity. The different channels of the media should not engage in unethical and unfair competition of reporting the news at the earliest, and lastly end up giving incorrect version of the issue, thereby causing malice.

- (iv) Reporting the incidence as it occurs without colouring it with one's own opinion.

The media is only an agency to report the incidences, issues, or events; so the media should report the matter only as it occurs. The media should report the bare fact without giving its own view, allowing the viewers to formulate their own independent views. The media enjoys such a capricious position that sometimes it only changes the angle of the news whereby the whole focus of the news changes. This aspect of either highlighting or to downplay any issue should be avoided by the media. It should not paint or colour the news with its own thinking or ideas. The job of media is only to report any issue, and not to act as a judge and pass a judgment on that issue. Practical experiences show that the media projects the news in such a manner as it wants to be seen by the public.

- (v) To impart the news impartially.

This aspect is the most important ingredient of free media. Free media means that the media should report the matter without any favoritism. It should not happen that the news reporters report the news for some consideration. In the cases where the news which is actually an advertisement, but is disguised as a news item, is misleading the public who believes it to be news; is virtually misguiding the public. Hence the news agency or media who adhere to such practice will not be considered as a free media, irrespective of the fact that there was no external compulsion on it to do so. If the media continues to adhere this practice of projecting any good or bad news based on the considerations received by them, then the whole spirit of democracy will collapse; as the media will project only what rich people will want, and people believing the media will act likewise, depriving themselves from enjoying the real democracy.

From the above points it is clear that what is meant by unbiased information.

The media is only an instrument of imparting the news; so it should impart the news in an unbiased manner. It should not tilt the balance in the favour of any one; on the contrary it should only inform the public of any issue or event. The media should not take any side or express its own opinion in front of the public, otherwise the public will tend to feel that the view of the media, is rational and correct. If this happens, then the

media will not be an agency of imparting information, but will perform the role of a dictator. As there is no place of a dictator in a democracy, it will collapse. The role of the media is only to give information and not to assess it. But unfortunately the media generally expresses its opinion or evaluates the situation. In the recent case of JNLU students protested with anti India slogans; and one of the students was arrested by the police. Some Media Channels trying to project his innocence stated that the arrested student was not shouting any anti India slogans, conveniently forgetting that he was the very part of the same protest where the anti India slogans were being given. This is just an instance to show how the media is capable of projecting the news tainted by its own opinion. One has to take a note of the fact that the media is not empowered with power to adjudicate; but its role is only to impart information in an unbiased manner.

(b) Media's role as an educator

In a country like India, where there is illiteracy on one hand and the confidence of people on media on the other, the responsibility of the media increases automatically. Illiterate people will blindly follow the old traditions and beliefs, causing injustice and harm to the society. For example it is the old belief that a son is a boon and a daughter is a curse. The people in India, in order to get rid of this curse, kill the daughter (female foeticide). This had a tremendous adverse impact on the male- female ratio. The media then conducted a campaign by various ways, making the people realize that a girl is no way any less as compared to a boy; and by killing the girl child or aborting the fetus, the people are not only doing a moral wrong but also are committing a crime. The media campaign played a significant role in change of the outlook towards a girl child as a result of which such atrocities on girl child are reduced.

The media performs vital role in educating the masses in the following ways.

(i) Education through information.

Lack of information results into ignorance and securing or getting information promotes education. This means that information is very vital for education; and that many a times education depends upon information. The most valuable role of the media is to educate the public through information. When the

media gives the exit poll analysis the whole community who does not understand the complexity of the constitution is educated to the extent of how much majority of a particular party is required to form the government. The same can be said about the budget bill, when communicated by the media, the people get many insights in the financial matters. Almost every type of information imparts education in some way or the other. The crucial aspect of education through information is related to that section of society which is remotely placed or the illiterate section of the society. This underdeveloped section of the society may have never been in schools, but they learn through the medium of television. Other channels like the radio or the press plays equally important role of educating the masses. The prime function of the media is to impart information, but the ancillary aspect of this function is to educate the masses.

(ii) Bring awareness regarding individual's right.

The media enables the individuals to know their rights. India is not very developed in the educational aspect, because of which many people are unaware of their rights. It is the media who makes the people aware of their rights. The media is responsible for such a high percentage of voting, as the people were made aware of the importance of the constitutional right to vote. The media is also responsible for enlightening the weaker sections about their rights, like the women, children and the senior citizens. Media has played a tremendous role in the empowerment of women, and uplifting the status of them. The children are also made aware of their rights by the media.

(iii) By way of advertisements

One can say that the era of advertisements prevails today. Advertisements also promote education regarding the product, commodity etc, however education through commercial advertisement is limited. Apart from the commercial advertisements there are certain advertisements such as jaago grahak jaago, in respect of consumer courts or the advertisements bringing out the ill effects of vices such as smoking or drinking. Such advertisements play a meaningful role in educating the masses.

Well educated citizens can make democracy more meaningful.

It is through media that people become aware of so many aspects of life of which they are normally ignorant.

(c) Media's role as a mentor.

In a country like India the media is expected to play the role of a mentor. The job of the mentor is to educate the ward, and make him independent. The mentor should bring the ward to such a state from where the ward can take a decision on his own. Similarly the media plays a role of a mentor. It should only uplift the status of the individual and make him independent of formulating his own opinion. The media should not put its opinion in the mouth of the public. In other words, the media must not make the people believe what it wants the people to believe, but should make the individual capable to think independently. Only when a person will start thinking independently, it can be said that a society is enjoying democracy; otherwise the democracy will be a farce. For a mentor it is very easy to influence the ward or psyche the ward and make the ward believe that his mentor is right. But a good mentor never does like that. He makes the ward capable of thinking independently. The role of the media shall also be the same. The media should present all the true facts and it should throw light on all the aspects equally. After doing so it should give equal representation to all sides and put forth all the merits and demerits of the issue; and only then allowing the citizens to make their choices independently.

The media being the mentor of the masses should emphasize on the following aspects;

- (i) Foster the spirit of brotherhood among the masses
- (ii) Develop and encourage the spirit of religious tolerance among the masses.
- (iii) Inculcate in the masses the spirit of nationalism.
- (iv) Encourage the people to part with the old beliefs and superstitions.
- (v) Make the youth aware of political, scientific developments which are happening around.

The media is a powerful instrument of influencing the masses, and hence is considered to be an influential mentor. But the media has to take care that while

mentoring its wards; it should not distract them from their main objectives of development. The role of the mentor is difficult as well as delicate.

Democracy is meaningless without a free, neutral and active media.¹⁰⁹ So the media carries with it a very huge responsibility in a democratic setup which it has to fulfil very carefully without any bias toward anyone by bringing out the real facts before the public.¹¹⁰

(d) Role of the media as a guardian of the society

The media is a guardian of public interest in a democracy. The people who are in power tend to involve into corruption, as rightly pointed out by Lord Acton ‘Power corrupts and absolute power corrupt absolutely’. The media can be free only if it dares to differ with the Government if it strongly feels that Government has taken a wrong stand which is to promote their selfish interest rather than to serve the people. Under these circumstances the media, instead of just singing high praises of the government, should unflinchingly oppose the arbitrary action of the Government.¹¹¹

Publicity is the best antidote for the arbitrary rule. This fact was valued even in the ancient societies in the 17th century. Many renowned philosophers have expressed that publicity and openness is the best way to protect the community against the tyrannical and arbitrary rule. The excessive use of the unwarranted or oppressive power can be controlled by exposing it to the public. Montesquieu the famous French political philosopher has opined that the abuse or misuse of power can be deterred by publicity. It is inherent in human nature that a human being likes to hear only praises; and does not like it when he is criticized for his actions. Not only this, but criticism acts as a check on his wrong and corrupt actions. As far as the public officers are concerned, expositions of their actions bring the public’s discontentment which acts

¹⁰⁹ Zillmann D (2002) Exemplification Theory of Media Influence. In: Bryant J, Zillmann D (eds) Media Effects: Advances in Theory and Research. 2nd edition. Lawrence Erlbaum, Mahwah, New Jersey

¹¹⁰ Dr. Bharti Das, Importance of Independent Media in Democracy, Scholar’s Voice: A New Way of Thinking Vol. 2, No. 1, January-June 2011,43-49

¹¹¹ Gunther R, Mughan A (eds) (2000) Democracy and the Media: A Comparative Perspective. Cambridge University Press

as a check on their arbitrary actions. In the role of the publication of the government or its officer's errors¹¹² the press plays an important role.

Now days the significance of the press has been widely acknowledged and in almost all societies the press has been commonly referred to as the "Fourth Estate." The press and the media have become extremely important in the democratic set up. The media provides the check and balance without which government cannot effectively function.

The media acts as a guardian of the society as it protects the rights of the people. Media through information and education makes the individual aware of his rights. In the cases where the individual's rights or liberties are infringed the media highlights such cases and hence the individual is secured of his rights and liberties. Actually the task of protecting and securing the individuals rights and liberties is done by the Indian Judiciary. However in the cases where the individual's right is infringed and such infringement is projected by the media; this publication acts as a deterrent check on the authorities who have attempted to infringe the right and thus it is stated that the media guards the individual's right. The judiciary acts as a guardian only in those cases which come before the court. But in the case of media this limitation is not applicable. On the other hand the media can operate *sue motto* and can expose the infringement of a right or liberty of any individual in the society. It does not wait like the courts for the individual to approach it for the publication of the infringement of that right.

In the classic case of *Nirbhaya*, it was only because of the media's efforts, that her right to file a First Information Report was secured. When that unfortunate incidence happened, and both the victims were thrown out of the bus, an attempt was made to file First Information Report; however the police refused to file the report. However when the media picked up the story and secured the support of the people not only

¹¹² Stephen Holmes, "Liberal constraints on private power?" in Judith Lichtenberg (ed), *Democracy and the Mass Media*," Cambridge: Cambridge University Press, 1991. pp. 21-65.

from Delhi, the police who refused to file the First Information Report, now filed the same. This incidence and many others of such nature prove the fact that because of the media's vigilance it acts a guardian of the society. The role of the media to act as a guardian of the individual's right helps the society in attaining justice.

A vigilant media will analyse the government's action, organize debates, gather the opinion of the people, and communicate the suggestions of the people to the government.

There is no doubt that the media has a very responsible role to play in a democratic system.

3. Impact of the Media

No agency is as influential as the media in the present times. The influence of the media is responsible for its dynamic growth in all its spectrums. The media has become more powerful because of its potential to influence the masses on large scale. One can see and experience the impact of the media in all walks of life. There is no aspect of the community in which the media has not played a crucial role. Every concept has got a positive as well as a negative side, and the media is no exception to it. The impact of the media on the masses is twofold:

- (a) The positive impact upon the society
- (b) The negative impact upon the society

(a) The positive impact of the media upon the society.

- (i) Makes the democracy more effective and meaningful
- (ii) Promotes the implementation of the Doctrine of Rule of Law
- (iii) Plays an active role to enforce the constitutional values
- (iv) Helps to formulate and organize the public opinion
- (v) Acts as an instrument of development of the state
- (vi) Promotes to protect the environment
- (vii) Promotes to provide aid in emergency situations
- (viii) Acts as a source of entertainment
- (ix) Promotes in a self development of individual
- (x) Promotes social values and helps in the eradication of social evils

(i) Makes the democracy more effective and meaningful

Democracy is the government of the people, by the people and for the people. The first aspect is that, the media imparts information to the public at large and based on this information; the people make appropriate choice of their representatives. In this way the media is indirectly responsible for the people's choice of the elected representation.

The second aspect is that the media abridges the gap between the government and the public. The media communicates the government's policies, plans, schemes, programs to the public. Simultaneously the media helps the government to know the pulse of the society by communicating to it the moods and reactions of the public. It is very correctly stated by Von Savigny¹¹³, that the government which is sensitive and alert to the public's mood that is the pulse of the society is a very stable and efficient government.

The third aspect is that the media aids and assists the government in implementing its policies. So also it helps the people to indirectly participate in the governments functioning by expressing their opinion. The last aspect is that, the press is the cornerstone of the democracy. It is generally said in a light vein that the press makes or breaks the government. The press or the media projects the electoral candidate in a good or bad light which plays a significant role in influencing the people to make their appropriate choices.

(ii) Promotes the implementation of the Doctrine of Rule of Law

According to A.V Dicey, Rule of law means that the law is supreme and no one is above the law. The nation shall be governed by the rule of law, and not by any arbitrary force. The rule of law demands that every action of the government or of any public authority has to be based upon the law. The lay man is unable to know, whether the governments action is within the ambit of legal powers or not. When the media informs the public of the arbitrary actions of the government or any public officer, then only the people are aware of such misuse of power. The media acts as a threat to the government as it projects the abuse or misuse of power instantly without wasting any time. This

¹¹³ Dias R.M ; ;*op.cit.* p 44

fear of projection by the media, of the misuse or abuse of power, acts as a deterrent effect on the government. Many a times the government is afraid to act in an arbitrary fashion because of the fear of the media who may expose it in front of the public; and the consequences may be dangerous for the government to survive in power.

Sometimes when the executive tries to shirk its responsibilities then the media perceives the matter, forcing the executive, to act in accordance with the law¹¹⁴.

(iii) Plays an active role to enforce the constitutional values

The Indian Constitution is the supreme law of the land. The media promotes the values enshrined in the constitution such as nationalism, integrity of the state, brotherhood, religious tolerance etc. The prime function of the media is to impart information; but while performing this function, the media also imparts education, awareness, brotherhood and fraternity, which are embodied in the Preamble and the Directive Policies of the state of the Indian Constitution. Not only this but it also helps to protect and promote some basic fundamental rights such as right to life, liberty and equality. When the state tries to infringe any fundamental or constitutional rights, the media exposes and projects such cases to the public at large. The government is afraid of such negative publicity as it tarnishes its image in front of the public and tries to immediately redress the grievance. To put it precisely one can say that the media indirectly compels the government to act within the constitutional framework.

(iv) Helps to formulate and organize the public opinion

In England public opinion plays a fundamental role in the governance of the state. No English Government dares to take a step against the public opinion, which prevails in the society. The public opinion of England is not only dominant and strong, but is also very well organized and hence can be conveniently communicated to the government.

In India before the liberalization policy of 1991, the public opinion was

¹¹⁴ The Nirbhaya case, *Supra.*, p121.

present but was not organized, and hence it could not be effectively communicated to the government. But after 1991, the media was free from the governmental control and helped in organizing the public opinion. The media not only informs the masses, but also collects, gathers analyses and arranges the public opinion, and communicates it to the government as well as to the other sections of the society. Every aspect of public opinion, that is the counter current of the public opinion as well as the dominant public opinion is collected and informed by the media. The media organizes and communicates the public opinion to the government; and it is the well known fact that the public opinion plays a prominent role in the governance of the state.

(v) Acts as an instrument of development of the state

The media provides the information about the various developments in the field of science and technology. Many a times this information regarding the various aspects of science and technology acts as an impetus to the research scholars to make inventions. By performing the prime duty of imparting the information, the media gives an insight to the public regarding the scientific agricultural and industrial development. By this information the remote sections of the society gets the knowledge of the development and take the benefit of the said developments; resulting in overall development of the state. The media is responsible for the development of the society through imparting the information to the public.

(vi) Promotes to protect the environment

As a result of the Stockholm Convention 1972, the whole world became aware of the need to protect the environment. Mrs. Indira Gandhi, the then Prime Minister of India, had represented India in the said International Convention. In pursuance to the conventions many statutes were enacted to protect the environment¹¹⁵. It is true that the statutes regarding the environment were passed, but for its effective implementation, it was necessary that there should be active participation of general public. This was possible because of the media. The media gave coverage to many programs like planting of trees,

¹¹⁵ Shastri SC, Environmental Law (2015th ed.) p. 448

saving water, saving fuel, construction and maintenance of toilets, and movements like 'Swacha Bharat' which had a tremendous effect on the people. As a result of these programs the environmental laws were implemented effectively. The public at large started taking steps to protect the environment because of the initiative taken by the media. The media has contributed indirectly in protecting the environment, by campaigning to protect the same.

(vii) Helps to provide aid in emergency situations

In the emergency situations like famines, floods or any other catastrophe, or in case of a disaster or a calamity, the media has played a vital role in providing aid and assistance, to the affected people. It is the welfare function of the state to provide aid or assistance or help to the people affected by such a disaster or a calamity. The media acts as an extended arm of the state in such situations and provides the necessary relief with the help of the public. It provides the aid to the victims, by informing to their relatives their whereabouts or other details. It publicizes the organizations which come forward to help in such situations. It also helps the affected people, by giving them helpline numbers. It also gives the information regarding such catastrophe which enables the people to take appropriate action.

(viii) Acts as a source of entertainment

Apart from imparting the information the media plays an important role, as acting as a source of entertainment. Entertainment is one of the important values of human life which adds spice to the mundane life. The traditional sources of entertainment programs like those of bhajans, kirtans, bharoods powada, etc have significantly reduced, and are replaced by the entertainment modes of media. Some ancient modes of media like Theaters and lavani have been rejuvenated by the media. The entertainment by media is more popular and cherished by media.

(ix) Promotes in the self development of an individual

Another tremendous impact of the media is that it promotes self help to an individual. Information regarding all the many fold facets of life such as, education, culture, vocation, profession, religion, science, technology,

development, research, cyber world, space communication, environment, sports etc is provided by the media. Relying on the information an individual can help himself to develop. The media not only gives the information to the public but also guides them by continuously and regularly giving detailed updates regarding developments and changes in all the spheres.

(x) Promotes social values and helps in the eradication of social evils

The impact of the programs conducted by the media promotes the social values, and helps in the eradication of social evils

The media, somewhere in 90' by advertisement tried to discourage the people from taking dowry. Even a movie projecting the ill effects of dowry was released.¹¹⁶ The taking and giving dowry has not been eradicated, but has been reduced by the impact of the media's measures to project it as the social evil.

The media is also trying to curb the vices by repeatedly pointing out the serious effects on health of an individual, through their advertisements.

The media also undertook the beti bachao and beti padhao andolan, by which the media tried to convince the people that a girl is no less than a boy, and should not only be aborted, but should be brought up and educated equivalent to a boy. So also the parents should allow her to pursue career. The laws to these effects were there no doubt, but it needed the change of perception, which was brought to a great extent by the media.

The media is also responsible to reduce the child labour and untouchability by conducting various programs, and articles published in the newspapers.

The impact of media, these days is really very significant. It is a well accepted fact that the media is indispensable in any democratic nation, and it becomes more significant in a country like India where there is a significant number of citizens who are illiterate, as the media can play crucial role in not only informing citizens but

¹¹⁶ Movie title '*Ye Aag Kab Bhujegi*' released in 1991

making them able to think independently and help and them to make correct choices which may be beneficial for them in long run.

A responsible media keeps the nation united and ensure its way for success. It also fosters the sense of brotherhood among the citizens. In addition to this the media tries to breed the spirit of religious tolerance among the citizens.

The media always acts as a guide or a mentor. Just as mentor does not take the decisions but enables his ward or pupil correct decision; in the same way the media guides the society to take its own decision.

(b) The negative impact of the media upon the society

The researcher in this topic wants to focus on the short coming of the media.

While giving the coverage to any news sometimes excessive coverage or hype of certain sensitive news has led to the communal riots, on certain occasions. As certain uneducated people are more prone to provocations rather than the rational thinkers; such people get easily provoked and act in a rash or violent manner because of the news projected by the media. Repeated reception of the same news, especially sensational news breeds apathy and insensitivity. For instance in the famous Dhanajoy Chatterjee case, the overloaded hype of hanging led to the death of quite a few children who went to imitate the hanging procedure which was repeatedly shown on the main television channels. There are lots of instances of such negative impacts. Media should take utmost care in airing such sensational news, as it may lead, to some or unwanted tragedies.

Commercialization and liberalization has created a cutthroat competition in media, In an attempt to outdo each other print media has often gone one step further and published articles, cover stories, etc. on sex which is against the standards of public decency and morality. Further such cover stories promote sex crimes in the society. A few stalwarts in the field of the media have opined that the print media is publishing such articles and cover stories on sex to reduce the viewership of the television channels which have gained profound popularity in the recent times. This is in bad

taste of unhealthy competition and also reflects upon the cheap form of journalism.

The liberalization policy of 1991 had a two way impact on the media. On the one hand it gave the independence to the media from the government control; while on the other hand encouraged unhealthy competition among the various channels of the media. The effect of the unhealthy competition among the various channels of the media made the media more like the the business centre rather than an agency providing service. This is a sign of real danger for the democratic principles as the media performs the function on an economic consideration.

Another aspect of serious concern is this that the private channels of the media are continuously engaged in combating with one another for Television Rating Points (TRP). As a result of which the channels instead of imparting objective and fair news, they mould, twist and turn the news to make it more spicy and appealing to the public. So now the thrust of the channels is to project such news which is catching and appealing, rather than the real and factual news. The consequences of this are very grave because the main objective and the focus of the media is totally grounded and the financial considerations are allowed to play a major role in the function of imparting information.

As stated above the role of the media is like a mentor who helps or assists a person to take an independent decision; hence the media should educate the people through information and enable them to take their own decisions. However today, the media psyches the people such a way that the people tend to take a decision which suits the interest of media rather than the interest of people.

Every coin has two sides; similarly the media also is capable of projecting the positive and the negative impact upon the society. The positive impact of the media is to a considerable extent; however the negative impact is of such a nature that it results in undoing all the positive achievements.

4. Media and right to fair trial

The media trial means where media itself acts as judiciary and tries to pose the accused guilty or innocent before any judicial pronouncement is made. This is only possible where the media is active and free, like that of India. It should be remembered, that the media should be active and not cause interference in the administration of justice. There is a thin line between activism and interference; the media should not interfere with the matter which is being adjudicated by the court of law. Media can report the proceedings of the court, unless directly prohibited by court in public interest.

But today it has become a fashion for the media to conduct media trial and some times, the media trial is conducted for getting TRP's or cheap publicity. Very often the media makes a personal attack on the accused or tries to prejudice the trial. The researcher has dealt with this problem in the following pages.

Before one can proceed to the instances of media trial it is imperative to deal with some fundamental principles of criminal jurisprudence¹¹⁷.

The cardinal principles of criminal jurisprudence on which the criminal culpability is based upon are:

- (i) Presumption of innocence, unless proven guilty by a competent court.

According to this principle every person is presumed by law to be innocent, unless and until, he is proved guilty by a competent authority of a court. No agency is allowed to put the stigma of “guilty of crime” on any person before the verdict of the court.

The Supreme Court has stated in *state of U.P. v. Naresh and Ors*¹¹⁸, no person shall be punished or sentenced unless and until his guilt is proved beyond the

¹¹⁷ Kenny; *Outlines of Criminal Law.*,

¹¹⁸ (2004) 4 SCC 158)

reasonable doubt as the principle of presumption of innocence prevails. In *Kali Ram v. State of H.P.*¹¹⁹ the Supreme Court has stated the grave consequences of convicting an innocent person. It has further stated that it would be extremely unjust to acquit a person who has committed an offence, and the confidence in the judiciary would be shaken. But it would be far more dangerous if an innocent person is convicted. As is commonly said let hundred guilty men escape gallows, but one innocent person should not be hanged.

- (ii) The parameter for proving the guilt is “beyond reasonable doubt”.

The burden of proof lies upon the prosecution to prove the person guilty. The scales of this burden are very heavy as the prosecution has to prove the guilt, beyond reasonable doubt. It means that the person is not guilty just because a doubt prevails in relation of his committing offence. But it is otherwise, that it is most certain that is beyond reasonable doubt that the accused and only the accused has committed the offence.

When media virtually conducts a trial, these golden principles are completely sidelined and ignored.

(a) Position of Media trial in United State of America

In United States of America the right to free press springs from the first amendment which states that the Congress shall make no law in respect of an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press¹²⁰, This amendment has given a free hand to the press. By virtue of this amendment, the hands of the government are tied to a great extent. It is because of this amendment that the press gets a considerable freedom to publish a matter which is subjudice. Such a publication in respect of a matter which is subjudice, poses a serious threat to the right of fair trial of the accused.

¹¹⁹ (2001) 4 SCC 324

¹²⁰ www.law.cornell.edu/constitution.-first-amendment

The American Constitution confers freedom on the press even to publicize the matter that is pending in court of law¹²¹. Not only this, but the government is refrained from penalizing the newspapers which publish such matter. The impact of this freedom was seen in the popular case *Sheppard v Maxwells*¹²². In this case wife of a doctor was murdered. The doctor was charged with the offence of murder. The prosecution did not have adequate and direct evidences. When the accused was on bail, The Cleveland press, one of the largest newspapers, of Cleveland, in its headlines stated, 'bring him in'. It appeared that whether the accused was guilty or innocent, was not the consideration of the press, they just wanted the accused behind the bars. It was not only the Cleveland Press but the entire media was behind the accused. This case is popularly termed as a 'Roman Holiday' for the press. According to Paul Holmes, the Sheppard murder trial was "the gaudiest, most publicized, and the most controversial murder trial in the United States in modern times." Sheppard was convicted. The Supreme Court on 6th June 1966 stated that, Sheppard was denied of a fair trial which was his indispensable right.

This trial was one of the earliest trials that was followed by the American citizens, not only through the newspapers but also television set which were rapidly evolving at that time. The Sheppard media trial poses a number of questions. Is it ethical for the media to conduct a media trial just to give the public the juicy entertainment of the analysis of the case; which hampers the merits of the case? Or should the media trial be curtailed, and allow the judiciary to function without any interference from the media, so that the justice can be met with. However these questions have remained unanswered.

To make the matters worse during the Sheppard's case the Cleveland press also brought the pool of jurors into spotlight by naming all of them and writing about the fashion of female jurors. It is clearly evident that in this case the American media has made a gross misuse of the independence which was conferred by the two amendments.

¹²¹ The Fourteenth Amendment. Id. Amend XIV;

¹²² 384 U.S. 333, 349-50 (1966)

The only restrictions the press earlier had in United States was that the doctrine of clear and present danger. This doctrine was evolved by the Supreme Court in *Schenck v. United States*¹²³ Charles Schenck, a socialist, distributed the flyers to servicemen. Those flyers stated that ‘the war is for the capitalist interest and a violation of thirteenth amendment of the constitution, which is against slavery’. It further appealed to the servicemen not participate in the war. The United States government charged him with the Espionage Act which was recently enacted by the state. Charles took the defense of the 1st Amendment which relates to the freedom to press. The Supreme Court of United States, while convicting Charles, evolved the doctrine of ‘Clear and Present Danger’. The right of freedom of press was limited by the doctrine of ‘Clear and Present Danger’

Later in the year 1969 the new "imminent lawless action" test in the *Brandenburg v. Ohio*¹²⁴ was derived. The leader of a Ku Klux Klan group was convicted for the crimes of sabotage, violence and using illegal means to promote terrorism. Under the garb of bringing about the industrial or political reforms the appellant was engaged in holding unlawful assemblies and was promoting Criminal Syndicalism. An appeal was filed in the Supreme Court; the Supreme Court in this case parted with the doctrine of ‘Clear and Present Danger’ and evolved the doctrine of "imminent lawless action", and acquitted the accused.

The doctrine of "imminent lawless action" is evolved by the Supreme Court of United States to draw the limits of free speech. This doctrine gives more scope to the right of free speech. It can only be restricted on two grounds

- (i) Speech that invites imminent lawless action
- (ii) Speech that is likely to produce such action.

In nutshell the doctrine of "imminent lawless action" is only attracted if the speech is an immediate threat to any lawless action. For example the speech “all the politicians to be put to death” may not be punishable as it does not cause any immediate or

¹²³ 249 U.S. 47 (1919)

¹²⁴ 395 U.S. 444 (1969)

imminent danger and hence is protected by the free speech. However the speech “here is Mr. X, let’s kill him” will not be protected by free speech, because it is causing immediate or imminent danger of lawless activity.

From the above discussions it is clear that the doctrine of "imminent lawless action" is granting more freedom to speech and expression than the doctrine of ‘Clear and Present Danger’.

It will not be an exaggeration to say that in United States free press is given more significance than fair trial. Hence in United States of America the scope for media trial is wide.

(b) Position of the media trial in United Kingdom

In United Kingdom the position of free speech is quite opposite as compared to the United States. In United Kingdom the right of fair trial of an accused, is given more significance and value than the right to speech and expression.

In United Kingdom the right to speech and expression given to its citizen is a negative right. In 1998 England adopted the European Convention. Article 10 of the Convention gives them the right of free speech. The right to speech is subject to limitation with threatening, abusive or insulting words or behaviour intending or likely to cause harassment, alarm or distress or cause a breach of the peace (which has been used to prohibit racist speech targeted at individuals)

The courts do recognize the newspaper’s rights to publish accurate reports of public court proceedings, however they admonish that the newspapers have no right to publish comments or anything which does not actually occur¹²⁵.

¹²⁵ Contempt of Court Act 1981, s. 46 & 4 (U.K.) (outlining acceptable boundaries of contemporary reports of proceedings); Law of Libel Amendment Act, 1888, 51 & 52 Vict, c. 64 & 3 (Eng. & Wales) (amending and repealing parts of Newspaper Libel and Registration Act 1881 & 45 Vict. c. 60). Accord magistrates courts Act (Ireland) 1964, c. 21;

The judiciary has stated in *R. v. Evening Standards*¹²⁶ that the newspapers cannot publish any information related to the accused or the case even if the case is not filed in the courts of law because the public may give any information related to the case or the accused and hence the rights of the parties may be affected. The press is also prohibited from publishing the results of investigations of matters related to the official scrutiny.¹²⁷

However this judgment may cause hurdles in the detection of crime and also in the procedure of investigation and inquiry related to the case. Further the media will also not be able to hold interviews of the people who are involved in the case.

In the United Kingdom there are various legislatures which limit the freedom of press, and hence the press cannot interfere with the fair trial. The Criminal Justice Act 1925, by section 41 prohibits any person to take or attempt to take any photograph of a judge or a witness. Also making a sketch or a portrait is prohibited. Section 12 of the Administration of Justice Act 1960 prohibits the publishing of the proceedings which are conducted under the Children Act 1989.

The Contempt of Court Act 1981 puts the following restriction on media.

- (i) According to section 9, the media is not allowed to use any tape recorders in the courts, and neither is allowed to record by any other means.
- (ii) By the virtue of section 10, a limited protection is granted to a person who does not disclose the source of information of any
- (iii) Section 18 of the Criminal Procedure and Investigations Act 1996 prohibits a person from knowingly using or disclosing an object or information which is prohibited by the statute¹²⁸. The guilty person is punished with fine or imprisonment or both.

In England the press is not allowed to publish or interfere in any way with the judicial

¹²⁶ (19241 40 T. L.R. 833 (K.B.) (U.K.)

¹²⁷ *Id.*

¹²⁸ http://www.cps.gov.uk/legal/a_to_c/contempt_of_court/

process or justice, as it may hamper the fairness and the objectivity of the court proceedings. In the criminal cases once the arrest of the accused is made or a warrant is issued from that time onwards the press is prohibited from publishing any matter which will prejudice the case. In Scotland once the Simmons (complaint) is made the press is prohibited from publishing any matter related to the complaint.

It is the discretion of the court to allow or not to allow the media to report the trials which are conducted in the crowns or magistrates courts.

Therefore one can say that in England, the press and media are subjected stringent rules as far as the reporting of the trial is concerned. So automatically the instances of media trial are reduced considerably.

(c) Position of media trial in India

In India the freedom of speech and expression includes the freedom of press. As it has been stated before, the freedom of press is a fundamental right, which is circumscribed by certain limitations. The authority of the media to conduct a trial falls within the scope of freedom of speech and expression. So in India the concept of media trial is prevalent and is gaining importance and popularity. The concept of media trial in India is not as broad as the concept existing in the United State of America; neither it is as restrictive as the concept of media trial in England. So the scope of media trial in India lies in between the scope prevailing in the United State of America and in England. The concept of media trial in India is old and was prevalent even before the year, 1961 because in the same year the Supreme Court has commented on the concept of media trial in *Saibal Kumar v. B.K. Sen*¹²⁹. The court had very clearly said that it would amount to mischief if a newspaper as to conduct an independent investigation of a crime. The consequences of such a media trial would be grave and affect the whole system of justice as it would tend to cause a prejudice to the parties involved in the case. The court has further stated that the media trial would cause an interference or hindrance in the course of justice.

¹²⁹ 1961 AIR 633

The point to be noted here is that the reflections of the court regarding the media trial point out the fact that the concept of media trial prevailed even then. In those days the media trial was conducted mainly through press, as the other channels of media such as television and other electronic modes were not in vogue for the domestic use. The media trial prevailed in a vague and not in a very systematic manner.

The media trial has become suddenly very popular and is often resorted to in the twenty first century.

One thing here has to be noted that the media trial should not be confused with the media trial. The media activism means where the media points out the injustice in the society and ensures that appropriate proceedings have been initiated. The following cases will ensure that how media has played a crucial role in dispensing the Justice. These cases also show that, had the media been inactive then, how the perpetrators of crime would had got scot free.

Nitish Katara murder case

This is also a case where the role of the media is significant in bringing the accused to the books. Nitish Katara, a business executive was murdered 17th February 2002, by a son of the criminal turned politician. The only fault of the victim was that he was in the love with the daughter of the criminal turned politician who was studying in same class. Both Nitish and the girl were pursuing graduation from Institute of Management of Gaziabad. It is here they fell in love and wanted to marry. This was not approved by the Yadav family.

Nitish Katara was a 25-year-old Indian business executive in Delhi, who was murdered in the early hours of 17 February 2002, by Vikas Yadav, the son of influential criminal-politician D. P. Yadav. Nitish had recently graduated from the Institute of Management Technology, Ghaziabad, where, he had fallen in love with his classmate, Bharti Yadav, sister of Vikas. The trial court held that Nitish's murder was an honour killing because the family did not approve their relationship. Vikas and Vishal Yadav were later found guilty by the trial Court and awarded life sentence on

30 May 2008. On April 2, 2014, Delhi High Court upheld the Trial Court verdict of life imprisonment to the accused. On Feb 6 2015, Delhi High Court on re-appeal on Death Sentence, extended sentence as 25 years rigorous Life Imprisonment without remittance. On Sep 9 2015, The Supreme Court of India rejected a plea by Neelam Katara seeking enhancement of sentence to death for Vishal and Vikas Yadav

The Yadav family never approved of the relationship between the two, and Katara received threats several times. However, he was an idealist, and believed in "standing up to injustice". On the night of 17 February 2002, the couple attended a common friend's wedding, where Yadav's brother, Vikas, and a cousin were present as well. From there, Katara was taken for a drive by Yadav's brother Vikas Yadav and Vishal Yadav, and never returned. Three days later, Katara's body was found beside the highway; he had been battered to death with a hammer, diesel poured on him, and set aflame. Dr T D Dogra collected the blood samples of parents for DNA profiling to establish the identity of deceased Nithish Katara at AIIMS New Delhi.

On 30 May 2008 New Delhi fast track court sentenced Vikas and Vishal Yadav to life sentences for the kidnap and murder of Nitish Katara. Both were also fined Rs.160,000 each.

On April 2, 2014, Delhi High Court upheld the Trial Court verdict sentencing Life Imprisonment to Vikas Yadav, Vishal Yadav and the contract killer Sukhdev Pehalwan. An appeal by Katara's mother and prosecution seeking death sentence to the convicts is still pending before the High Court which will be heard on April 25, 2014. The Delhi High Court on Friday 06th Feb 2015 sentenced Vikas Yadav and his cousin Vishal Yadav to 30 years in prison for the murder of Nitish Katara, a friend of Vikas Yadav's sister.

On August 18, 2015, Supreme Court of India upheld the High Court verdict On 9 October, 2015 Supreme Court rejected the appeal filed by the sister of Nitish Katara for death penalty of the Yadav brothers. Hon'ble Supreme Court of India upheld the conviction for 25 years.

Sexual assault case against Tejpal

The sexual assault allegations against Tejpal in November 2013 received intense public attention and media scrutiny, because *Tehelka* had previously been involved in highlighting the issue of sexual violence in India, including in a special issue on the topic in February 2013. There were protests against Tejpal by supporters of the BJP and its allies. Shoma Chaudhury's handling of this case was also criticised, for possibly underplaying the issue. The details of ownership, board of directors and financials further came under scrutiny. From the Registrar of Companies in 2012, *Tehelka* was owned by Anant Media Private Limited whose major shareholder was from a company affiliated to Alchemist group, a business conglomerate which was investigated by the Serious Fraud Investigation Office. The industrialist and Trinamool Congress member KD Singh also owned a part of this company.

"Sting journalism"

After "Operation West End", *Tehelka*'s "sting journalism" influenced the country's media.^[47] In five years, Indian news channels began to regularly feature sting operations. Tejpal called it the "greatest tool of journalistic investigation and exposure" and that it was for public interest.

Authorities and politicians demanded a sort of legislation over such "stings". Journalists against this, questioned the difference between this type of reporting and entrapment, between public interest and voyeurism. The Indian Supreme Court expressed its concern over the cases of freelance reporters selling their sting reports, questioning whether their intent was for money or public interest. Bahal said, "There's no thriving freelance sting journalism industry in India as the judges seem to think. Stings are serious business and not everybody has the guts to do it or telecast it."^[47] Cases of sting operations where fake evidence were given increased the court's criticism. Tejpal said, "there may be bad, motivated and indifferent stings - but that is no different from the rest of journalism".

Jessica Lal case

Jessica Lal (5 January 1965 – 30 April 1999) was a model in New Delhi, who was working as a celebrity barmaid at a crowded socialite party when she was shot dead at around 2 am on 30 April 1999. Dozens of witnesses pointed to Siddharth Vashisht, also known as Manu Sharma, the son of Venod Sharma, a wealthy and influential Congress-nominated Member of Parliament from Haryana, as the murderer. In the ensuing trial, Manu Sharma and a number of others were acquitted on 21 February 2006.

Following intense media and public pressure, the prosecution appealed and the Delhi High Court conducted proceedings on a fast track with daily hearings conducted over 25 days. The trial court judgment was overturned, and Manu Sharma was found guilty of having murdered Lal. He was sentenced to life imprisonment on 20 December 2006.

On 29 April 1999, Lal was one of several models working at an unlicensed bar at a party in the Tamarind Court restaurant, which was within the Qutub Colonnade, a refurbished palace overlooking the Qutub Minar in Mehrauli. By midnight the bar had run out of liquor and it would, in any event, have ceased sales at 12.30 am. After midnight, Manu Sharma walked in with his friends and demanded to be served liquor. Lal refused to serve Manu Sharma, who was with a group of three friends. He was ready to offer Jessica ₹ 1000 for it. Sharma then produced a 22 calibre pistol and fired it twice: the first bullet hit the ceiling which was to serve as a warning to Jessica not to refuse liquor, but when Jessica refused again, Sharma fired again and the second hit Jessica in the head and killed her.

Charge sheets were filed with the court on 3 August 1999.

The trial court has acquitted them because the Delhi police failed to sustain the grounds on which they had built up their case. The police failed to recover the weapon which was used to fire at Jessica Lal as well as prove their theory that the two cartridges, emptied shells of which were recovered from the spot, were fired from one weapon.

The police petitioned the High Court for a review of the case and on 22 March 2006.

On 15 December 2006, the High Court ruled that Sharma was guilty based on existing evidence, and also criticised the trial judge, S. L. Bhayana.

On 19 April 2010, the Supreme Court of India approved the sentences.

(d) Priyadarshini Mattoo case

Priyadarshini Mattoo case is another classic example where the media refused to let the case go out of the minds of public thereby ensuring the conviction of the wrongdoers, and prohibiting them to escape from the clutches of the laws, using their high position in the society.

Priyadarshini Mattoo was a 25-year-old law student was found raped and murdered at her house in New Delhi on January 23, 1996. Santosh Kumar Singh, the son of a Police Inspector-General, was the prime accused in this case. He fell in love with the victim and started to chase her, despite the fact that she clearly said no to his proposals.

Upset by her refusal on January 23, 1996 he raped and murdered the victim.

The trial court on January 23, 1996, acquitted the accused. The media criticized the decision strongly and created the pressure on the administration. The appeal was made to High Court and the High court setting aside the conviction of the accused and awarded death sentence of the accused. However, the Supreme Court on October 6, 2010, reduced the punishment to life imprisonment.

This case pointed out the power of the media. The accused had got benefit of doubt and was acquitted. Had the media not pursued the case then there would have been no conviction.

On October 17, 2006, the Delhi High Court found Santosh Kumar Singh guilty on both counts of rape and murder and on October 30 of the same year sentenced him to death. On October 6, 2010, the Supreme Court of India commuted the death sentence

to life imprisonment. Santosh Kumar Singh, the son of a Police Inspector-General, had earlier been acquitted by a trial court in 1999, and the High Court decision was widely perceived in India as a landmark reversal and a measure of the force of media pressure in a democratic setup. This decision went in favor because the facts were not presented correctly in the lower court. The intense media spotlight also led to an accelerated trial, unprecedented in the tangled Indian court system.

Priyadarshini was in the third-year of her law program, when she was found strangled in her uncle's residence. She had been raped, struck 14 times with a motorcycle helmet, and finally strangled with a wire. Santosh Kumar Singh, her senior in college, had been stalking and harassing her for several years, and was the immediate suspect. But Santosh came from an influential family - his father J.P. Singh was then Inspector General of Police in the Indian Union Territory of Puducherry

The Additional Sessions Judge G.P. Thareja delivered the ironical and widely criticized judgment in the trial court proceedings in 1999, which said of Santosh, that though the Court knew that "he is the man who committed the crime," he was forced to acquit him, giving him the benefit of doubt.

Following a public outcry, the CBI then appealed the district court's verdict in Delhi High Court on February 29, 2000.

On October 17, 2006, Santosh Singh, was found guilty under Indian Penal Code sections 302 (murder) and 376 (rape).

As recommended by the Central Bureau of Investigation the death penalty was awarded to Santosh Singh on October 30, 2006

In October 2010, the Supreme Court upheld the conviction of Santosh Kumar Singh but reduced the death sentence to life imprisonment. Priyadarshini's father expressed disappointment with the CBI for failing to appeal against this decision.

(e) The Ruchika Girhotra Case

The Ruchika Girhotra Case is about the of 14-year-old girl who was molested by Inspector General of Police *Mr. Shambu (S.P.S. Rathore)* in 1990 in Haryana, India. When Ruchika opposed such molestation, and lodged a complaint, *Mr. Shambu* who was holding a big post in the police force itself, systematically harassed the victim, her family, and her friends. The girl went in such a trauma that the girl committed suicide. The case prolonged for 19 years with 40 adjournments, and more than 400 hearings. On 22 December 2009, after 19 years, the court finally pronounced Rathore guilty under Section 354 IPC (molestation) and sentenced him to six months imprisonment and a fine of Rs 1,000. Mr. Shambhu appealed against his conviction. Chandigarh District Court not only rejected his appeal on 25th May, but also increased the sentence one and a half years of rigorous imprisonment, On 11 November 2010, the Supreme Court granted bail to S P S Rathore on the condition that he remains in Chandigarh.

This case had tremendous impact as the case was highlighted by the media. It caused a tremendous sense of anger among the general public.

The importance and significance of the press has been very well stated by the first Prime Minister of India, Pandit Jawaharlal Nehru, who has opined that he would prefer a free and independent press inclusive of all its dangers, to that of a regulated or restricted press. He was aware of the dangers involved in free and independent press, he still preferred that to a press which was restricted. He has expressed this because he was aware of the important role of the media. The main tool of media is reporting. Through reporting media can bring various issues to the notice of people which would otherwise go unnoticed. These issues of public importance make people aware of their rights and duties. A media which tries to make people aware by reporting is called as an active media. Active media is indispensable in a democracy;

but an interfering media may cause the system of legal justice to collapse. This is because the media itself pronounces the accused to be guilty or is declared even before a competitive court does so. The media does this only to make the news sensational, thereby increasing its saleability. The media trial is held mainly because of the publicity, and the media forgets that its job is to only inform and not to adjudicate. The constitution of India has vested every institution with specific and defined functions. The function of adjudication is vested in the judiciary and the function of inquiry and investigation is vested in the executive. The media along with its own function of informing grabs the adjudicatory as well as the function of investigation while conducting media trial.

The media fails to understand that it is the job of the judiciary to adjudicate the matter by appreciating the legal aspects of it. The media neither has the excellence nor the competence which the judiciary has. It is also not possible that the media has access to each and every piece of evidence, which is presented before the judge. The media does not even bother about the massive injustice it is inflicting upon the accused, when it repeatedly point him as guilty without giving him any fair opportunity to defend himself This creates enormous pressure on judiciary and also tarnishes the image of the accused. When the media continuously harps upon the guilt or the innocence of the person, it is possible that the mind of the judge is affected. He may be deprived of a clear, reasonable, rational and legal thinking. According to the Realist approach¹³⁰, the judicial thinking is affected by the prevalent social facts; so the facts that the media hyping the guilt or the innocence of a person will no doubt influence the judicial thinking. Even an eminent jurist like Cardozo¹³¹ has expressed that the judicial process not only involves the attitude, and the thinking of the judge but also the factors which influence his thinking which virtually affects the decision of the case. Not only may this but because of the media trial which sways the moods of the public in favour or against the accused, the judge, himself may feel under tremendous pressure. For example Salman Khan's case of rash and negligent driving. The media in Salman's case kept on projecting that he was guilty and had to be punished; and if he was acquitted, it would be only because he was a cine star. The

¹³⁰ Friedmman; *Legal theory*

¹³¹ Cardozo; *The Judicial Process*

judiciary underwent a tremendous pressure while delivering Salman's verdict. In any democratic setup the media and judiciary always play a complementary role where media explores and reveals the achievements and mistakes of an individual while judiciary takes care of legal problems of individual. The motive of the media is to discover the truth and to uphold the democratic spirits. That is why media is called as watch dog of society while the judiciary is called as a dispenser of justice.

There is no doubt that the media has the right to report any proceedings which is subjudice. However there is an implied condition that the media shall restrict itself to mere reporting of what has transpired without trying to form any opinion. This is so because the role of the judiciary is to adjudicate without having bias. The role of the media is to report what has happened.

A fair trial means that an accused is brought before an impartial judge who does not have any interest or bias. The judge shall then appreciate the evidence and either pronounces the accused guilty or innocent. However in the case of media trial, with media constantly harping upon the guilt of the accused, may affect the minds of the judges in two ways;

- (i) Either the judge starts believing the guilt of the accused, before the trial has commenced in the court of law, the result of which is, the judge may not appreciate the evidence fairly, thereby causing prejudice to the accused during trial.
- (ii) Or there is a strong possibility that the judge to save his reputation may give the decision against the accused from the fear of the wrath of the public. Public is highly influenced by media, and if the public is so influenced by the media, then the judge may dare not go against the public opinion, who may accuse him of being corrupt.

Under both circumstances it is a clear denial of a fair trial to the accused.

Another very far fetching but grave impact of the media trial is that if the media has projected an accused guilty and subsequently a competent court after weighing and balancing all the evidences for and against the accused has declared the accused innocent and has thereby acquitted him; he may have lost his image and status in the society, because the media has declared him to be guilty. When the media declares a person to be guilty the public naturally forms an opinion against him; and the public will never say that the media is wrong. Believing the media the public will form an opinion against the person and believe him to be guilty and may not accept him socially. This person who has been declared by the media to be guilty faces a lot of problem to rebuild his image and status of the society. Further to worsen the consequences, the public may have the apprehension that the person who is declared by the media guilty was acquitted by the judiciary on some extraneous consideration; because of the society may start distrusting the judiciary and the whole system of justice will start crumbling.

The reasons for the media trial to prevail and become so popular are identified as below

(i) The race of Television Rating Points (TRP)

This is the main factor responsible for the significant increase in the media trial. To increase the Television Rating Points, by attracting viewers, the media feels itself under compulsion to promote only that news such as media trial which is appealing to the viewers. The media is over enthusiastic and hypes the media trial making them popular. Every channel wants to show the media trial first on its channel to get popularity.

(i) Media trial, the want of the public.

The judicial process of justice is very cumbersome, lengthy and complicated; for a public to know and follow to a particular case. Hence it is very difficult for public to know the happenings of the case, and sometimes even the verdict of the case is not known. In contrast to this, by the media trial the public gets access to the information related to the case and hence the media trial becomes the favourite programs of the public. In the sensational cases

the public wants to know the facts and the issues involved in the case; and this is done very efficiently in the media trial. The public is not always well versed with the intricate legal issues, and is happy to know only what is projected by the media. For the sake to get information about a particular case, media trial is in demand of the public; irrespective of the fact whether the projected information is true or false.

(ii) The image of the media.

The whole world knows that media plays an important role in the preservation and promotion of democracy. It is also known that the media performs an important function of imparting fair, objective, and true information to the public. This image has been acquired by the media over a period of time and the public believes in the same image of the media. Hence whatever has been projected by the media in media trial; the public believes the trial to be correct and in consonance with justice. Nobody questions the intentions or the objects of the media of projecting the information and hence whatever is shown in the media trial is chewed and digested by the public.

(iii) Lacunas in the present legal system

The media trial survives and thrives because of some lacunas in the present legal system. The court procedure is so lengthy and complicated, that sometimes it takes years to dispose off a case. Many times it happens that the case is followed by the public in its initial stages, and eventually the public loses interest in the same case, as it drags on for years. In such cases the public feels that the justice is denied because the justice has been delayed. The sense of justice is present in the core of every human being and hence everybody wants justice to be done. In the cases of media trial the media not only projects the case in an interesting manner, but also apparently shows that justice has been done by declaring a person innocent or guilty. By declaring the person guilty or innocent by the media, the media tries to imprint upon the public, by a make way belief that justice is appeared to be done. When the villain in the movie is caught and punished, the public is satisfied and happy; in the similar fashion, when the media pronounces a

person guilty, or declares him to be innocent, the public is satisfied and happy irrespective of any legal issues.

It is not only because of the media's personal interest and gain that the media trial has become popular, but it is also the demand of the public. In 2006, the Law Commission in its 200th report has clearly stated that the consequences of media trial, not only affects the system of Criminal Justice, but also affects the rights of the accused, and damages his images in the society.

It is humbly submitted that the media and the judiciary should play a supportive role to each other. The media should bring out the wrong happenings and ensure that the prosecution against such wrong is commenced. However, once the prosecution commences, the media should limit itself to mere reporting; the researcher would like to state that the media should indulge into media activism. Media activism means, the media projects the irregularities or illegal procedural activities which are indulged by the court officials, thereby resulting into injustice. By media activism, the media highlights such irregularities and ensures justice. However by media trial the media exerts its influence and interferes with the judicial process thereby disrupting the balance of justice.

Conclusion

Democracy cannot prevail without either media or judiciary, as both organs are indispensable for proper functioning. The judiciary should ensure that all the legal rights of the accused or convict should be protected. Our judiciary ensured this recently when it heard Kasab's plea for mercy even in the night to ensure that any of his right is not prejudiced.

The media should also take the inspiration from judiciary's sense of duty and implement the following aspects in criminal trials to avoid any prejudice to any of the parties involved in the case

- (i) The media should report the facts as they exist, without colouring or twisting or turning them.
- (ii) It should confine to reporting of the facts only and should not project any opinion regarding the facts.
- (iii) It should not try to create sensation by showing the concerned clips repeatedly.
- (iv) It should not make any imputation which may in any way tarnish the image of the judiciary.
- (v) It should ensure that while reporting the media is not violating any of the rights of fair trial of the accused.

If the media strictly adheres to the above guidelines, then the media will play a pivotal role in enforcing the democracy in the true sense.

Chapter –V

Issues and challenges of media

1. Introduction
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(1) Introduction

As it has been seen earlier the media plays not only a very pivotal role, but enjoys tremendous influential powers¹³², as a result of which it enjoys wide liberties. Today very few other agencies enjoy wide powers and liberties as compared to that of media. However with the enjoyment of those wide powers, the media has to shoulder heavy responsibilities. The task of the media becomes tougher to discharge these heavy responsibilities as the media is in a whirlpool of challenges. The forth coming pages deals with the issues and the challenges posed before the media.

(2) Responsibility of the media in a democratic society

The media is bridled with the task of shouldering a very heavy, important and crucial duty in the present times. This is because of the three facets of human public life which are – (i) to know, (ii) to publicise, and (iii) to expose, plays a vital role in the societal life.

- (i) To know means to get information about various aspects. It is the media which imparts the information to the public, which helps the public in knowing and becoming aware of many issues and aspects prevalent in the society. This is the very reason that the media is the instrument of education.
- (ii) To publicise – means when a person or an institution or the government does any positive or good activity, it is the media which publicises such activities and makes it known to the entire society. This publicising a good activity, acts as a reward to the person doing such an activity, and the publicising also gives an impetus to the others to engage themselves in similar activities.
- (iii) To expose – means the negative side of publicising. The media not only publicises the good activities, but also exposes the negative acts in the form of corruption and illegal activities of the public, as well as government officials. The exposing activity of the media acts as a check upon such activities.

¹³² *Supra.*, p. 113

The role of the media either to make known to the public any information, or to publicise or to expose is done only with the help of technology. The advanced technology plays an important role in enabling the media to perform its function. In absence of the advanced and developed technology, the media would be unable to discharge its functions efficiently and effectively. So one can easily say that; the advanced technology occupies a special and conspicuous place in enabling the media in shouldering it's responsibility.

(a) Indispensible postulate of the society – Fourth Estate of the state.

Since a long time the media has played an acknowledgeable role; but from the recent past it has played and is playing a pivotal and indispensable role in shaping a healthy democratic setup. It is therefore considered as an indispensable organ of the democracy. Not only this, but the media is regarded as the backbone of the democratic foundation of the society. Many a times media is regarded as the 'Fourth estate' of the state. Media makes us aware of the various social, political and economical activities which are happening around. A similarity can be drawn between a mirror and the media because just like the mirror¹³³, the media also reflects or projects to us the bare truth or the ground reality as it exists actually. An important aspect to be noted here is that the media not only projects the positive aspects of the circumstances, issues, or events but also shows those realities which are sometimes tainted negatively or could be categorised as 'harsh' in nature.

(b) Media – watch dog of the society¹³⁴

Since the inception of media, it has developed into different streams and has become more active. The media can remind the politicians every time they keep any promise unfulfilled, especially during the elections. Frequent reporting helps even the illiterate people in deciding the right person to vote for. The continuously reminders by the media persuade the politicians to fulfil their promises, in order to continue to enjoy the confidence of the people, which is required to continue their position in

¹³³ Infra., p.153

¹³⁴ Supra., pp 120-122

chair. If any politician does not care to fulfil the promise the media will repeatedly communicate that to the public, who then will not elect that person again. Thus the politicians who do not care to fulfil their promise are risking their chair, and all this is possible because of the vigilant media.

Television and radio, which also forms part of the media has made noteworthy contribution in creating awareness especially regarding uneducated masses. Televisions and radio broadcasts the news in the native language. The listener or the viewer does not need to be able to read or write, or have knowledge of any foreign language. He can hear the news in his mother tongue and be equipped with the knowledge about the current events. The media also covers the corrupt practises of head of the village, moneylenders and local politicians, and thus have helped in taking stern steps against them by making the appropriate agencies aware of their misdeeds, and strengthening the democracy.

(c) Media a mirror which reflects the realities.

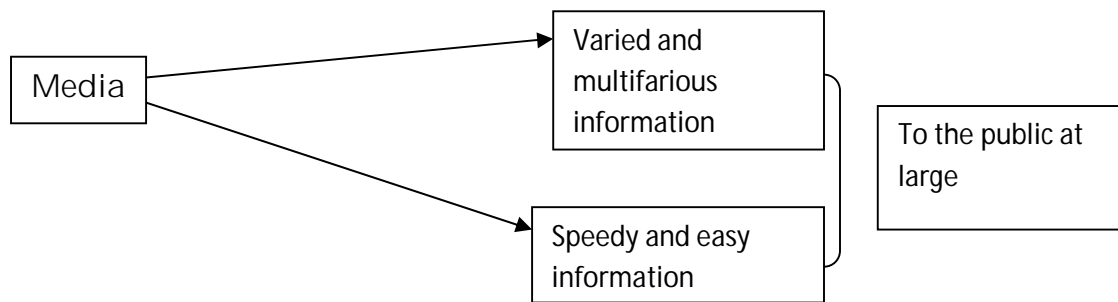
Another very crucial function performed by the media, is that it highlights and brings to the notice of the society the mal administration, discrepancies, blunders, mistakes or the mismanagement of the government. This function fulfils a dual aspects; like on one hand it helps the society to know the mal administration etc activities of the government, and on the other hand, it helps the government to improve its functioning and minimize the mal administration activities, thus making democratic system more transparent, efficient, responsible and accountable. Further the media helps the government and the society to exchange the ideas, views and opinions with each other which minimizes the friction between the government and the society and helps in developing harmonious relationship between the two; which no doubt brings stability and progress of the state.

(d) Diverse information made easily available

The modern age is regarded as the era of information and technology. The consequence of the increased volume of information and technology has led to the fact that; the society not only thrives upon the voluminous information, but the societal life exists on the vast and diverse information. Apart from the vast

information, diverse and varied information is imparted to the society from every aspect of the society or from every nook and corner of the entire global arena.

In addition to the diverse information which is projected by the media, another very crucial aspect is this that, this diverse information is imparted very easily and quickly. In fact the vast information is available at the tip of the fingers of a person. So the advantage of the media is two folds : one -vast varied, diverse, and multifarious information is imparted to the public at large, and the second – such information is made very easily and speedily available to the public at large.



(e) Deterrent effect upon the corrupt or unethical tendencies.¹³⁵

Today the media is feared because it not only publicises any unethical, corrupt or any illegal activities, but also provides almost each and every detail of the procedure evoked to commit such an unethical, corrupt or any illegal activity. So also all the people involved in such activities are also named and nailed down and are exposed in front of the society. The list of the instances where the media has exposed the people of corrupt and mal practises is endless.

Nitish Katara murder case

Jessica Lal case

Priyadarshini Mattoo case

The Ruchika Girhotra Case

Nirbhaya case

¹³⁵ *Supra.*, p 121

Nitish Katara murder case¹³⁶

In the instant case a lower cast boy, and an upper class girl from Uttar Pradesh were in love with each other. The parents of the girl were from high class and influential political parties. The boy was murdered. The accused were acquitted in the lower courts, however the media persuaded the case, and the case had to be reopened. The ultimate result was that, the guilty people were punished.

Jessica Lal case¹³⁷

The bar tender, Jessica Lal, was murdered by son of a politician Manu Sharma, Most of the witnesses turned hostile, and he was acquitted, again the media highlighted the issues and kept it in the limelight, which worked as an catalyst while delivering the justice, and punishing the guilty persons.

Priyadarshini Mattoo case¹³⁸

The accused was in love of the victim, and had proposed her. The victim rejected his proposal. Then the accused made a false complaint that the victim was taking two degrees simultaneously. Not satisfied by that he raped and murdered the victim. The accused also tried to exploit the influential position and escape the clutches of the law. The trial court had given him the benefit of doubt. The media took the matter. Here the media used the tool of investigative journalism, and found the servant working in the Priyadarshani's house, who had supposedly allowed the accused to enter in her house. The servant was missing since the crime was committed. The media put the pressure, and did not allow the people to forget. As a result the matter was taken to the High Court, which delivered its Judgement in 42 days, reversing the judgement of the lower court.

¹³⁶ *Supra.*, p137

¹³⁷ *Supra.*, p140

¹³⁸ *Supra.*, p 141

The Ruchika Girhotra Case¹³⁹

Ruchika Girhotra was sexually molested by the Director General of Police and freely roaming, the media persuaded the matter and got the police person arrested.

Nirbhaya case¹⁴⁰

In 2012 when the unfortunate Nirbhaya was raped in the moving bus, and thrown out of the bus, the victim then went to lodge the FIR, the police were refusing to lodge the FIR, the media harped on the issue, not only resulting in the lodging the FIR, but also the conviction of the culprits.

Many a times these mal practises were brought to the notice of the people, only because of the strong organised, and vigilant media. In some of the cases mentioned above justice was done simply because the media pursued and projected the facts and the issues related to the corrupt or illegal activity.

The media no doubt has helped in doing justice by bringing the culprits into the clutches of the law. Apart from the above quoted incidences, there are many more instances, where the media has performed the duty of the vigilant policeman. One can say that the media has played a supplementary role to the judicial function of dispensing justice.

(3) Theories about Media Influence

Just as seen in the forgone pages, the media plays a very crucial role in bringing about the stability in the society as well as imparting knowledge. The impact of the media is tremendous and is of great magnitude; because of which the media is the most powerful influential instrument existing today. One ponders to know as to what is the reason behind the media's influencing power. To put it in other words what are the reasons behind the media being so influential. No other agency is able to leave the lasting impact upon the minds of the people, as that of the media. Hence

¹³⁹ *Supra.*, p 143

¹⁴⁰ *Supra.*, p 121

a cursory glance is given to the theories which give the reasons as to why the media is so influential.

(a) Limited-Effects Theory:

Limited effect theory hails somewhere in 1940 and 1950. According to this theory the people who have adequate intelligence, enough experience, and do possess intellect will not be affected by what the media states. On the other hand it is the people who do not possess the adequate knowledge will tend to believe the media entirely.

According to this theory the impact and the influence of the media is limited only to the people who do not have adequate knowledge or awareness. This theory places a severe limitation upon the media's influencing powers. This limitation can be justified to some extent on the basis of the time in which it was formulated. Regarding this theory one fact has to be taken into consideration is that the theory is propounded somewhere in 1940 or 1950, and during that time the media was not as developed as it is developed and is still developing today. The media at that time was limited to newspapers, magazines, etc. Television and radio were not in full swing, as they are today. Nowadays the media not only conducts the debates but also frames and limits the issues of the debates which have lasting impact on the conclusions that people may draw. This aspect of conducting the debate; framing and limiting the scope of the issues was totally lacking in the era when the theory was propounded.

Another severe limitation of this theory is that it fails to take into account the fact that many notable and renowned scholars were associated with the press. Such scholars used to express their ideas and opinion through the press which used to not only have profound impact upon the minds of the people but was capable of creating and moulding public opinion. It has to be remembered that the educated masses were not only influenced but also took the opinions and ideas of great scholars like Bal Gangadhar Tilak, Gandhiji, Nehru, Savarkar, Phule etc, as verdicts.

(b) Class-Dominant Theory:

The class dominant theory states that few influential people control the media. The bureaucrats and other rich and powerful people control the media corporations. The bureaucrats decide what shall be sent through air waves, or through internet, or through newspapers. They are also able to restrict the flow of information which they do not want to project. According to this theory the influential aspect of the media is totally at the disposal of the dominant class of the society; and because the class being dominant, the news they project through media is also more influential.

(c) Culturalist Theory:

According to this theory the media is not capable to influence the masses at all. The people who listen to the news broadcasted by the media make out their own meaning and the value of the news according to their own experience and knowledge. Further when the media projects any news, how the news is taken by the people depends upon, the personal and social factors such as their age group, their financial limitation, their region, their religion, their social strata etc. So this theory states the media projects the news and each person is influenced according to the above mentioned personal and social factors.

However, sometimes the news is so catching or appealing that it influences the minds of people irrespective of class, caste, colour, religion and creed. For example in Nirbhaya's case the news was so appealing that it touched the hearts of the people from every corner of India irrespective of any class, caste, colour, religion and creed. The news was also understood in the same sense by these people, in the same sense in which it was projected.

(4) Common challenges before the media

There is no doubt what so ever, that a free media is essential for the exercise of a fair democracy. Without free media it is impossible to imagine any democratic society, as the democracy will lose its essence. Without freedom, the press will be at the mercy

of the rulers and will be under obligation to project any policy in the interest of the rulers, even if it may be detrimental to the interest of the society at large.

A question now haunts is that whether the free media is really serving the people. The answer unfortunately is no. The media is not serving the people as was expected to serve, after freeing it from the governmental control. The said statement is not been made to justify the government control on media, but put a fact that despite independence from the government the media fails to do the duties as expected from the media.

The question which arises before the researcher is that why the independent media sometimes fails to perform its duties fairly, objectively and impartially. The hurdles which come in the way of the media while performing its duties are as follows.

- (a) Paid news
- (b) Cross media holdings
- (c) Glorification of news
- (d) Neglecting important issues

(a) Paid news

One of the major concerns in India is the concept of paid news. The definition of “paid news” as stated by Press Council is as follows, ‘paid news as any news or analysis appearing in the print or electronic media for consideration in cash or kind’¹⁴¹.

To enable us to get good understanding let’s study the concept of paid news. A paid news is a where an advertisement is disguised as a news. To put it in other words, the news channels advertise a party, or a person (mostly political) under the colour of news. Now let us first analyse the term ‘advertisement’. In an advertisement a person, an institution, any product, any event, or any other element is promoted through the media, and the media for this promotion receives some monetary considerations. An advertisement is different from the news which is projected by the media. The media does not receive any monetary consideration for news, where as in an advertisement

¹⁴¹www.prsindia.org/parliamenttrack/report-summaries/issues-to-paid-news-2780

the monetary consideration is a must. As per the rule of the Press Council the advertisement should clearly distinct from the news content.

Paid news is an advertisement which is designed as news and the viewer is made to believe that it is news, when actually it is not. Such a disguise is made to either promote or defame someone, in exchange for consideration.

In the Lok sabha election of 2014, 3,100 notices regarding paid news were served to the news agencies. Out of the 3100 cases regarding the paid news 787 cases were confirmed¹⁴². This statistics of the paid news, is only of one year and one election; one can just imagine the number of paid news which are rampantly occurring or existing.

Paid news is a blatant violation of the democratic spirits. In a democracy, which candidate is to be elected is the choice of the voter, which the voter has to make very carefully. It is obvious that while making such an important decision the voter should be well informed, only then he will make the correct choice. But if the press by publishing the paid news is promoting any one candidate; then it is in a way misleading the voters and destroying the basis of the democracy itself.

The fundamental difference between the news and advertisement is that, the news has to be neutral, unbiased and fair. The news shall provide true and accurate report, while advertisement on other hand need not be fair. It is made to promote a person or promote some article or someone. Advertising is a means of communication with the users of a product or service. Advertisements are messages paid for by those, who send them and are intended to inform or influence people who receive them, as defined by the Advertising Association of the United Kingdom¹⁴³.

In a country like India, the people tend to believe the media, so when the media, especially the press writes anything good or bad about someone the people tend to believe it. The rich politicians in India take the advantage of such a belief, gets lavish

¹⁴² *Id.*.

¹⁴³ <http://economictimes.indiatimes.com/definition/advertising>

praise for them, or taint or tarnish the image of the opponents, by paying high consideration amounts.

When any candidate resorts to the strategy of the paid news for his popularity, he is not only deceiving the public but commits three main offences.

- (i) The aim being only to get a favourable coverage, the paid news may make the people to believe what may not be fair, or true. As the aim of the paid news is to give the favourable coverage to a particular product, people or associates rather than to publish the truth.
- (ii) In case of paid news, where the candidate pays the money to the newspaper agency, and this transaction between the candidate and the press or any media is done secretly. It is but obvious that the candidate involved in such practise, does not declare the amount of the money paid by him for such favourable coverage. Thus the candidate ends up spending more money than he is permitted to spend in election campaign. He is thus guilty of violating Representation of the People Act, 1951.
- (iii) Similarly the transaction being a secret media company who receives such amount will not account the money so received by it from the candidate. This means that the said media company is violating the provisions of commercial and the fiscal statutes.

Paid news it is best described in following words “paid news” is a menace which “started out as an abrasion, went on to become a disease and is now an epidemic.”¹⁴⁴

“The phenomenon of “paid news” goes beyond the corruption of individual journalists and media companies. It has become pervasive, structured and is highly organized and in the process, which is undermining democracy in India.”¹⁴⁵

¹⁴⁴ <http://www.aamaadmiparty.org/paid-news-undermining-democracy-press-council-report>

¹⁴⁵ Paid news undermining democracy: Press Council report P. Sainath available at <http://www.thehindu.com/opinion/columns/sainath/paid-news-undermining-democracy-press-council-report/article407201.ece>

To check the evil of paid news, the Election Commission of India initiated some measures to curb the menace of paid media during election period. The Commission issued orders to the chief electoral officers to appoint District level and State level Media Circulation and Monetary Committees (MCMC). The main function of these committees was to scrutinize the operation of the electronic media, mass media and print media, and to stop any advertisement being disguised as paid news.

Causes of Paid News

(i) Lack of clear distinction between Editorial section and management.

The primary cause for erosion of the independence of journalism is the contract system employment. Now the status of the journalist is reduced to marketing agents. Therefore the journalists who should impart fair and objective news seek and collect only paid news. Actually the press council is in favour of a clear distinction between management and the editorial staff. When this distinction is maintained then the independent journalists (editorial section) can concentrate on fair and neutral news issues, while the people from the management of the press can look after the advertisements.

(ii) Journalists and reporters are under paid.

The journalists and reporters are underpaid. Most of the media personnel get very less wages. Many journalists or reporters work on commissions or on contract basis¹⁴⁶. They are mostly bringing advertisements, and end up eventually working as market representatives rather than standard journalists.

As stated earlier the media is considered to act as a link between the government agencies and the citizens. It is a well known fact that the media is a very potential institution, which has the ability to create or generate public opinion or counter public opinion of the common man. For instance, if the media projects that a particular

¹⁴⁶As per <http://164.10047.134/intranet/PAIDNEWS.pdf> around 80% of journalists are getting very less wages.

picture is one of the most wanted terrorists, people would trust it blindly. It has the capacity to change perceptions or evoke emotions; which reflects upon the media's capacity to gain the faith of the public. In this scenario when the media is entrusted with so much faith of the public, then the same faith is imposed in the media when it is projecting the paid news. If the media on the basis of the public faith is going to project the paid news and thereby deceives the public, then the concept of fair press and the media waters down.

The evils of paid news try to malign the image of media and also raise serious doubts over media's freedom. One will not advocate free media, if it tries to cause hindrance in justice, and supports the person or party for some monetary or other favours.

(b) Cross media holdings.

Cross media holding means owning more than one media business, by a single person or an entity. The South Indian Channel Sun T.V has 14 channels, four magazines and two newspapers.¹⁴⁷ Incidentally approximately 400 channels are being provided by only 11 cable distributors.¹⁴⁸

In a democracy, multiple channels or modes are essential as there may be various opinions related to a single issue. In order to get a proper solution all the views are needed to be projected. However if the person or the entity who runs or owns the multiple channels is the same; then the very purpose of having multiple channels or mode fails, as they are mere different sources of the same person, imparting the views and appreciating the ideology of the same person, running it. People will believe that different channels are advocating the same ideology, hence the ideology is worth following. This is nothing but a way of misguiding the people.

In the United Kingdom there are rules relating to the cross media holdings which are as follows.

- (i) A person can own only 20% of a Channel.

¹⁴⁷ Shivaji Sarkar, 'Cross Media Ownership - A Threat to Vibrant Democracy', available at <http://www.vifindia.org/article/2013/august/22/cross-media-ownership-can-india-checkmake-it>

¹⁴⁸ *id*

- (ii) 3 licences.
- (iii) Any national newspapers not more than 20% of the market share. A person who is holding 20% of shares of the national newspapers is prohibited from holding more than 20% shares of the national newspaper market, sometime known as the "20/20" rule, It is really a "20/20/20" rule.¹⁴⁹

There is still a prohibition on political parties holding any broadcasting licences and on religious bodies holding certain licences for Channel 3 and Channel 5, any national radio analogue licence, and multiplex licences.¹⁵⁰

Channel 4 and \$4C may not hold Channel 3 or Channel 5 licences.

The Nominated News Provider for Chanel 3 cannot be under the control of political or religious bodies or bodies which would be barred from holding a channel 3 licence.¹⁵¹

The Secretary of State may intervene in media mergers where he has concerns about media plurality.¹⁵²

The situation in India seems very different as that from the United Kingdom as far as the regulatory and control provisions regarding the electronic media. It is seen that in India there exists no common policy related to ownership and cross media regulations. So also no restrictive provisions on the number of holdings are present for the print and electronic media.

However, some limitations are being imposed by the Telecom Regulatory Authority of India (TRAI) for different segments within the broadcasting sector. The TRAI dictates the policy framework for each segment, such as DTH guidelines or FM radio policy.

¹⁴⁹ http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf

¹⁵⁰ *id*

¹⁵¹ *id*

¹⁵² *id*

TRAI wants the laws to control the cross media holdings, but the media houses in India have the fear that there will be proxy control by the government.¹⁵³

There is no dispute that there shall be multiple informing bodies in a democracy, however it is the very necessary that those bodies should be of different entities or individual, rather than of the same individual, only then different views can be put before the people.

(c) Glorification of crimes.

Today in this cut throat competition the news channels and news agencies want sensational news to be in the race of TRP¹⁵⁴. Crimes generally create sensation. The media to get popularity end up showing the way crimes are committed, who was the person successful in evading arrest, how lavish did the criminal live etc, making the criminal virtually a hero, and when a criminal is depicted as a hero then his actions makes a deep impact on the minds of the people, especially the young ones.

When Dhananjay Chatterji, a convict for rape and murder of a British girl, was hanged, the news channels were focusing on his minor things such as to what music he listened, what he ate etc, so much that it looked as if he is a national hero rather than a criminal. Few young children died, while imitating the hanging process.

If the crime is glorified, then the young people in the society will want to imitate the same. This would be a most congenial atmosphere to produce more criminals in the society.

The role of the media shall be to discourage the youth from the path of crime, and to encourage the spirits of brotherhood, honesty, tolerance etc.

However continuous projection of crime may tend to corrupt the minds of the young ones, and the society will lose its balance.

¹⁵³ Prashant Jha '*Media cross-holding in cross hairs*' available at <http://www.thehindu.com/opinion/op-ed/media-crossholding-in-cross-hairs/article4743586.ece>

¹⁵⁴ Television Rating Points.

(d) Neglecting important issues

Another major problem with the media is it is often portrays lesser significant news as real news sidelining the real news. Issues like which celebrity is getting married, who is pregnant, etc is given coverage. Actual relevant issues such as economic position of India, poverty, etc are either not covered properly, or not covered at all.¹⁵⁵

Out of the many, one incident to show how the media neglects the real or important issues and focuses only upon the glamorous news is about the week event of Lakme India Fashion. In this event the models taking part in the display of fashion outfits, were wearing cotton garments. During the same time of the fashion event, some farmers who had cotton farms; due to poverty were committing suicide, not very far away from the place where the fashion event was conducted. There were 512 accredited journalists covering the same event, and it is very sad to note that out of 512 journalists only 2 journalists covered the news of farmers committing the suicide¹⁵⁶. This instance clearly shows that the media covers only popular, interesting and glamorous news. The news which is related to harsh realities is often neglected or sidelined.

In this situation one really questions the media's responsibility and its impartial or neutral functioning. The media enjoys full freedom to pick and choose and then to project the news, which it feels like or which is commercially beneficial to it. As the media cannot be compelled to cover a particular type of news, it very conveniently sometimes turns a blind or a Nelson's eye to the ground or harsh or painful socio economic realities, which are faced by majority of the Indian population. Instead of giving adequate coverage to such types of news, the media engages itself in covering the news which contains glamour and popular showbiz like the Lakme fashion event. By covering the events like Lakme fashion, media is only covering entertainment oriented news, and the issues of real concern for people go unnoticed.

¹⁵⁵ Markandey Katju - 'Media and issues of responsibility' available at <http://www.thehindu.com/opinion/lead/media-and-issues-of-responsibility/article2559712.ece>

¹⁵⁶ *id*

No doubt, sometimes the media mention farmers' suicides, the rise in the price of essential commodities, and so on, but such coverage is at the most 5 per cent to 10 per cent of the total news coverage. The bulk of the coverage consists of showing the life of film stars, pop music, fashion parades, cricket astrology etc.¹⁵⁷

The raging floods in Jammu and Kashmir in 2014 attracted the attention of many news channels because of the heavy damage and the vast devastation it had caused. During the same time there were heavy floods in Assam which however went unnoticed by the news channels.¹⁵⁸ What can one say when media highlights the news from one region and completely ignores similar news from another region.

The media has given a cold shoulder to the issues happened and happening in the north eastern states of India. The entire north eastern zone which includes Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura are considered a veritable biodiversity hotspot. The geographical, social and economical issues are rarely projected by the media¹⁵⁹, where as some popular or some news which is of commercial gain to media is conveniently reported and projected¹⁶⁰.

Tata Institute of Social Sciences (TISS), Guwahati, has found out that even the Guwahati or Kolkata editions of national newspapers do not give enough space to the coverage of environmental issues from the region.¹⁶¹

Even some important news related to health issues are sometimes is sidelined. The media gives a very marginal coverage to the issues related to functioning of the government and private hospitals such as; the inadequacies which are present in their

¹⁵⁷ *Id.*

¹⁵⁸ Nivedita Khandekar – ‘Neglecting the environment at our peril available at http://www.thehoot.org/story_popup/neglecting-the-environment-at-our-peril-7777’

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

administrations or the problems faced by the medical officials or the hurdles suffered by the patients due to the complex and lengthy procedures of admission and discharge of the patients. However we do not see such reporting in the media. What we see instead in the media are discussions like have Anushka and Virat met together?¹⁶² or what comment is made by Salman Khan, and for such, the news channel go to the extent of procuring the audio clip,¹⁶³ and it is the paradox that we have debates over such issues.

It is not that the news channel should never give such news, but the news channel should fix some criteria as to how much time, significance, space should be attributed to such news.

The media persons may argue that it is the demand of public, and hence we fulfill their demand, as the public is the consumer. Here the media cannot afford to forget that the role of media is also to develop the good taste of public, they should make the public inquisitive about those happenings which would have impact on their life, their prosperity, their enrichment etc.

(5) Challenges before print media

There is no doubt at all that the print media has large circulation and there are many readers who read and get enlightened by press. Press serves as a good agency of communicator between government and a common man. However the press is not free from the challenges. The few challenges are as follows.

(a) Limited reach because of low Literacy rate.

The newspapers can only be read by the people who are able to read. In other words, only literate people can be communicated through the medium of press. The illiterate

¹⁶² Times of India June 22 ,2016 available at <http://timesofindia.indiatimes.com/entertainment/hindi/bollywood/Anushka-Sharma-to-host-a-special-screening-of-Sultan-for-Virat-Kohli/photostory/52869074.cms>

¹⁶³ Newspaper DNA dated June 22, 2016 available at <http://www.dnaindia.com/entertainment/report-rape-remark-what-salman-khan-said-exactly-2226330>.

people are likely to get excluded. They do not have the access to information. In other words only literate people can only cast informed votes.

This would mean that it will be easy for political parties to garner votes of illiterate people and occupy the power, and then turn deaf ears to informed people's rightful demands.

(b) Aliteracy

*"There are worse crimes than burning books. One of them is not reading them."*¹⁶⁴

Aliteracy is another problem with the press.

Aliteracy is derived from the word alliterate which the Webster defines as '*the quality or state of being able to read but uninterested in doing so*'

Aliteracy means the people who can read and write choose not to do it. In other words the people who can read and write choose to stay ignorant.

The concept of Aliteracy is different from illiteracy. An illiterate person cannot read and or write; on the other hand the alliterate person knows very well how to read and write but still does not do so.

The problem of choosing to be ignorant is not new in India and was found in somewhere in 1959, just two weeks after the revolution of Tibet, despite being literate and having access to newspaper the majority of people were ignorant and only one person was aware as to who is Dalai Lama, when all the newspapers were full about the news of Dalai Lama¹⁶⁵.

In the age of communication, and where there are a lot of tools for information, we find people who are not updated with current events. It is not because they do not know how to read and write but because they are not interested or do not care to be

¹⁶⁴ Joseph Brodsky brainy quotes

¹⁶⁵ By Arthur Bonner, *India's Masses : The Public That Cant Be Reached* available at <http://www.theatlantic.com/past/docs/issues/59oct/masses.htm>

updated. The house wives who spend number of hours watching daily soaps, and are unaware of current events can be cited as the best example of aliteracy.

Aliteracy is no doubt an impediment for democracy; also it is an impediment for print media, as the circulation of the press can be affected. As the alliterate people will never invest their money for buying a newspaper thus reducing its circulation.

(c) Stale news

Stale news is another problem regarding the print media. With advent of television and internet, news in any corner of the world is circulated within minutes and seconds. The same news will appear in the next day's news paper. The people might have lost the interest in reading that news. In today's era where there is any news which is visually represented and also be heard through audio just after the incident, under such circumstances, not many people will wait and read the same news next morning.

(d) Costs involved in production and circulation

The cost of production of newspaper is another challenge before the print media. The cost of production seriously affects the business. There are various factors which determine the cost of production of a newspaper or a magazine, for example, paper used by them, colour or quality which is used for printing, as the price of paper differs based on its quality, competition existing in the market also plays a crucial role while determining the price. These costs are variable from year to year. Another important aspect is print run. This depends on the size of the newspaper; it costs around 50 to 60% of the production cost¹⁶⁶.

Another type of expenditure is the expenditure of the staff and miscellaneous expenditure relating to the staff. The printing cost is variable whereas the expenditure

¹⁶⁶ Sanjay Kumar, V.V.S. Sarma *Performance and Challenges of Newspapers in India: A Case Study on English versus Vernacular Dailies in India* available at eprints.exchange.isb.edu/355/1/K740-final.pdf

of the staff is somewhat fixed. All these expenditures increase the financial burden on the press.

(6) Social media

Social media means all the online communication tools which are dedicated to online communication, data sharing, sharing of information, sharing career interest, etc.

The definition of social media as per Cambridge Dictionary is ‘websites and computer programs that allow people to communicate and share information on the internet using a computer or mobile phone.’

Social media has been an integral part of at least urban population today. Sites like facebook, twitter etc, that have given a platform to an individual to assert himself. It is not only the matter of mere assertion but through the communication, the business also becomes easy. For any business to grow it is very essential that the producer should reach to maximum number of customers, this can be done easily by the face book or any other tool of social media.

(a) Development of social media

Man is a social being and hence cannot live in isolation. A Man needs to communicate with the other human beings for self satisfaction as well as his development. This need of being able to communicate with others has sown the seeds of social media. So it can be said that the concept of social media has existed right from the ancient times. The necessity of communication compelled man to develop the methods of the communication. So previously the modes of communication were pigeons, which flew to deliver the message which was tied to their legs with strings or cloth. The very famous poet Kalidas has gone to the extent to make use of the clouds as messengers in his Meghdoot kaavya. In the Hindu mythology even the domestic wives in the ancient times, sent their messages to their parents through the moon or the winds.

Even if the above instances of the means of communication seem to be an exaggeration, one aspect has to be noticed, that man has always indulged in inventing some modes of communication. The modes of communication depend upon the following aspects

- (i) The development of the state.
- (ii) The development of science and technology
- (iii) Economic development of the state.
- (iv) The social development of the state.

If the state was in the primitive stage of development, then the modes of communication (social media) was also primitive or in a crude form. However if the state has developed in all spheres, then the modes of communication (social media) are sophisticated, for eg the internet. The present researcher has tried to analyse the journey of social media from the primitive stage to the internet stage.

The year 1940, can be considered to be a crucial year in the development of social media as computers were manufactured then. With the help of these computers the data could be stored. The computers in those days were mainly used for military centric commands and were used as control schemes. Slowly the use and the application of the computer expanded and the computers reached the households of very few. These computers were cumbersome and complex to operate; so also it was not refined and sophisticated. The inventors at that time took painstaking efforts to try and develop a link between all these computers. So if the message was typed in one computer, then it could be accessed in another computer. This effort of linking the computer together has laid down the foundation for further development of internet. In 1960 the linkage between the computers was achieved known as the CompuServe.

It is popularly called as the initial form of the internet. With the help of the CompuServe emails which were in a very crude form could be dispatched. Initially the CompuServe service was regarded as business oriented, main frame computer. But later this service got expanded and was used by the general public for social purposes. So, later on with the help of CompuServe, debates, discussions and meetings could be achieved. Sometimes some social discussions or social communication was also initiated. The computer language had developed and

'Mulletts' had originated. This computer language was a very new concept and was technically complicated. Hence it was not very popular and the use of it was very limited. A little later the UseNet facility was developed. This facility became more popular and the number of users of this facility increased to a large extent. Simultaneously the BBS (Bulletin Board System) was invented which provided for codes which allowed the users to communicate with the central system. The BBS got access through telephone lines via modem. The Long distance calls through telephones involved were costly; hence the bulletin boards were restricted to local circles only. So also with the help of these techniques many files could be downloaded. However while downloading the files from this method the distinctions between the original and the pirated versions could not be drawn.

Though there were some restrictions on BBS, the technology was very popular in the 80s and in the early 90s. Somewhere in the 90s however, there was a revolution in the field of internet. Some services like Jennings FidoNet could manage to hold grounds as it linked a number of BBS into a worldwide computer network.

After BBS system the whole scenario of the computer world changed, as the first ever social media web site was invented which was called as the Six Degree. The applications of the site were many more as compared to BBS system.

- (i) It enabled the users to achieve a social communication.
- (ii) The users could create their profile.
- (iii) They could create friends through profile of other users.
- (iv) This application even allowed connecting people who were not registered as users.

This Six Degree application system enabled the people to use computers to develop their social contacts, hence paving the way for the development of social networking sites.

In the year 2000 the world was engulfed with the term 'blog'. The term 'blog' is a part of the phrase 'Weblog' which was named by Jorn Barger, Editor of 'Robot Wisdom'. The concept of blogging enhanced the use of computers for social communication; because people were able to communicate with the help of the blog

with wide range of readers and users. So also the technique of messaging gained rapid popularity, again enhancing social communication through media.

The concept of Blogging enhanced the importance of social media, and in the year 2000, websites like Linkdin, and Myspace came into being. The website Myspace helped the users to create profiles and find friends. Even if the application of the website Myspace is smaller as compared to today's internet facilities, still the web site Myspace was used by many users for social networking, and sometimes it was used even for advertisement and promotion of certain activities.

Another website Linkdin surfaced simultaneously, which was different from website Myspace. With the help of website Linkdin, the professional could achieve a link through the network. Hence this site was for a particular purpose. The difference between the two websites, Myspace and Linkdin is this that, the website Myspace was of general nature, and could be used for social communication or networking. Whereas the website Linkdin was for a particular purpose and could be used by professionals, business groups, to communicate with each other.

Mark Zuckerberg in 2004 made a magnificent invention of the computer application in the form of – The Facebook.com. The application of The Facebook.com was initially launched for a specific group that is for the students of Harward University. The application was very successful as its utility was tremendous. After gauging the potential of The Facebook.com site, Mark Zuckerberg released the service of this site to the world at large. This website The Facebook.com can be regarded as a gigantic step in the development of the social media. Through this application of facebook, profiles can be created and the friends can be made from any corner of the world. From 2004 till to date Facebook.com can be regarded as most popular and the leading social media, having more than a billion users.

In 2006 Jack Dorsey, Bitz Stone, Noah Glass and Evan Williams created the system of twitter. By this system the users are allowed to say precisely, that is to tweet, the only limitation is that the user can use only 140 characters. This twitter system is very popular and is very widely used.

In 2007 David Karp launched a micro blogging website called Tumblr. Today this website is owned by yahoo and named after it. Websites like Foursquare, Spotify, Google Buzz, Pinterest, Loopt, Blippy, Groupon, were launched and are regarded as the popular social media. Some other websites which can be called as photo sharing websites were created are Flickr, Photobucket, Instagram.

After so many websites it is but natural that the world of social media rocked and the social media was not only used for personal or social motives, but it was used for business or commercial purpose rampantly. Every brand is now taking their product on social media to get more buyers, so one can say that the trade and profit is carried out with the help of social media. Apart from this, the website owners of different businesses, professions, etc are advertising their product as well as their websites on the social media websites.

The social media has put another step forward when messenger applications which could be installed in mobile, like Whatsapp, Line, Wechat were created. By way of these application two or more people can chat, send photos, videos, etc. This type of media also (in particular whatsapp) is slowly becoming integral part of business and profession.

As one can see that the social media from a primitive stage, has developed to the most sophisticated mode. The social media has also undergone a sea change in its function; because initially the social media's function was only to cater to social communication, and today, the social media is playing an important role in almost every aspect of human life. With the help of social media, the users of it use it to promote their business, trade, advertise their occupation etc. The artists use the social media to promote and advertise their art pieces, including music. The professionals use the social media to promote their profession and intellectual work; sometimes education is also imparted through the social media. Cultural, religious and political events are promoted with the help of social media. It can be said that the ancient social media performed the function of social communication, and the today's social media, 2016 is omnipresent because almost every activity of human beings as well as the institutions cannot be carried out without the help of the social media.

(b) Legal implications of social media

In the present times no other agency has gained popularity as much as the social media. The social media enjoys hype, importance and popularity throughout the world. The same is true in the case of India.

The youth in India today is zapped with the social media. The facebook in 2014 had the 112 million users, this figure itself suggests that the number of users in India is only next to United States of America. The number of users who daily use the facebook through their mobile is 45 million. According to Facebook India Managing Director, Kirthiga Reddy a considerable number of Indians like to be connected with the facebook wherever they are. This is called as FOBO (Fear Of Being Offline)¹⁶⁷

The social media now, not only is limited to the personal use, but also has made a significant mark in the professional and business circles. Many small and big offices have the whatsapp group, and many business entrepreneurs have links to the facebook. The social media is a very useful tool for communication. It goes far beyond entertainment and allows two individuals or organizations, foreign to each other previously, come together, and make profitable deals, which otherwise would not have been possible.

With the above discussion it becomes clear that the social media is popular in personal as well as career circles. However the social media is not free from implications.

(i) Content ownership

There is a problem regarding the content ownership. The question is who owns the content which is posted on the face book. The answer to this question is pretty simple, it is the face book which owns the all the intellectual property rights, as per the agreement between the user and the face book site. When any individual signs the face book or any other social site then that social site becomes the owner of the intellectual property rights relating to the content posted by that person. These intellectual property rights will allow that media to post the details of that individual

¹⁶⁷ Indiatoday, 17th December 2014, available at <http://indiatoday.intoday.in/technology/story/112-million-facebook-users-in-india-second-largest-user-base-after-us/1/407261.html>

whenever they feel like doing it. This can cause severe damage to the person who posts something on the social media.

Another issue is that, even if a person deletes his page, then will the content be actually deleted or will it surface again? Sometimes the user wants to delete the content permanently, and if the content is not deleted by the concerned social media, even after it was deleted by the person who posted it, then the person deleting it, is straight at loss as he cannot sue the social media, nor can compel them to delete the page.

(ii) Defamation and Other Torts.

Defamation is a curse that the social media suffers. The torts like defamation can be easily committed by the facebook. Any individual can write anything which is bad, or derogatory about the person he hates.

Many people, who are not aware, may due to their ignorance, end up in getting into legal trouble. The following acts on the social media can constitute as defamation, and will invite the legal action.

- Making allegations that a person is committing any sexual harassment, without any authentic verification. However, it will not be an offence, if the person against whom such tweet was made, is convicted by the competent court.
- A tweet, which can be misinterpreted can amount to defamation and can invite the legal action. Any comments, statements of which may be interpreted in such a way, that the statement may carry some different meaning, which may not be the intention of the maker. However the same may invite the legal action.
- Any personal attack of facebook or any other social media can attract the legal action.
- Name calling over social media can also can invite a legal action against the person doing so.
- Anyone who is linked with any possible defamatory substance is also liable for defamation. For example if a person likes a statement which is already

defamatory, then the person liking defamatory statement can also be held liable for defamation. This happens generally, when a link posted by someone which is liked or shared on the social media by others.

Social media and Criminal Activities.

The social media has also become a place for criminal activities. Lot of criminal activities is taking place through the social media.

(i) Posting offensive text

The offensive text related to known or unknown person, institution, is posted, with a view to malign his image. The content here is generally not verified, and the language used against the person is very harsh. Even false allegations are levied. Use of this platform is often done to do character assassination, to do lewd comments etc.

(ii) Posting morphed or private videos

There were series of cases where the secret videos of the ladies were taken and then they were blackmailed. Recently in Tamil Nadu a girl committed suicide after her morphed pictures were released along with the mobile number of her father¹⁶⁸. This is not the only or isolated incidence, there are many others. A spy camera was installed in the changing room of Ms Smriti Irani, the then HRD minister, at FabIndia outlet, Candolim, Goa.¹⁶⁹ Such type of activities can be done as it is very easy to have access to social media. Many unhappy people may tend to do so with a view to extract revenge. Some may do it to force a girl to submit to their demands.

(iii) Posting the links of porn videos

This kind of offence is done by the people with perverse mentality. They upload or share the porn videos. This is also a criminal offence.

¹⁶⁸ http://www.newindianexpress.com/states/tamil_nadu/Girl-commits-suicide-after-morphed-pics-appear-on-Facebook/2016/06/28/article3503206.ece- Published: 28th June 2016

¹⁶⁹ <http://indianexpress.com/article/india/india-others/smriti-irani-spots-camera-facing-trial-room-police-register-fir-against-store/published> on April 4, 2015

(iv) Online defamation

The social media can be said to be the hub for defamation. Young children who are above 12 years of age have an access to the facebook¹⁷⁰. The age of the people who get access to social media like whatsapp may be even less. The children of such young age may not be well conversant with the legal provisions relating to defamation, and end up in posting something which may be defamatory. The nature of facebook is such that the comment may disseminate very fast. Some other people may do it purposely with a view to get perverse pleasure.

(v) Spreading religious hatred

Facebook and other social media are also flooded with the messages which tend to spread religious hatred and communal violence. Generally on facebook this message is forwarded with intention to get like. However they end up spreading the feeling of jealousy towards the other religion, which might be detrimental to the unity of the nation, pushing the nation on the brink of communal disharmony.

(vi) Spamming

To spam means to send immaterial or unwanted messages through the medium of internet. Anybody who does so is termed as a spammer. Previously these spammers used to target those email ids which they could obtain easily from chat rooms, customer lists etc. The result would be that the inbox of the mail would be blocked. Later on however the email filters also got refined and as a result the inbox does not get blocked. The spammers now have started to attack through social media. Out of many ways, one way as to how the spammers carry out their attack is that they hack the account of the user, and then they can send the fake messages to the followers or the contact list.

¹⁷⁰ It is mandatory that the person who is desirous of having facebook account shall be of 12 years of age.

(vii) Cyberstalking

Cyber stalking is just like ordinary stalking. The only difference is that, in ordinary stalking the stalker physically stalks the victim, and in cyber stalking, the stalker keeps a tab on the victim through the use of technology. The cyber stalkers use the gadgets like email, messengers to keep the tab on their victims. They harass the victims by monitoring them, threaten them or to manipulate or destroy the data of the victim etc. The cyber staking can have serious impact which is as under;

- It can be dreadfully frightening
- It can make one lose their friends.
- It can affect, career, self confidence and self image.¹⁷¹

There are a few steps, to avoid the cyber stalkers.

- Never give your system in the hands of the strangers.
- Never keep anything open on your system. Make it a habit to log out once you are done.
- Avoid giving the password to anyone, also keep changing the password.
- Do not open any emails, unless it has come from trusted source.

(c) Social media vis a vis right to privacy

In the age of the social media, the right that gets jeopardized the most is the right to privacy.

Privacy according to Black's Law Dictionary "right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned".

¹⁷¹ By Marian Merritt, *Straight Talk About Cyberstalking* available at <http://in.norton.com/cyberstalking/article>.

In ancient times, in India the protection of law was awarded against any physical or property related encroachment, for example hurt, theft, murder etc. But now the sphere requiring the protection has increased, as crimes are not only limited against the body and property. In the present times people need protection in some other spheres like intellectual property rights, privacy, cyber protection etc, which were unheard of in the ancient times.

(i) Meaning of right to privacy – constitutional perspective

The right to privacy was discussed in *Kharak Singh's*¹⁷² case, where it was stated that regulations which permitted the surveillance of the suspects, would contravene the right to privacy, if the regulations were unreasonable. The Supreme Court cleared had stated that the right to privacy is implicit under Article 21 of the Indian Constitution; however, the right to privacy is subservient to the security of the state.

Right to privacy got a clear interpretation after *Maneka Gandhi's*¹⁷³ case, as the *Maneka Gandhi's* judgement was pronounced against the background of Universal Declaration of Human Rights and International Covenant on Civil and Political Rights 1966, and both these international document incorporate the right of privacy. So in *Maneka Gandhi's* case the Supreme Court gave a very liberal interpretation to the terms 'right' 'liberty' of the Indian Constitution. The Supreme Court stated that, these terms have very wide implications and broad dimensions. Hence right to privacy is included in the concept of life liberty. Further the court has stated that there is no need for the right of privacy to be mentioned expressly or specifically as a fundamental right, and it can be implicitly included in the Article 21 of the Indian Constitution. In the Indian legal system it is a settled law, that the right to privacy is a fundamental right, incorporated in Article 21 of the Indian Constitution.

The main focus of social net work is to build up a social structure with the help of media to be able to communicate and interact socially between the public at large. In the social net work personal information is communicated to other people. Here

¹⁷² AIR 1963 SC 1295

¹⁷³ *Supra.*, p 39

sometimes right to privacy of a person may be jeopardised sometimes. Now the question arises how to balance the working of social media and the right to privacy of a person.

(ii) Violation of right to privacy by the media inclusive of social media.

Accessibility of the data to the third party.

Information is sometimes programmed or stored, or imparted for a particular purpose to a particular party. But sometimes it may happen that, this personal information falls in the hands of another person whom the user does not to share the information with. This happens with the misuse of number of websites such as the facebook, Myspace etc. Another method to provide the information to another unknown person is Browser multiplayer games such as Farmville, Quiz planet etc. In such types of games, if the players click specific advertisement or an icon of the other player, then the profile of that other player will be displayed directly to the person who clicks that icon or advertisement. The danger involved here is that, personal information through the profile is made available to any person, which in turn may be misused and hence the right to privacy is violated.

Today it is a compulsory fashion to put each and every, and sometimes even the minute information about oneself, family, friends, etc on social media like the facebook. Such posts on the social network can be easily accessible to the cyber criminals, who do not hesitate to invade the privacy of the person for their gains.

The preteens and the early teenagers are an easy prey to the cyber criminals, as they tend to believe their new friends, and overlook the safety measures. Hence the right to privacy of such children is invaded.

The age verification mechanism, of social media is not at all reliable. At times the underage children tend to open account on these social sites, posing as the persons of appropriate age, and become easy victims at the hands of sexual predators by violating the right to privacy.

The employment sites request the concerned person to furnish the full personal data, along with CV and contact number. If by any chance the data is leaked through them, then naturally the right to privacy is invaded.

The most glaring examples of the violation of the right to privacy by the social media is in the cases of celebrities, such as the cine stars, sport stars, politicians, and other eminent social figures.

News reporting witnesses the direct contradiction with the right to report and the invasion of privacy. The right to report is the prerogative of the journalists, so also how much time to allot is also their discretion.

If the above discretions are taken away from the journalists then it would amount to control of media by an external agency.

The journalists on the other hand tend to take undue advantage of the discretion granted to them and thereby invade the privacy of the celebrities, such as the cine stars, sport stars, politicians, and other eminent social figures. The people are very much interested in knowing the minute details of their favourite star, or leader as to what they eat, what they like etc. The journalists also follow the celebrities in order to fulfil the demands of the public and thereby get the TRP to their channels. While doing this the journalists knowingly or unknowingly violate the right of privacy of these celebrities.

The Aradhya controversy is the glaring example of the above mentioned point. When Aishwarya Bacchan was pregnant, lot of journalists were flocking at the hospital and the residence of the Bacchans reporting the minute details.

The Bacchans had to get an order from the court restraining the media from reporting anything in respect of the pregnancy till the official bulletin was issued from the Bacchans.

The incidence of Virat and Anushka controversy is also no different. When India was playing against England in 2014, Anushka Sharma had gone to England, the newspapers at that time were full of headlines like 'Anushka Sharma is keeping Virat

Kohli company in England'¹⁷⁴, the news media. The media also gave a detail discussions as to which dress Anushka, wore¹⁷⁵. These descriptions relating as to the dress and how Anushka was cheering was not at all mere reporting, but it is clear case of infringement of the right to privacy. The duty of media is no doubt is of reporting, but it is not the duty of media to report as what does the actress wears, or can the actress be the lucky charm for the cricketer or not. The reporting of such events is clearly against the ethics of journalism and a blatant violation of privacy.

In the present electronic media age, there is no doubt that the social media channels have to exist and be used by public at large. On the other hand right to privacy has to be preserved and protected.

Primarily one can say that the social media channels are innocently or neutrally conducting their functions; and only their applications are misused then the right to privacy tends to get violated. The users of the social media channels should be aware of three things viz (i) their own right to privacy, (ii) another person's right to privacy (iii) The safeguards which have to be followed, while using the social media channels. When one is aware of these three factors, it is difficult to invade the right to privacy by the social media. If the social media channels are used within the legal limitations then there is no question of violation of right to privacy; and the two terms instead of being opposite to one another, there can be a harmonious co - existence between the social media and right to privacy.

(d) Social media as a tool of harassment.

There is no doubt whatsoever about the fact that the social media has become the integral part of our personal and professional life. The social media is not only limited for social purposes, but it also play a crucial role in enhancing the success in the professional world as well.

¹⁷⁴ Vicky Lalwani Mumbai Mirror |

<http://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/Anushka-Sharma-is-keeping-Virat-Kohli-company-in-England/articleshow/38665114.cms> - Jul 19, 2014,

¹⁷⁵ *Id.*

Though this is the meritorious side of the social media, there is a dark side to it. The social media has become a tool for the harassment of children, teens, adolescents, and women. Apart from this even the frauds are committed through the medium of the social media in the professional sphere. The social media being uncontrolled, has encouraged the criminal and the terrorist activities. The social media can be regarded as a boon and a curse simultaneously.

Let us first study how the social media is used as tool of harassment in personal sphere. The below mentioned acts are offences and affects the victim emotionally, making the victim to go low on confidence. The following type of offences which affects the children more.

(i) Cyber bullying

Though it is true that this offence can be done with respect of any person, the worst hits are the young children. In this type of offence the attacker posts abusive, derogatory, hateful, nasty comments. It tends to affect the young minds deeply and they have the scars of that wound, which may affect the life of the young ones adversely.

(ii) Age inappropriate Contents

The internet makes available virtually any content within micro seconds. However not all contents which are available may be desirable to watch or read, especially by children. Though it is true that there is a parental control system to regulate as to what, the child should watch, the inappropriate contents could still be watched by the child, if someone makes available, the said contents for them. These inappropriate content might influence the young minds in a wrong way.

(iii) Online Grooming

The internet allows to keep anonymity and the exactly that is thing which is exploited by the attackers during this online grooming. Here the attacker poses as a person of same age as that of child and befriend him. Speak to him and win his trust. When the child starts to trust the attacker completely, then the attacker would expose the child to sexual content,

corrupt his mind, and then manipulate him. In other words the child would be bullied by a buddy.

With the changing dimensions of the social media, it will neither be advisable nor be possible to prohibit the access of children to social websites. However, we can supervise the content they watch, without making them feel, that the elderly people are spying them. The elderly people have to take active interest and understand what activities are being done by the child on the social sites. If the need arises then set up some rules for the use of the internet at home. These steps will ward off the danger of any cyber attacker who will try to corrupt the young mind for his perverse pleasure.

The women also are harassed through the instrument of social media.

(i) Using morphed pictures

The morphed pictures are used by the cyber attacker either to take revenge or make submit her to their demands.¹⁷⁶

(ii) Cyber stalking

The stalking is done by using devices, rather than physical stalking.¹⁷⁷

Apart from this the one more concern about the social media is that it ruins the marriages. Social media, especially the whats app is one of the reasons for the increase of the divorce rate. Out of 5000 divorce cases at least 3000 are related to the technology. The spouses take the aid of technology to prove that the other spouse is cheating on them¹⁷⁸. SMS and email are also nowadays submitted as evidence.

The social media not only harasses the people in their personal circle but also may be reason for the loss of people at the professional circle as well. Though it is not possible to cover all the threats, some activities of the cyber attackers, which can ruin the professional life is mentioned below.

¹⁷⁶ *Supra.*, p 177

¹⁷⁷ *Supra.*, p 179

¹⁷⁸ <http://www.dnaindia.com/scitech/report-smartphones-facebook-whatsapp-break-down-marriages-in-bangalore-1969218>

(i) Executive impersonations

As the name suggests this type of attack is done by making the people believe that the sender is the genuine company, when it is actually not. The modus operandi used by the attacker is that, he creates a fake account of that company or concerned person and then sends defamatory messages regarding that company, through the phishing links. This can be done very easily and with low cost, as it does not take a long time to open fake email account of the targeted. If this fake account is seemingly appropriately created, then it appears as if it is an authentic account of the company. The clients or the concerned persons will respond to the emails sent through this account. The attacker now can send slanderous, false, or those messages which are detrimental to the company, from this fake email id. This can cause a great prejudice to the company.

(ii) Watering hole Attacks.

This is a type of attack generally launched on an organisation, company etc, rather than individual. In this type of attack the attacker initially studies in detail as to which are the websites that are used by the victim organisation or company. Then the attacker infects those websites, and obtains the desired information or result with ease. The major concern regarding this site, is that it is very difficult to know whether the site they are seeing is infected or not. The other concern is that it is very difficult to dodge this virus and also train the staff to deal with this virus.

(iii) Hashtag hijacking

Hashtag hijacking is said to have done when the hashtag which is created by a particular company is used for other purpose, than it was created. Generally the hashtag is created by the company to promote their particular product. This hashtag is hijacked by the attacker and used for some other purpose.

There are two types of hashtag hijacking. One is called as ‘attention seeking troll’ while the other is called as ‘The PR campaign gone wrong’.

The attention seeking troll' is not dangerous, as the hacker just promotes his junk, which is not a rival product. It is as the term suggest, the hijacker wants attention of the people who visit that hashtag. However in this case the hijacked hashtag is being used for the purpose, other than for which it was created.

The second one which is called as 'The PR campaign gone wrong' is a serious threat for the company as it has a serious prejudice to the profits of the company. In this type of attack the hijacker uses the hashtag to detract the people rather than to attract. Such a type of hijacking can have tremendous and lasting negative effects on the company. The glaring example is of Mcdonalds hashtag called #McDStories was used in a way, which was not expected by the Mcdonalds company in 2012.¹⁷⁹

The threat of social media is also stretched beyond the personal or professional circles. It has also become a hub for carrying out terrorist activities. The terrorists can plan as to which type of attack is to be carried, when it is to be carried out, whether the attack to be carried out is physical or cyber. There are also professional unethical hackers who hack the websites for exchange of hefty fees, or do it for carrying out terrorist activities.

(7) Conclusion

There is no denying in the fact that the media is the backbone of the legal system. In the recent times the media has grown voluminously and in different spheres. The role of media has increased in proportion to its growth. The media has diverse roles to perform in a society like the role of an unbiased informer, role of educator, role of a mentor, the role of instrument of social change. While performing these roles the media has to face the stiff challenges such as violation of right to privacy, illiteracy, aliteracy etc. Sometimes the media oversteps the line of freedom and causes invasion of privacy of other person or nuisance. This is because the media wants to create news, for the considerations, best known to them.

¹⁷⁹ Anita Campbell *What is Hashtag Hijacking?* Available at <http://smallbiztrends.com/2013/08/what-is-hashtag-hijacking-2.html>

Speaking about the social media, it has undergone a sea change, and today, the social media channels are used for, employments, advertisements, to further social contacts, and for the professional life as well. If the users of the social media keep themselves within legal limits, then there is no fear of violation of right to privacy and balancing of the conflicting interests can be achieved between these two seemingly opposite concepts. The users of social media should adhere to the safety rules, so that the offenders cannot victimise the users easily.

Chapter –VI

Conclusion

As the nomenclature of this research indicates, the researcher has made a humble attempt to assess the role of the media and elements of its accountability. The subject matter of this research has fascinated the present researcher, because of the breath taking or dynamic growth of the media industry throughout the world. Naturally one ponders to think, upon the various counters of the media industry such as the rapid growth of the media, role of the media, the hurdles and challenges faced by it, etc. One thing is for sure that the media has grown rapidly, and definitely, it has a powerful potential, so much so that, it is capable of making or breaking the government, by influencing the minds of the people.

Every research begins with the research problem, and in the present research the problem statement of the research was, how to balance the conflicting rights of the press with the rights of the individuals. Here the researcher would like to rely upon the Roscoe Pound's theory of Social Engineering. Each interest should be defined and limited so that one interest does not overshadow the other interest so that the conflicting interests can be balanced. The rights of the press as well as the rights of the individuals are very well defined by the law. Sometimes the media for other extraneous considerations oversteps its limits, and the balance gets tilted towards the side of the media which results in the violation of right to privacy of an individual. Here the humble submission of the research student is that the media should confine itself within the jargons of ethical, neutral and objective standards apart from the legal limitations, so that the right to privacy of the individual is secured; and the conflicting rights can be balanced. The researcher would also like to state that the modern natural law theory can be made applicable in the cases of right to privacy and right of reporting of the press. According to the modern natural law, the natural rights will prevail within the framework of the positive law, and the positive law will prevail with minimum moral content. Here the media's right of reporting and imparting information should prevail within the legal limits; however the media should adhere to the minimum content of the morality in the form of ethical and unbiased reporting.

After the completion of the research ie the collection of the data, arranging of the data, analysing the data and interpreting the data it can be said that the hypothesis

forwarded in the initial stages is proved to be correct and the concluding remarks are based upon the hypothesis.

In the Indian Legal system every institution, be it the state or the private institutions, including the branches of the state are accountable to some higher authorities. Now the media being so powerful, should it not be accountable? It is humbly submitted, that the accountability of the press is quite vague and weak, as the media is accountable to the public at large. Even the parliament is accountable to the people, but this accountability is effective or strong as the members of the lower house are elected by the people and hence the elected members are to a certain extent, deterred from doing anything, which goes against the public. However in the case of media, even though it is accountable to the people, it is not elected by the people. The media can only be criticised by the public, and sometimes the TRP ratings of the media may fall. This is the only check on the media exercised by the people and hence the media has become a self declared boss- a free, independent, and above all (to some extent.) The media should act, responsibly, neutrally, objectively and abide to the ethical standards of journalism on its own, and should not wait for the law, forcing it to be ethical or neutral in dispensing its duties. Every time the law cannot interfere and set standards for neutral and unbiased reporting, because if the law does so, then the independence of media will be at peril. At the same time the media should not take undue advantage of this fact and confine itself to self imposed ethical limitations.

The Chapter - II of the present research deals with the constitutional framework of the freedom of the press. To deal with the concept of media, it is mandatory to analyse the constitutional provision, which deals with the freedom of speech and expression, inclusive of the concept of press and media. Hence the entire second chapter is devoted to the constitutional provision of the freedom of speech and expression- Article 19(1)(a) of the Indian Constitution¹⁸⁰. The right of freedom of speech and expression has prevailed, since the times immemorial as the necessity of expression is very natural and inborn in human beings. So it can be stated that, expressing oneself is inherent in human beings, which is beyond the scope of any legal parameters. To put it in other words, freedom of press has not prevailed because of any sanctions but is

¹⁸⁰ *Supra.*, p. 29

born with the human beings. In the ancient times, expression prevailed in very crude forms, such as paintings or carvings on stone or woods. The first informal press can be traced to the Muslim era, where the Mughal rulers, used to select people to report to them on the on goings or the happenings in their regions. The severe drawback in this system was that, the reports which were prepared for the king, were exclusively for him only and the public did not have access to it¹⁸¹. The establishment of a formal press is evident in the pre British era¹⁸². It can be seen that the Indians were very keen and adamant to establish and use the press, with the motive to unite the Indians and to revolt against the British government. In those days, the media was prevalent in the form of the press only. Press was used as an agency to promote the independence activities. The Indian freedom fighters such as Girish Chandra Ghosh, Gangadhar Bhattacharya, Tilak, used the press aggressively to promote their freedom struggle. On the other hand the British government tried to impose stringent restrictions on the press, in order to curtail or suppress the freedom movement. One can draw the analysis that the press has tremendous potential even in those days, as the freedom fighters used it as a popular platform, to achieve their own motives. On the other side, the British Government was aware of the power of the press media, which had the capacity to destabilise its rule in India, and hence kept on imposing such stringent rules, that ultimately the press should suffocate and die.

After analysing thoroughly the press in British era, the researcher has turned his attention to the post Independence status of the media¹⁸³. After Independence the Indian Constitution was enacted and the Fundamental Rights are rooted in the constitution. Media and press are incorporated in the right to freedom of speech and expression which are enshrined in the Article 19(1) (a) of the constitution and the preamble of the constitution. It has been time and again stated by the Supreme Court that the freedom of speech and expression includes press¹⁸⁴ and the various aspects related to the press. A point to be noted over here is that in those days press was the only form of media, and hence when the word press is used, it includes the entire

¹⁸¹ *Supra.*, p. 31

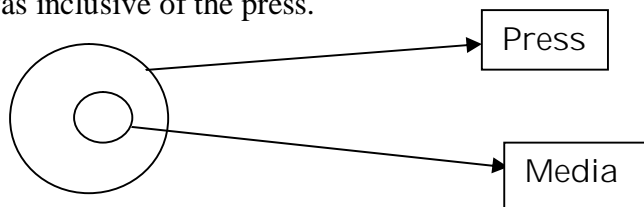
¹⁸² *Supra.*, p. 32

¹⁸³ *Supra.*, p. 35

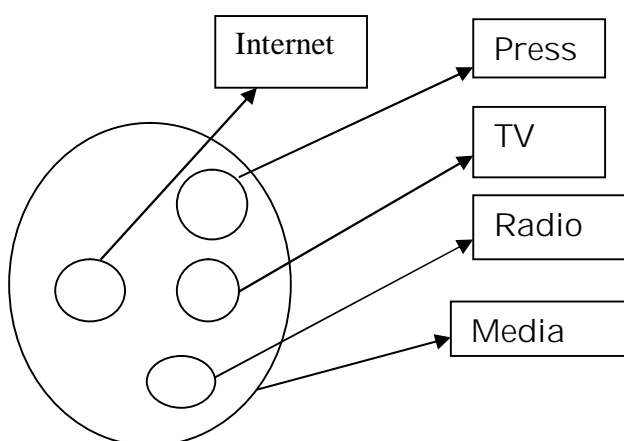
¹⁸⁴ *Supra.*, p. 39

sphere of the media. But today, the media is a larger term, and the press is a part of media.

In ancient times (pre- independent period) the press was a larger term and the media was inclusive of the press.



In the modern times, the media is the larger term inclusive of press, TV, internet etc



The media is regarded as the founding force of a democracy and hence the rights of the media have to be guarded zealously; so that the press can function freely and effectively. But again this does not mean that the media's powers should go unfettered. Limitations on the powers of press and media are must, as the scope of their powers is very vast¹⁸⁵. The scope of the press includes the power to circulate the information, which can be regarded as the most prominent aspect of the press. If this power is not attributed to the press, the press cannot survive, as it is through circulation only that the press reaches out to the masses. So many a times the government has tried to curtail the size of the circulation in order to reduce the influence of the newspapers¹⁸⁶. The power to receive information is also a vital power enjoyed by the press, because if the information is not received by the press, how can the news be created and circulated by the press.

¹⁸⁵ *Supra.*, p 45

¹⁸⁶ *Supra.*, p 67

Other types of powers of the press are also analysed in detail. One of the powers of the press is to conduct and hold interviews. It is necessary to bring out all the facets of the information or the event related to the interview. No rights are without restrictions and so is the case with the right to interview. These restrictions are dealt in the appropriate places; however the present researcher would like to humbly state an aspect regarding the restrictions on the right to conduct interview. The interviewer should ask only such questions which are related to the subject matter of the interview, and if the interviewee refuses to give an answer or remains silent, the interviewer should not be in a hurry to draw his own conclusions and should not at any cost insult or pass an adverse comment upon the interviewee. In the present television interview sessions it is seen that the interviewer becomes the judge, and passes a judgment upon the interviewee's committal or non committal answers. It seems that the present interviewers or the interviewing agency has forgotten one basic limitation that the purpose of the interview technique is to only cull out the information and put it before the public and allow the public to formulate its own opinion based upon the information obtained through the interview. Unfortunately the interviewer passes the judgment himself creating the bias in the minds of the people, especially when the interviewer is a renowned personality in the media field. Some other limitations of the interview technique are as follows

- (i) The interview will only commence if the interviewee gives his consent.
- (ii) The interview shall stop at the will of the interviewee.
- (iii) The interviewee will not be forced to answer any question, which he does not want to answer.

Another type of the power of the media is to report the court proceedings. This is a very important power and is widely used by the media. The publicity brings transparency, and transparency leads to justice. In a democracy even the judiciary has to be accountable. As it is popularly stated, that justice must not only be done, but it should also be seen to be done.

Though, both, an ordinary citizen, and press enjoy the same right under constitution of India, in reality, the press enjoys more liberty or rights as compared to the individuals.

The press enjoys the privilege of sitting in the press bench and also receives any information regarding any proceedings on account of the citizens right to be informed on matters of public importance.¹⁸⁷

An exception to this right to report was carved out by the Supreme Court in *Sahara India Real Estate Corpn ltd v SEBI*¹⁸⁸ case where the superior courts could postpone the reporting of the case proceedings in the interest of the justice, however the court should not postpone the said reporting of the case for some duration without reasonable cause. Even the in camera proceedings shall be used only if it is in the interest of justice.

Another special power of the press is to attend and report legislative proceedings. In a democracy, even the legislative is also accountable to the public, and hence the Article 361 of the Indian Constitution confers the right of publishing a true report of the parliamentary proceedings. The limitation of this right is that the publication of these legislative proceedings should not be done with malicious intentions. However the legislature has always attempted to curtail this right of the press, the glaring example of which is the *Searchlight case*¹⁸⁹.

Today the power to report the parliamentary proceedings has become more vital as there is a live telecast of the parliamentary proceedings.

Another conspicuous power of the press is to act as an advertising medium. Initially the advertising did not fall under the ambit of Article 19(1)(a) of the Indian Constitution, as the rule was laid down in *Hamdard Dawakhana v Union of India*,¹⁹⁰ where the court stated that advertisement were made with intention to have commercial gains and hence they cannot avail the benefit of freedom of speech and expression. However this judgment was overruled in *Tata Press v Mahanagar Telephone Nigam*¹⁹¹, where the Supreme Court stated that even advertisements were

¹⁸⁷ *Supra.*, p. 48

¹⁸⁸ *Supra.*, p. 48

¹⁸⁹ *Supra.*, p. 49

¹⁹⁰ *Supra.*, p. 49

¹⁹¹ *Supra.*, p. 50

covered under Article 19(1)(a) of the Constitution. A point here to be noted is that today the media, especially the television and newspapers give a lot of weightage to the advertisements rather than the substantial news. Sometimes advertisements occur on the first page of the newspapers instead of the most important or the prime news. Ethically the news and the advertisements should be arranged in a proper sequential manner. The first page of the newspaper should be devoted to national or the international happening of the day before. So the reader is enabled to get the information at one glance at the first page, which is the prominent page of the newspapers. Advertisements should be dealt with last two or three pages of the newspapers.

Another type of power of media which is increasing day by day is the power to Broadcast. In the 21st Century there was rapid growth of technology, the concept of broadcasting emerged. Right of broadcasting was also considered to be the part of free speech and expression. Not only this but along with radio, television, the emails also were brought into the purview of Article 19(1)(a).

Even the films were the part of freedom of speech and expression. In *Bobby Art International v Om Pal Singh Hoon*¹⁹² The Court held that the film must be judged in its entirety from point of view of its overall impact.

The Court however has clearly accepted the fact that though the motion picture is nothing but a medium of speech and expression, still it has to be kept on different footing as laid down in the case of *K.A Abbas v Union of India*¹⁹³.

In the present times the electronic broadcasting has not only made tremendous progress in the quantum, but also a vivid progress of the procedure of broadcasting, such as direct to home broadcasting, Wifi, mobile networks, cable television networks, radio networks etc. The reason or the focus of all types of broadcasting is to receive, store and impart information. All these types of broadcasting modes should

¹⁹² *Supra.*, p.52

¹⁹³ *Supra.*, p.52

perform the function of receiving, storing and imparting the information neutrally. If the broadcasting agencies of the media tamper the information in any way then the fear of the nation being ruled by the press rather than the elected government cannot be denied.

If one has to see the scope of the powers of the press, then it is mandatory to identify the end line or the zone or the extent where the scope of the powers finish. These end lines or the zones or the extent can be termed as limitations or restrictions. So in order to get the scope of powers of the press, it becomes necessary for one to analyse the limits of that power, hence a few pages of the research are devoted to the freedom of speech and expression. Here the reference can be made to the Hohfeldian table of rights and duties, that every right has a corresponding duty. If some rights are enjoyed by the press or media, then the duty is upon the state, not to infringe these rights by making certain drastic legislations. It is accepted that the principle of jurisprudence should prevail, which states that no concept in any legal system can exist without limitations. It follows that there should be a balance between the rights of the media and the restrictions imposed on these rights. The question is how to balance these seemingly opposite interests. Many a times the free press is considered to be a thorn in the throat of the government, and hence the government through its shrewd schemes tries to clip the wings of the press by various orders and statutes, for instance the word 'public order' was inserted by Constitutional (First Amendment) Act 1951. This clause was inserted to reduce the effect of *Romesh Thappar v State of Madras*¹⁹⁴, where the court had held that the right to circulation is a part of right to freedom of speech and expression. Many other cases have been dealt under the topic of judicial activism and press.¹⁹⁵ The powers of the press have always been the bone of contention between the executive and the media agencies. The judiciary has played a very conspicuous and remarkable role to settle the battle between the state and the press. The judiciary being the guardian of the fundamental rights of the citizens has tried to protect the freedom of speech and expression of the press, zealously as reflected in many cases. It can be stated that there was a time when the state was in a mood to axe down the powers of the press, right from the pre independence regime, to

¹⁹⁴ *Supra.*, p. 45

¹⁹⁵ *Supra.*, p. 62

the post independent period (especially during the emergency times.) Here the press managed to survive through all the hurdles and become one of the prominent factors of the independent state, by performing vital function of imparting information. However in the present times the entire media inclusive of the press has diverted from their focus of imparting the information and knowledge objectively and fairly; to the adaptation of modalities of popularity and financial gains even by some times resorting to misinterpreting or distorting information thereby misleading the masses or camouflaging their opinions. This is a severe hindrance for the effective functioning of the democracy.

The press is considered to be the backbone of the democracy and hence is profoundly important and significant. It has a dual role to perform. On one hand it acts as a medium to impart information to the public of the state activities. On the other hand it gives an insight to the government about the public opinion regarding its activities; hence the press is sometimes known as the pulse of the society. Not only is this, the media acts as a linkage between the different regions of the entire nation as the information regarding these regions is circulated by the media. This being an undeniable fact, a heavy responsibility lies upon the media to discharge its functions objectively, without bias or any personal or emotional favour.

This entire chapter is devoted to the scope of right to freedom of speech and expression along with the restrictions. The people staunchly favouring the liberties or the rights will no doubt try to minimise the restrictions placed on the media, as it is in consonance with a flourishing democracy. However it is humbly submitted that seeing the present scenario of the powers and the functioning modes of the media, not only legal restrictions, but also ethical restrictions should be imposed upon the media.

After scrutinising the constitutional restrictions upon the right to freedom of speech and expression a few statutory restrictions are analysed.

Chapter III of the present research deals with the important legislations relating to the press and media in India. The researcher has classified the legislations into two groups.

When a particular legislation deals with the aspect of freedom of press in totality or generally it can be classified as a general legislation. It means this type of legislation deals with the freedom of press in a general manner imposing general restrictions. To put it in other words, this type of legislation does not deal with any particular or specific aspect related to the press. For example the Indian Penal Code imposes a general limitation of defamation on the freedom of speech and expression inclusive of freedom of press.

When legislation deals with a specific aspect of the freedom of press, it can be classified as a specific legislation. In this type of legislation the legislature's intent is to deal with a particular or a specific object related to the freedom of press. It means that such a specific legislation deals with explicit elements in the form of restrictions imposed upon the freedom of speech and expression inclusive of freedom of press. For example, the Cinematograph Act 1952 deals with the restrictions imposed upon the cinema that is it deals with a specific aspect of freedom of speech and expression that is the cinema.

A few legislations have been analyzed according to these criteria. Out of the much general legislations, which have been dealt before, the researcher would like to comment upon the Information Technology Act 2000. This statute can be considered as a landmark legislation, as it has brought the revolutionary change in the methods of communication and storage of the information. This statute has introduced the electronic medium of the communication, which is very significant for the convenience and the development of the state. The entire lengthy, complex and manual labour of indulging into paper work is done away with the replacement of the electronic medium of communication. Not only this, but as the new vistas of the communication channels have come up setting up an entire world of networks and communication, which has really given a boom to the media's scope. This statute lays down the powers the procedures and the penalties regarding the electronic medium of communication. The statute has got far fetching implications and four statutes had to be amended to incorporate the provisions of the Information Technology Act 2000.

All the statutes discussed above do not deal with any particular or specific aspect of freedom of press and hence they are classified as general statutes. These statutes have influenced the freedom of press in an indirect or general manner. The said statutes have either dealt with the nature and scope of the press, or have created a right, or have given a different dimension to the freedom of press, or have changed the mode of expression or have placed a restriction or limitation on the freedom of speech and expression inclusive of freedom of press and media.

In the group of specific legislations some of them are not in consonance with the concept of freedom of speech and expression as envisaged in today's times; and the most glaring example is of the Official Secrets Act 1923.

A very grave demerit of the statute is that, any information covered under Official Secrets Act 1923 is exempted from The Right to Information Act 2005. This complicates the matter because the term secret is not defined in The Official Secrets Act 1923 and the same secret information is exempted from The Right to Information Act 2005.

Lastly it has to be remembered that this statute was passed by the Britishers, whose utmost endeavour was to protect their official secrets to stop the growth of mutiny. But today India is a democracy wherein there is people's participation in the government, and there is no question of mutiny. So also all the secret information regarding defence forces are protected under the various defense statutes; hence there is no point in protecting the official secrets under a separate statute. It is humbly submitted that The Official Secrets Act 1923, is not applicable in present times, and hence should be repealed.

The Cinematograph Act 1952 needs a special mention as it deals with two types of censorships. According to the Act the censorship is to be imposed by the Censor Board, which is constituted by the Act. Whereas the second censorship is imposed by the state, even before the film is released. There are a number of movies¹⁹⁶ which are released by the censor board, but are banned by the state. Now a question which

¹⁹⁶ *Supra.*, p. 83

arises here is that; what is the validity and authenticity of the censor board. If the Censor Board passes a film, then it means that the film is capable of being shown to the public. The state in its apprehension that it will cause unrest in the society bans a movie. The researcher would like to pose a question here that, is the Censor Board not capable of assessing the impact of the movie on the society? If the state is going to override the decision of the board, then what is the utility or the functioning of the Censor Board?

It is true that the motion pictures are capable of stirring the emotions more than the press, and a pre censorship regarding the motion pictures is necessary, but this does not mean that it can be done at the whim and fancies of the government or the self declared authoritarians. To censor the films there is a proper statutory authority and if it passes the film then it should be displayed without any undue delay.

One important statute which furthers or enhances the ambit of the freedom of speech and expression is the The Prasar Bharati (Broadcasting Corporation of India) Act, 1990. The credit goes to this statute because for the first time in the history of India, two important channels of media viz. radio and television were made independent from the government control. This was a very major step in bringing about the transparency in the functioning of government. The government was so apprehensive regarding the independency of radio and television channels of communication that this statute was not implemented for seven years after its unanimously passing by the legislature. Eventually in the year 1997 the statute was implemented and the radio along with the television channels of communications were made independent from the governmental control. The implementation of the statute was regarded as a landmark step towards the democracy because of the implications of the statute. Prior to the year 1997 the government could influence the news as the broadcasting channels of radio and doordarshan were under the government control. So it is but natural that these channels could not impart free and objective views which were against the government policies. After the independency the radio and the doordarshan channels, can broadcast freely and fearlessly any news or program. So it can be stated that the Prasar Bharati Act is the real foundation of the democratic state, within which a free press exists. It is humbly submitted that the Radio and television channels of communications should be independent from the governmental control,

only then they can impart news or information of the government's activities objectively, fairly and neutrally. But it should be remembered, that this independency from the governmental control should be cautiously and carefully enjoyed. The media channels should not take undue advantage of the extended independence or liberty. Just because the radio and television channels of communications are free from governmental control, should not telecast programs which show disrespect to the government officials of high stature. So also while imparting information the radio and television channels of communication cannot implant their own views on the public minds for financial or any other personal motive. Just to give an example if a government official has some conflict with media personal then the media devotes so much of time in projecting him as villain, rather than imparting meaningful news.

Another huge leap in bringing about transparency in the functioning of the government is the enactment of the Right of Information Act 2005. The very essence of the executive to work in closed chambers has been done away for good with the implementation of Right to Information Act 2005. This statute has put the last nail in the coffin of the doctrine of denial of government records and documents in the so called 'public interest'.

This Act has cleared all the impediments which were present in securing, gathering and disseminating information. Barring a few exceptions the media can get access to any information and communicate it to the public. It can be stated that The Right to Information Act, 2005 has made things easier for the press and media. By the virtue of this Act, now it is possible for the media not only, to project more news, but also to give specific and correct information regarding the government policies and action. As a result of this, the public can get a clear picture regarding the whereabouts of any public officer. So in the real sense, this Act helps to bring transparency in the governance.

A very positive impact of this statute is that it acts as an indirect check on the public authorities. As all the information relating to the records and documents can be accessible to the public. This makes it compulsory for them to maintain their

documents and records according to the prescribed procedure and order; and hence apart from acting as an indirect check on the executive, it helps in improving the efficiency of the executive setup. According to this statute, the public may have access to the government records which can be scrutinised by the public, and if any mistake, or negligence, or fraud is evident in the records, that official or department can be questioned. Hence it can be stated that essential feature of this Act is that it has brought accountability of the public authorities. One can say that the Right to Information Act, 2005 has really brought a revolution in the functioning of the government and other public authorities.

The statute in a way acts as a supplementary asset to the press and the media for the broadcasting of news. The Right to Information Act 2005 can be regarded as the most 'happening' statute of the present media era.

The cumulative effect of the three statutes viz., The Information Technology Act 2000, The Prasar Bharati (Broadcasting Corporation of India) Act, 1990 and Right To Information Act 2005 is that the media has got gigantic qualitative powers, of course within certain limits. Few years before the above mentioned statutes were enacted; there was always the grievance, that the media especially the television communication channel did not enjoy the freedom in the real sense. The concerned governmental set up in those years was constantly blamed or criticised for imposing restrictions or curtailing the liberty of the media channels. Finally the above three statutes were implemented and the media channels were freed from the chains of the governmental control. Now it is to be seen how the media channels use these gigantic qualitative powers for betterment of the state or the society. It is sad to note that many a times these precious powers are not utilised in a sincere manner to promote the welfare of the society, but under the garb of imparting information, the media channels hype an insignificant event, or make a mountain of a molehill regarding any issue. So also many a time's privacy of individuals, especially the celebrities is infringed. The worst aspect of the misuse of media's powers is that they tarnish or cover up the image of any government official or a public figure for some personal or financial benefit.

The massive powers of the press were confirmed in order to enable the press to perform its functions effectively in the society. To access the role of the media in the democracy the researcher has devoted the chapter IV of the present research for this task.

The first part of this chapter is devoted to the role of media¹⁹⁷, the second part of the chapter is devoted to the impact of the media on the masses¹⁹⁸ and the last part of the chapter deals with media trial¹⁹⁹. The researcher has classified the role of media in four categories

i. The role of media as an unbiased informer

The first and the foremost duty of the press is to be unbiased informer. This duty of the press to act as an informer of the society is very demanding, complicated and crucial. It is very essential to understand this role of the media. It is not only to impart information, but to impart unbiased, true, impartial, neutral information. These adjectives unbiased, true, impartial, neutral affixed to the noun information, casts a very demanding duty upon the media. The media has got no right to turn, twist and tamper any information and then project it to the public. The media cannot impart any false information or play an active part in spreading any rumor. If the information is false, it will give rise to one grave consequence that the foundations of the democracy will be shaken as the public will not be able to know and understand the real facts. The other aspect of this criterion is that the information should not only be true but should pass the test of verification. That means the information which the media passes on to the public should be supported by evidence. The media cannot project the information based upon some vague assumption or wishful thinking.

¹⁹⁷ *Supra.*, p. 113

¹⁹⁸ *Supra.*, p. 122

¹⁹⁹ *Supra.*, p. 130

The media should report the bare fact without giving its own view, allowing the viewers to formulate their own independent views. The media enjoys such a capricious position that sometimes it only changes the angle of the news whereby the whole focus of the news changes. This aspect of either highlighting or to downplay any issue should be avoided by the media. It should not paint or colour the news with its own thinking or ideas. The job of media is only to report any issue, and not to act as a judge and pass a judgment on that issue. Practical experiences show that the media projects the news in such a manner as it wants to be seen by the public.

A necessary collateral factor of the fair and objective imparting of the news is that the news should be imparted impartially. But many a times there are some alluring motives to impart the news. It sometimes happens that the news reporters report the news for some considerations. In the cases where the news which is actually an advertisement, but is disguised as a news item, thereby misleading the public who believes it to be news; is virtually misguided. Hence the news agency or media who adhere to such practice will not be considered as a free media, irrespective of the fact that there was no external compulsion on it to do so. If the media continues to adhere to this practice of projecting any good or bad news based on the considerations received by them, then the whole spirit of democracy will collapse; as the media will project only what the rich people will want, and people believing the media will act likewise, depriving themselves from enjoying the real democracy.

Apart from financial considerations another hurdle in imparting the impartial news is the issue of TRP ratings. Unfortunately the news is imparted on the basis of getting high rating of TRP. In the unhealthy competition of TRP ratings the media channels end up projecting news which is inconsequential but is spicy and appealing to the peoples taste; and ultimately the news which is of public importance may be over shadowed.

ii. The media's role as an educator.

In India the media, especially the television communication channels are regarded as the most unbiased, true projectors of the information or knowledge and hence the media has assumed the role of the educator. The most valuable role of the media is to educate the public through information. When the media gives the exit poll analysis the whole community who does not understand the complexity of the constitution is educated to the extent of how much majority of a particular party is required to form the government. The same can be said about the budget bill, when communicated by the media, the people get many insights in the financial matters. Almost every type of information imparts education in some way or the other. The crucial aspect of education through information is related to that section of society which is remotely placed or the illiterate section of the society. This underdeveloped section of the society may have never been in schools, but they learn through the medium of television. Other channels like the radio or the press plays equally important role of educating the masses. The prime function of the media is to impart information, but the ancillary aspect of this function is to educate the masses.

Further the media also educates by bringing awareness of the rights of the individuals. The credit goes to media for making the people aware of their rights. Another feather in the hat of the media is that, it is responsible for such a high rate of voting as the people were made aware of the importance of the constitutional right to vote. Similarly it was the media who has enlightened the weaker section like women, children, senior citizen, and other disadvantaged groups of their rights, privileges and the concessions given by the state. Even the advertising modalities educate the people, such as 'Jaago grahak Jaago' in respect of consumer courts. So also the advertisements which bring ill effects of the vices such as smoking, drinking etc educate and make the people aware of the consequences.

It is no doubt that the media has played a crucial role in imparting education through various modes and on varied subjects to the public at large.

iii. Media's role as a mentor.

People in India believe the media channels completely and take the opinion of the media as the parameter of true facts or information. So also the media not only imparts information, but also is capable of helping the public to formulate the opinions. Hence it is said that the media dispenses the role of a mentor. The role of the mentor is to educate the ward, and make him independent to take his own decisions. The media also should adhere to this principle and impart knowledge and the education to the public and allow the public to take its own decisions. The media should not put its own opinion in the mouth of the public. In other words the media should not project information in such a manner that while imparting the information it makes the people think and act as it wants. This is where the crucial aspect lies because it is very difficult to impart news impartially. The influential journalists of the media are so skillful that they project the information mixed with their comments and commentaries, which the people believe to be objective and real, and act according to the journalist's opinion.

iv. Role of the media as the guardian

There is no doubt that the judiciary is regarded as the guardian of the rights of the people; however the media is also regarded as supplementary guardian of the rights of the people.

The role of the media as the guardian is implicit in the existence of the media. To put it in other words, the media has come into existence to protect the interests of the public by the way of imparting information and education. Entertainment is the secondary role of the media. Media protects the interest of the public at large by publicizing mistakes or negligent activities or any tyrannical acts of any state officials. It is frequently said that publicity is the best antidote for the arbitrary rule.

Exposure of the wrong or illegal actions of the public officers brings a discontentment or dislike of the public, which constitutes as deterrent check on their arbitrary actions.

The judiciary acts as a guardian only in those cases which come before the court. But in the case of media this limitation is not applicable. On the other hand the media can operate *sue motto* and can expose the infringement of a right or liberty of any individual in the society. It does not wait like the courts for the individual to approach it for the publication of the infringement of that right. This is definitely a very important advantage of the media over the judiciary, and hence it can serve to do justice more effectively.

It should be appreciated that the media performs vital role in imparting the information and educating the masses; however one note of caution would be liked to be given here that while performing its role the media should bear in mind that it has to act in objective and impartial manner.

The second part of the chapter deals with the impact of the media on the masses. It would not be very wrong to state that the media seems to be omnipotent because there is no aspect of life upon which the media has not touched upon. Hence the impact of the media is also tremendous and far fetching. Every concept has got a positive as well as a negative aspect, and media is no exception to it.

The positive impact of the media on the society is that the media makes the democracy effective and efficient. As stated earlier the media abridges the gap between the government and the people. The media communicates the government's policies, plans, schemes, programs to the public. Simultaneously the media helps the government to know the pulse of the society by communicating to it the moods and reactions of the public. It is very correctly stated by Von Savigny, that the government

which is sensitive and alert to the public's mood that is the pulse of the society is a very stable and efficient government²⁰⁰.

On the other hand the media aids and assists the government in implementing its policies. It also helps the people to participate in the functioning of the government, by expressing their opinions. The media is so influential that the opinion it indirectly projects before the people is accepted and acted upon during the elections. The press or the media projects the electoral candidate in a good or bad light which plays a significant role in influencing the people to make their appropriate choices.

The media helps in the implementation of the Rule of the Law. The media acts as check on the governmental actions and compels the government indirectly to functions within its legal framework. The media makes the government officials to act in accordance with law and if they don't their activities are immediately projected before public; and hence it can be stated that the media implements the rule of law. The only apprehension to be expressed here is that the media while helping in the implementation of the rule of law with excess zeal and enthusiasm should not over step its limits and end up with the rule of media.

The media also upholds and enforces the constitutional values to a certain extent. The media promotes the values enshrined in the constitution such as nationalism, integrity of the state, brotherhood, religious tolerance etc The prime function of the media is to impart information; but while performing this function, the media also imparts education, awareness, brotherhood and fraternity, which are embodied in the preamble and the directive policies of the state of the Indian Constitution. Not only this but it also helps to protect and promote some basic fundamental rights such as right to life, liberty and equality. When the state tries to infringe any fundamental or constitutional rights, the media exposes and projects such cases to the public at large. The government is afraid of such negative publicity as it tarnishes its image in front of the public and tries to immediately redress the grievance. To put it precisely one can say that the media indirectly compels the government to act within the constitutional framework.

²⁰⁰ *Supra.*, p123

A good and an active media helps the society in formulating a public opinion. It is one of the basic functions of the media to impart information to the public so that the public can formulate its own opinion. It is a known fact that the strong public opinion is the deterrent check on the government. The media should not only enable the public to formulate the public opinion, but should also organize it and then communicate it to the government. Then one can say that the role of the media is successfully achieved.

Today the protection of environment has become a major global issue, and all countries are trying to protect the same by legal measurements.

The media also endeavours to protect the environment by giving coverage to many programs like planting of trees, saving water, saving fuel, construction and maintenance of toilets, and movements like 'Swacha Bharat' which had a tremendous effect on the people. As a result of these programs the environmental laws were implemented effectively. The public at large started taking steps to protect the environment because of the initiative taken by the media. The media has contributed indirectly in protecting the environment, by campaigning to protect the same.

It is the welfare function of the state to provide aid or assistance or help to the people affected by such a disaster or a calamity. The media acts as an extended arm of the state in such situations and provides the necessary relief with the help of the public. It provides the aid to the victims, by informing to their relatives their whereabouts or other details. The secondary role of the media is that it acts as a source of entertainment. There are many modes of the entertainment available through the media channels today. Sometimes these entertainment channels or the media are more popular and hence the organisers from the media give more attention to these channels as compared to other channels. Because of these positive aspects of the media it has become really very strong organised and is exercising dominion almost at all levels. The media knows its power, and hence sometimes acts in a dominant or dictatorial manner.

The negative impact of the media on the society is to a large extent. Sometimes excessive coverage to hype certain sensitive news may lead to unrest in the society.

Commercialisation and liberalisation has led to a cut throat and unhealthy competition in the media. A serious concern is this that the private channels of the media are continuously engaged in combating with one another for the Television Rating Points (TRP). As a result of which the channels instead of imparting objective and fair news, they mould, twist and turn the news to make it more spicy and appealing to the public. So now the thrust of the channels is to project such news which is catching and appealing, rather than the real and factual news. The consequences of this are very grave because the main objective and the focus of the media is totally grounded and the financial considerations are allowed to play a major role in the function of imparting information. Today the media instead of only imparting the news, bombards the public with their views, opinions and comments to an extent that the public gets psyched by their comments, opinion and takes a decision which suits the interest of the media, rather than their own interest.

No one can deny the contribution of the media in the development of the society at large, but the media sometimes oversteps its powers because of which the focus of the welfare is lost and is replaced by media's selfish interest.

Another controversial aspect which prevails is the concept of media trial, and the last part of the chapter IV is devoted to the few aspects of media trial²⁰¹. Few of the media trials have been discussed in detail in this chapter. Today the media trial has become very popular in the public as well as in the media sections. By projecting the media trials the media channels TRP ratings increase; and the media trials are liked by the public also. The whole world knows that media plays an important role in the preservation and promotion of democracy. It is also known that the media performs an important function of imparting fair, objective, and true information to the public. This image has been acquired by the media over a period of time and the public believes in the same image of the media. Hence whatever has been projected by the media in media trial; the public believes the same to be correct and in consonance with justice. Nobody questions the intentions or the objectives of the media while

²⁰¹ *Supra.*, p.130

projecting the information, and hence whatever is shown in the media trial is chewed and digested by the public.

In the cases of media trial, the principles of criminal jurisprudence are violated, such as the accused should be presumed innocent unless proven guilty beyond reasonable doubt.

In 2006, the Law Commission in its 200th report has clearly stated that the consequences of media trial, not only affects the system of Criminal Justice, but also affects the rights of the accused, and damages his images in the society.

It is humbly submitted that the media and the judiciary should play a supportive role to each other. The media should bring out the wrong happenings and ensure that the prosecution against such wrong is commenced. However, once the prosecution commences, the media should limit itself to mere reporting. Whenever the reporting of the pending cases is done by the media then the guidelines which are forwarded by the researcher should be strictly adhered by the media.²⁰² The guidelines are based upon Roscoe Pound's theory of balancing the conflicting interest. The guidelines stated by the researcher are to balance the interest of the media to report the court proceedings and also to safeguard the right of the accused to fair trial. Thus the clash of rights of media and the rights of the accused will be averted, without anybody having to sacrifice their interest entirely.

After accessing the concept, restrictions and role of the media the researcher has moved his attention to the challenges which are encountered by the media. It is not very easy for the media to face the difficult challenges posed before it. The media, especially the print media has faced tremendous difficulties right from the pre-independence era and has managed to not only to survive, but is also successful in shouldering its responsibilities. The media has to be applauded for the various functions it discharges efficiently in the society. However sometimes the media oversteps its authority and power, and hence one is a little worried that it should not infringe someone's rights. The media is like a mirror which reflects the bare realities as it exists. The media should not be a concave or a convex mirror. To put it in other words, the media like a mirror should only reflect the facts and not magnify or change

²⁰² *Supra* p148

or shrink,(like the concave or convex mirror) the facts, while projecting them before the society. This aspect should never be forgotten by the media, however today the media plays the role of the concave or convex mirror and skilfully distorts or changes the information, while projecting it before the society.

Imparting information and educating the masses through information is the essential function of the media. Technology has played a pivotal role in enabling the media to discharge its function efficiently. The modern age is regarded as the era of information and technology. The consequence of the increased volume of information and technology has led to the fact that; the society not only thrives upon the voluminous information, but the societal life exists on the vast and diverse information. Not only vast, diverse and varied information is imparted to the society, but information from every aspect of the society or from every nook and corner of the entire global arena is bombarded on the society.

In addition to the diverse information which is projected by the media, another very crucial aspect is this that this diverse information is imparted very easily and quickly. In fact the vast information is available at the tip of the fingers of a person. So the advantage of the media is two folds : one -vast varied, diverse, and multifarious information is imparted to the public at large, and the second – such information is made very easily and speedily available to the public at large. As a result of the fact that the information is easily and speedily available, the public heavily relies upon the media. Due to which the media enjoys its influencing powers and hence it has become the most powerful influential instrument today. No other agency is able to leave the lasting impact upon the minds of the people, as that of the media. There are some theories which try to explain the reasons for the influential powers of the media which are analysed in chapter V of the present research²⁰³

The researcher humbly feels that the Culturalist Theory²⁰⁴ should prevail ideally. It means that the media broadcasts the news and each person is influenced by the news

²⁰³ *Supra.*, p.156

²⁰⁴ *Supra.*, p. 157

according to his or her personal and social factors such as financial limitations, region, religion, social strata etc. Here the media does not influence the public, but the public is influenced by the news or information according to their own attitude, understanding, and personal circumstances. The Culturalist theory clearly projects the media as a mirror which merely reflects the facts as they exist.

Unfortunately the culturist theory is an Utopian concept, at least in today's times. The present researcher feels that the Class Dominant theory²⁰⁵ of media influence prevails. According to this theory the Bureaucrats and the rich and the powerful people control the media corporation. It is these people from the executive or the legislature pressurise the media to impart information or withhold the information. So ultimately only that information and in the manner and extent the Bureaucrats want to be circulated, is projected by the media. It can be deduced that the media becomes the mouth piece of the rich, powerful, and the dominant class.

A formidable challenge before the media is the concept of paid news.²⁰⁶ Paid news is an advertisement which is designed as news and the viewer is made to believe that it is news, when actually it is not. Such a disguise is made to either promote or defame someone, in exchange for consideration.

The paid news concept is detrimental for the basis of a democracy as it is an attempt to misguide the people. In today's world the people believe in the media, and when media indulges in such a practise of paid news, the people who will believe that news, which is a paid one, may end up making a very wrong choice.

In a country like India, the people tend to believe the media, so when the media, especially the press writes anything good or bad about someone, the people tend to believe it. The rich politicians in India take the advantage of such a belief, and for consideration gets lavish praise for them, or taint or tarnish the image of the

²⁰⁵ *Id.*

²⁰⁶ *Supra.*, p. 159

opponents. The concept of paid news is like dynamite, which blasts the very essential or the original function of the media, of imparting the impartial news, which is the foundation of any democratic setup.

Cross media holdings is another impediment in the smooth functioning of the democracy. The basic concept of having multiple channels, or different editions is that the diverse views could be available to the public, however in cross media holdings, the diversity itself is cut down, as though the number of channels or magazines may be sizable, but the number of operating such media may be very less (The South Indian Channel Sun T.V has 14 channels, four magazines and two newspapers.)²⁰⁷ It is quite obvious that, the same opinion is reflected in various media platforms, which is owned by the same person. People are aware about the existence of many channels (400 channels are been provided) but very few people are aware that the said number of channels are operated by only 11 cable distributors.²⁰⁸ This means that though we are having access to 400 channels, we are only accessing the views of 11 people, who are operating those channels. Further because one person may operate many channels, his views and the same news are projected in those many channels, the people profoundly believe those views merely because they are repeatedly projected by the different channels, but by the same persons. Hence the media misleads the public by projecting similar views in different channels which are actually owned by very few people.

The print media faces a number of challenges with the advancement of technology as different sources of news agencies, apart from the print media have emerged. One prime problem, which is faced by the print media, is the concept of Aliteracy²⁰⁹. The print media already faces the limitation because of the low literacy and the problem of the print media is enhanced severely because of aliteracy. The print media cannot perform its function of imparting knowledge to the people who cannot read and write; but what can be done in those cases where the people can read and write, but refuse to read the newspapers. Another severe limitation to the print media is due to the

²⁰⁷ *Supra*. p 162

²⁰⁸ *id*

²⁰⁹ *Supra*. p 168

advancement of technology; which projects the news more speedily and easily as compared to the newspapers.

One of the threads in the entire fabric of the media network is the social media²¹⁰, which has gained tremendous popularity. As one can see that the social media from a primitive stage, has developed to the most sophisticated mode. The social media has also undergone a sea change in its function; because initially the social media's function was only to cater to social communication, and today, the social media is playing an important role in almost every aspect of human life. With the help of social media, the users of it use it to promote their business, trade, advertise their occupation. The artists use the social media to promote and advertise their work, including music. The professionals use the social media to promote their profession and intellectual work; sometimes education is also imparted through the social media. Cultural, religious and political events are promoted with the help of social media. It can be said that the ancient social media performed the function of social communication, and the today's social media, 2016 is omnipresent because almost every activity of human beings as well as the institutions cannot be carried out without the help of the social media.

However the social media is not free from complications and problems which are content ownership²¹¹, defamation and other torts²¹². Defamation is most rampant and can be said to be a curse, that social media suffers. The social media has also become a place for criminal activities. Lot of criminal activities is taking place through the social media; and sometimes it is stated that the social media is a hub for posting offensive text, posting morphed or private, or porn videos etc.

Sometimes in its over enthusiasm the media exceeds their limits and treads upon the private arena of the individuals resulting into infringement of right to privacy. Right to privacy is invaded with the misuse of number of websites such as Facebook, Whatsapp, My space etc. Through the browser multiplayer games personal

²¹⁰ *Supra*. p 170

²¹¹ *Supra*. p 176

²¹² *id*

information through the profile is made available to any person, which in turn may be misused and hence the right to privacy is violated.

Today it is a compulsory fashion to put each and every, and sometimes even the minute information about oneself, family, friends, etc on social media like the facebook. Such posts on the social network can be easily accessible to the cyber criminals, who do not hesitate to invade the privacy of the person for their gains.

Not only this, but the social media may be used as a tool of harassment.

Apart from this the one more concern about the social media is that it ruins the marriages. Social media, especially the Whatsapp is one of the reasons for the increase of the divorce rate. The social media not only harasses the people in their personal circle but also may be reason for the loss of people at the professional circle as well.

The threat of social media is also stretched beyond the personal or professional circles. It has also become a hub for carrying out terrorist activities. The terrorists can plan as to which type of attack is to be carried, when it is to be carried out, whether the attack to be carried out is physical or a cyber. There are also professional unethical hackers who hack the websites for exchange of hefty fees, or do it for carrying out terrorist activities.

Democracy thrives upon the people's participation in the governmental activities. People can participate in the governmental activities only if they are aware of government's actions and policies, and the government is aware about the people's aspirations and needs. It is the media which acts as a linkage to communicate the thoughts of the public and government to each other, and hence it is stated that the media is the backbone of the democratic setup or the fourth estate of democracy. As the media enjoys an indispensable fundamental place in the democracy it is flooded with the liberties and powers. The media has to use these liberties and the powers in an objective, neutral and impartial manner to promote and strengthen the principles of democracy. However it is seen in today's times that the media utilizes its strength and power to fulfil its own objectives such as the TRP ratings or it acts or some

commercial or financial considerations. This aspect of media completely water downs its image and shakes the foundations of the democracy.

It can be said that the journey of the media has travelled from the north pole to the south pole because, few years ago the focus was on how to curtail or minimise the restrictions on the media, but today the focus is upon how to control or make the media more accountable. Today the media is so powerful and almost omnipotent that one has got the apprehension that the rule of law and the role of the media might be replaced by the rule of media and the role of law.



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