

**A Study on Freedom of Speech and Expression With Reference to
Social and Electronic Media**

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I hereby declare that the Ph.D. thesis titled “**A Study on Freedom of Speech and Expression With Reference to Social and Electronic Media**” is my own work conducted under the guidance and supervision of **Dr. ArchanaGadekar**, Research Supervisor, Associate Professor at Faculty of Law, The Maharaja Sayajirao University of Baroda, Vadodara, India. I have put in more than two years of attendance with the supervisor at the Faculty of Law, The Maharaja Sayajirao University of Baroda, Vadodara.

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A STUDY ON FREEDOM OF SPEECH AND EXPRESSION IN RESPECT OF SOCIAL AND ELECTRONIC MEDIA

ABSTRACT

The Constitution of India provides freedom of speech and expression to all its citizens which is subject to reasonable restrictions namely in the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The said restrictions ensure that the freedom of speech and expression is not transgressed by the citizens in any manner but so utilized so as to bring out the best in them.

Media plays a major role in shaping the nation by way of broadcasting 24x7 news channels, science and technology channels, sports channels, etc. Amidst all these, as news channels are a major form of informing the news events, news stories from nation and the world, they have been termed as the fourth pillar of democracy. Though the Constitution of India did not specifically provide any rights to press, freedom of press was guaranteed time and again through consistent judicial decisions which specified that press had the same rights of free speech as any other citizen under the Constitution of India and the same were also subject to reasonable restrictions.

As the use of newly found social media kept increasing due to its unique concept of sharing live videos, photographs through social networking sites such as Facebook, Instagram, WhatsApp, Twitter, etc. the right of freedom of speech and expression found a new platform to stand on. Anyone and everyone could now use social media to make himself heard or to give his opinions and share his views with anyone else on a public platform. The widespread use of social network also came to be used by news channels. News channels created their websites which continuously

updated the news headlines through reports, photos and videos. Anyone on the go could stay abreast with the latest happenings through social media and even give his views on any issue, be it political, social, national or international.

However, social media came with its own vices which also spread its roots in electronic and print media. News channels which were originally the sole broadcasters of news stories and news coverages through their professional level journalists now faced competition not only from its peers but even from social media which helped in rapid news communication. Again, anyone could now report and update news from his vicinity by taking photo or video and putting it in public domain for viewing, informing and spreading it ahead.

For this reason, media started indulging in sensationalisation of news by creating fake news, media trials, sting operations and paid news.

All such instances have raised doubts on the freedom of press which was to be utilized for healthy reporting of news events and news reports. However, it has now started getting misused and overstepped by indulging in such acts of media trials, sting operations, fake news and paid news. Again, as no present legislation defines either of the terms, the gravity of the same cannot be exactly determined.

Chapter One is the introductory chapter. It discusses the rationale of present study, object and hypothesis of present study as well as literature review alongwith how present study differs from previous studies conducted on the subject.

Chapter Two of present research deals with development of media starting from the earliest print media and its development in the world and in India followed by advent of electronic media and its spread through electronics like television sets and radios. The research also discussed the development of internet and how it formed the crux of the entire social media. Major platforms of social media such as Facebook, WhatsApp, Twitter, Instagram, etc. have been discussed as not only

individuals but even news channels use the said platforms for seeking opinions, tweets and views of everyone on the news stories posted by them.

Chapter Three of the research studies the national and international legislations as well as regulatory bodies pertaining to media in USA, UK and India. How the free speech is regulated in USA and UK have been discussed in this chapter. Likewise, as the Constitution of India provides freedom of speech and expression subject to reasonable restrictions and the same also apply to freedom of press, they have been discussed in the Chapter in detail. Also, regulatory bodies like Press Council of India, News Broadcasters Association, News Broadcasting Standards Authority, etc. regulate the functioning of newspapers and news channels.

Chapter Four deals with the judicial position of cases involving newspapers, TV channels and social media wherein it has been observed that news channels and newspapers have been specifically granted freedom of press subject to reasonable restrictions mentioned above. Where the media has been attempted to be stepped upon by tax authorities or by arbitrary increase in price of newspapers, Supreme Court has directed appropriate strictures to concerned authorities so that freedom of speech and expression remains undeterred. Likewise, if legislature has been found to be inconsistent or wrongly stepping over citizens' right of free speech, such provisions also have been struck down.

Chapter Five deals with non-doctrinal research which seeks to know how media laws are viewed by different sects of society and how far have they utilized their free speech right on media. Analysis have been drawn on basis of the response which show that media needs to be regulated at dual level, viz. internally as well as externally. Also, the research shows that the cases of media trial, fake news, paid news and sting operations are now known to one and all and hence need to be treated at the earliest.

In Chapter Six, the researcher has given conclusions and suggestions based on the entire study. Need is found for a separate legislation which relates to the recent vices of media rising from freedom of press combined with ever-developing science and technology. No legislation defines media trials, fake news, paid news or sting operations and hence when the cases thereof arise, the same are not aptly tried.

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LIST OF ABBREVIATIONS

AIR: All India Reporter
All ER: All England Law Reports
ALJ: Allahabad Law Journal
ALT: Andhra Law Times
BARC: Broadcast Audience Research Council
BBC: British Broadcasting Corporation
BCCC: Broadcasting Content Complaints Council
BEREC: Body of European Regulators for Electronic Communication
CrPC: Criminal Procedure Code
CrLJ: Criminal Law Journal
CWN: Calcutta Weekly Notes
CTIA: Cellular Telecommunications Industry Association
EPW: Economic & Political Weekly
FAIR: Fairness and Accuracy in Reporting
FCC: Federal Communications Commission
Guj: Gujarat
IBF: Indian Broadcasting Foundation
ICCPR: International Covenant on Civil and Political Rights
IPC: Indian Penal Code
ILR: Indian Law Reports
IMPRESS: Independent Monitor for the Press
IPSO: International Press Standards Organisation
KB: King's Bench
NBA: News Broadcasters Association
NBSA: News Broadcasting Standards Authority
NCAC: National Coalition Against Censorship
NSWLR: New South Wales Law Reports
OFCOM: Office of Communication
PRESSBOF: Press Standards Board of Finance
QB: Queen's Bench
SCC: Supreme Court Cases
SCJ: Supreme Court Journal
SCW: Supreme Court Weekly
Supp: Supplementary
TRAI: Telecom Regulatory Authority of India
TLR: The Literary Review
UDHR: Universal Declaration of Human Rights
UK: United Kingdom
USA: United States of America

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CHAPTER 1

INTRODUCTION

The Constitution of India is the basic document of the nation. Amongst various other provisions that state the working of the executive, legislature and judiciary, it also sets down the rights, duties and freedoms available to every citizen and the restrictions thereupon. These rights were considered inevitable by the framers of Constitution in order to guarantee a proper living of all citizens of the nation. Article 19(1)(a) of the Constitution of India specifies that:

All citizens shall have the right to freedom of speech and expression.

Article 19(2) provides that:

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

A combined reading of both the provisions creates the result that all the citizens of the nation are entitled to freedom of speech and expression but only to the extent that it does not violate the restrictions which have been laid down on the said freedom. If any individual during the exercise of his freedom of speech and expression steps upon a right of the same/similar kind of any other person, such an exercise will be violation under Article 19(2). Thus, Constitution has taken care that nobody can overuse his freedom at the cost of over-stepping on the same rights of another citizen.

Article 14 of the Constitution provides for “equality of law” and “equal protection of law”. Every citizen is equal in the eyes of law and there is no scope for discrimination on any ground. Hence, the freedom as provided under Article 19(1)(a) shall also be equally available to every citizen. The said freedom is immensely important and the same can be figured out considering that media which has been considered the “Fourth Pillar of Democracy” has also been equipped with the

freedom of speech and expression meaning that even the major forms of media, namely the print media, electronic media as well as the recently evolving social media have been provided freedom of speech and expression while performing their functions. Though nowhere specifically provided for in the Constitution, media has been conferred with freedom of speech and expression by the judiciary under Article 19(1)(a) as it has been conferred to every citizen. It is of utmost relevance to media because media expresses itself to the world at large. Its news stories, news reports, articles, advertisements, editorials, etc. are read by one and all for updating themselves with the who's who of the world. If the said right were ever taken away from media, it may result in a chaotic situation where journalists and editors are unable to produce news stories as and when they happen. The news channels cannot conduct interviews, debates or opinion polls thus resulting in total unawareness for the general public regarding what's happening in the world and who is to be held accountable for the same. Decisions will be taken bureaucratically as nobody with an authority would be responsible to the public.

Media is the fourth estate in a democracy. It plays a major role in informing the public and thereby shape perceptions and through it the national agenda. Considering how the literacy levels are increasing across the world, each and every individual requires information of one kind or the other mostly relating to current affairs, political scenarios, scientific developments, social upliftment, art and culture, sports, finance, etc for survival in the world.

Due to continuous developments in science and technology, the media has developed modern manners of presenting its news stories. Gutenberg's invention of printing press in the 14th century has proved to be a boon to the world. The newspapers that can be printed in millions of copies everyday now would have been impossible otherwise. But today print media alone is not the sole pioneer of media landscape. Today, even though newspapers have created a firm space amidst the people, the news carried through electronic and social media is equally utilized by the public. The invention of internet and its easy accessibility through computers, smartphones, notebooks and other electronic devices has changed the way people get the news. E-papers, online news, expression of views, opinion polls, online surveys,

tweets and commenting have made news system not just a one-way communication from media houses to the public but an informal and prompt exchange of views and ideas in respect of current affairs or any political event. People have found a platform wherefrom they can express what they feel in respect of anything that is happening in the world.

Gone are the days when the major sources of communication, news and entertainment were just selective national and local newspapers, All India Radio and Doordarshan. While newspapers and magazines were a form of print media which was the earliest form of media communication, it was taken over by electronic media which mainly included television and radio. Today, media offers several other forms of communication which are faster, easier and more easily accessible than any of the earlier sources of communication like smartphones, laptops, tablets, etc. It would be impossible to imagine living sans the various forms of media that are available today.

But like everything that in excess becomes unhealthy and eventually harmful, even media can be held responsible for several flaws emerging out of the freedom of speech and expression that has been provided to it.

India under Article 19 has given the media, freedom of expression because governmental functions must be transparent and the perennial duty of a free press, even under grave risk, is to prevent the three instrumentalities of the State from deceiving people. Alas, the literacy indigency and amenability to clever misrepresentation of lies by the news media is a syndrome and the vast agrestics are victims.¹

Starting with freedom of expression, three well known justifications are often advanced. The first view is that freedom of expression is essential to a person's autonomy and self-fulfilment. The second is the marketplace of ideas, that minimal government regulation will allow robust debate between citizens that is most likely to lead to the truth. The third justification is that freedom of expression is a necessary

¹ Justice V.R. Krishna Iyer, "The Regional Media and the Democratic Process" Pg. 26 (2008) 1 Madras Law Journal

component of democratic government. There is an overlap between these justifications and all have been subject to extensive criticisms.²

Even judiciary has time and again recognized the freedom of press. Though neither the Constitution of India nor the legislators have anywhere specifically provided for the freedom of speech and expression as available to the press, the Indian judiciary has through its various landmark judgments specified that the freedom of speech and expression as available to the citizens of India is also available to the press and media houses. Likewise, just like the citizens' right is restricted by reasonable restrictions as mentioned under Article 19(2), the rights of press and media have also been curtailed by these reasonable restrictions.

1.1 Right of Press and Media in light of Article 19(1)(a) and 19(2)

Article 14 of the Constitution provides for “equality of law” and “equal protection of law”. Every citizen is equal in the eyes of law and there is no scope for discrimination on any ground. Hence, the freedom as provided under Article 19(1)(a) shall also be equally available to every citizen. The said freedom is immensely important and the same can be figured out considering that media which has been considered the “Fourth Pillar of Democracy” has also been equipped with the freedom of speech and expression meaning that even the major forms of media, namely the print media, electronic media as well as the recently evolving social media have been provided freedom of speech and expression while performing their duties. Though nowhere specifically provided for in the Constitution, media has been conferred with freedom of speech and expression by the judiciary under Article 19(1)(a) as it has been conferred to every citizen. It is of utmost relevance to media because media expresses itself to the world at large. Its news stories, articles, editorials are read by one and all for updating themselves with the who's who of the world. Removing this right for media may result in a chaotic situation where journalists and editors are unable to produce news stories or give news reports as and when they happen. In its absence, the news channels will not be able to conduct interviews in a healthy and conducive manner thus resulting in total unawareness for

² Jacob Rowbottom, Media Freedom and Political Debate in the Digital Era, Pg. 491 (2006) 69(4) Modern Law Review 489-513

the general public regarding what's happening in the world and who is to be held accountable for the same. Decisions will be taken bureaucratically as nobody with an authority would be responsible to the public.

1.2 How electronic and social media are misusing the freedom?

Gone are the days when the major sources of news communication, news and entertainment were just selected regional and national newspapers, All India Radio and Doordarshan. While newspapers and magazines were a form of print media which was the earliest form of media communication, it was taken over by electronic media which mainly included television and radio. Today, media offers several other forms of communication like smartphones, laptops, tablets, etc. which are faster, easier and more easily accessible than any of the earlier sources of communication. It would be impossible to imagine living sans the various forms of media that are available today. These forms of media are not only technologically advanced but also at the same time shape up the latest form of media namely the social media.

But like everything that is in excess becomes unhealthy and unadvisable, even media can be held responsible for several flaws emerging out of the freedom of speech and expression that has been provided to it.

Due to 24x7 news channels, people get prompt report of latest happenings from across the world but simultaneously there are also instances of paid news, sting operations, media trials, etc. News that is broadcasted on electronic and social media and printed in newspapers is occasionally found to be without any substance thus resulting in rumors or hoax which is known nowadays as “fake news”. The same spreads more rapidly with technological advancements like smartphones and through apps like WhatsApp. People have been found to have acted violently on base of such fake news reports and end up committing heinous crimes like murders, riots, etc. Likewise, there are entertainment and film channels, but the content of their programs also needs a check considering the vast audience of various age groups to which such programs are broadcast. In absence of such measures, the channels often take liberty to broadcast program content of any level without any restriction, thus sometimes offending the viewer groups like women and children. Even on social

media which is the biggest platform used by every individual, many respect the freedom of speech and express themselves accordingly while others use the same platform to abuse the rights of others, be it publicly or personally. Thus, it can as well be said that development of media has resulted in an increasing number of sources of media which again has proved both, a virtue and a vice.

Simultaneously, due to media convergence, there is a continuous process of churning out modern modes of presenting news which combine traditional ways of printing, broadcast, publishing news stories online, and so on. Considering these problems, the question arises if media needs to be regulated and to what extent should it be regulated?

Also it is important to determine if the regulation has to be from within the media houses itself or should there be an external regulator independent and separate from all media houses? Considering these problems, the question arises if media needs to be regulated and to what extent should it be regulated? Also it is important to determine if the regulation has to be from within the media houses itself or should there be an external regulator independent and separate from all media houses?

Hence, the title of this research is as follows:

A Study on Freedom of Speech and Expression with reference to Social and Electronic Media

1.3 Rationale of the study

Although right of freedom of speech and expression is not absolute and subject to certain constitutional restrictions, the freedom to form opinion with its privileges is considered a great instrument in the hands of the citizens which contributes significantly to the democratic functioning of the Government.

The media covers news of public interest such as political happenings, sports, local news, national and international news, business, entertainment, medical and literature news. The news reportings should satisfy people from all walks of life and should not be half-baked and exaggerated simply in the run of trying to report before all other news channels.

It would not be incorrect to say that media is the watchdog of political democracy. If it plays its role honestly, it will be a great force in building the nation, but since last few years, media has become a commercialized sector which stresses only on the news that is hot and sells. Instead of giving important information and educative programmes, all that one gets on television is sensational depiction of all news stories and loud debates, their only goal being to achieve highest TRPs. No news is complete and totally impartial and every news channel reports a news story after shaping it in its own manner. If the basis of such news report is unverifiable or without any authentication, the news report becomes a part of fake news, a rumor or a hoax.

The rationale of the study is thus to understand the pitfalls and loopholes in freedom of press namely media trials, fake news, sting operations and paid news, despite it being such a vital organ of the nation.

1.4 Object of the study

The main purpose of this research was to know whether the existing laws, enactments and regulations dealing with media and internet which has become the new media is effective and well developed to face the challenges of paid news, media trials, sting operations and free speech on internet. While finding out this the researcher conducted the study with the following objectives:

- To find if existing laws related to media in India are sufficient to deal with media trial
- To study the existing laws governing the media in the light of advent of science & technology
- To study the powers of regulatory bodies

1.5 Scope and Delimitation of the study

The research deals with development of media, laws and bodies regulating media laws in USA, UK and India as well as judicial pronouncements in respect of media

in India. The study has been conducted by comparing the media related laws in USA, UK and India because the laws of our nation heavily borrow from USA and UK.

As freedom of speech and expression covers several areas, present research is restricted only to its implications for media law and mainly new media like the social media and electronic media which almost competes social media in respect of free speech. Likewise, media has several other modes wherein freedom of speech and expression maybe questioned namely entertainment channels, films, serials and advertisements, all of which have often come up with cases of being restricted due to one reason or the other. The present study is limited only to freedom of speech and expression with reference to social and electronic media and mainly on news channels dealing with paid news, fake news, media trials, sting operations and freedom of speech on internet.

1.6 Significance and Utility of the Study

Media laws come up from several forms of Acts and bodies which are meant to regulate the media. There are international legislations, treaties and bodies which regulate the media internationally and similar natured Acts and bodies have been developed in India to look after the working of media in India. Though media does not specifically have freedom of speech and expression anywhere in the Constitution of India, several judicial pronouncements from time to time have guaranteed the said freedom to media. However, with competitive scenario, media takes a step ahead of the said freedom and indulges in cases of paid news, fake news, sting operations and media trials. Likewise, even the new media wherein social media on the internet rules currently, cases like Shreya Singhal come up wherein legislations are wrongly used to curb the right of free speech on internet. The present study is important to find out if the currently prevailing laws and regulatory bodies are sufficient for the ever-changing media facet and if not, what more is necessary to regulate them. Again, whether the checks should be internal or external also needs to be decided because an internal check would leave scope for mischiefs.

1.7 Statement of Problem

The research has dealt with how freedom of speech and expression and the reasonable restrictions thereto have been used/misused by social and electronic media. Constitution of India does not specify freedom of media anywhere but the judicial decisions by Hon'ble Supreme Court have laid down freedom of speech and expression for media. However, the same is often stepped over and misused by indulging in paid media, media trials, sting operations, etc. Likewise, even on social media, freedom of speech is sometimes used/abused. The present research deals with the problem of freedom of press resulting in instances of fake news, paid news, media trials and sting operations.

1.8 Hypothesis/Research Questions

The research was conducted on the basis of the following hypothesis:

- Are the existing laws adequate to tackle the impact of science and technology on freedom of speech and expression?
- Are the regulatory bodies of India like Press Council of India and News Broadcasting Standards Authority adequate to control the telecast through internet?
- Have the provisions of I.T. Act been misused by State machinery to curb, control and silence the political criticism?
- Does the media carry impression that their rights are superior to rights of citizens of freedom of speech and expression?

1.9 Research Methodology

The methodology adopted in this study was both doctrinal and non-doctrinal. The research concerned dealt with the legislations at national as well as international level.

The method of the research adopted for hypothesis 1, 2 and 3 was descriptive and analytical method. The sources of data was bare acts for referring provisions of national and international laws governing media, secondary sources such as secondary data, books, case laws, expert articles and journals written by eminent

authors, editorials of newspapers, websites of regulatory bodies to know their functions, etc.

Lastly, the research methodology which the researcher adopted for hypothesis no.4 was non-doctrinal method and the research tool used was interviews of judges, professionals and experts from legal field. The scheme of the interview was both structured and non-structured. The researcher has used Maximum variation sampling which is a purposive sampling technique where subjects are selected to study varied perspectives in order to determine the exposure of media laws. Thus, questionnaires have been collected from various segments of society such as judges, advocates, law students and teachers as well as students from journalism field and company secretaries. The basic principle behind maximum variation sampling is to gain greater insights into a phenomenon by looking at it from all angles. In present research, media being a field of vast nature and being used by people from all segments, purposive sampling and specifically maximum variation sampling has been used to collect views from several segments of society.

1.10 Chapter Outline

Chapter One deals with the introductory aspects of the research work. A brief introduction has been given about the various aspects of Article 19(1)(a) of the Constitution of India alongwith the scenario of media world mainly the print, social and electronic media. The hypothesis, the object and scope of study as well as limitations and delimitations, conceptualization of terms have been discussed.

Chapter Two deals with Development of Media. When the print media made its entry in seventeenth century, its potentiality as a mass communicator was soon realized and it was used both as an informer as well as a propagator. What was born essentially to disseminate factual and objective information came also to be used to misinform and disinform, to control and manipulate the news and to shape and mould the views. The print media thus emerged as a powerful weapon to manipulate the public opinion and to rule the people through manipulation. When it was reinforced by the electronic media, first by the radio and followed by television, the

media by itself became an all powerful institution of the society. In some aspects it became more important than the all embracing power of the State because of its audio-visual and quicker reach to all nooks and corners of the State. The events prove that this pervasive mighty power of the media was successfully used by interested to serve their purpose, benevolent or malevolent.

In this Chapter, the evolution of media has been discussed at length. Starting from the earliest form of media, namely the print media and how it evolved with invention of Gutenberg's printing press and then eventual growth of newspapers, magazines, periodicals, etc. across the world followed by invention of television, radio and other electronic devices which shifted the media sources from print media to electronic media have been discussed alongwith how growth of technology also brought related laws into existence. For e.g., first US copyright law was enacted in 1790 as several articles, books, fiction, etc. had started to come in existence due to technologic advancement in print media.

Finally, invention of computers followed by worldwide spread of internet and its widespread use have been discussed alongwith how social media is transforming the media platform today as well as how all three forms of media – namely, print, social and electronic media are working simultaneously to provide a continuous supply of news and information to the entire world has been discussed. Social media has given rise to new forms of communication like Facebook, Whatsapp, Twitter, etc. They help in sharing photos, videos, personal profiles, headlines and reports and every other kind of information. Today, they are a major form of communication hence the same have been discussed.

Also, various terminology of media like communication, mass communication, media, mass media, social media, new media and media convergence have been discussed to elaborately deal with the research work. As the print media is the earliest form of communication and also the base of major forms of communications available today, its evolution has also been included. A detailed timeline of how each form of media had developed in the world as well as in India have been given so that a year-wise development can be studied.

Chapter Three deals with the national and international legislations in respect of social and electronic media. The researcher has studied the legislations pertaining to print media, social media and electronic media which are available in USA, United Kingdom and India. The Chapter covers enactments as well as recommendatory bodies, regulatory framework, conventions and charters which have been held and implemented internationally and in India.

With an increasing number of sources of media, it was realized that media is often misusing its powers under the garb of freedom of speech and expression. Often, media indulged in paid news by telecasting stories that positively highlighted a single political party in lieu of financial gains. Likewise, it was also discovered that media trials were becoming more and more rampant and at times, judiciary itself was getting pressurized to give judgments as per the media trials because otherwise there would be chaos in the nation. Hence, the need was realized for having legislations and even independent and autonomous bodies that shall:

- prevent the media from stepping over the fundamental freedom that has been guaranteed to it;
- Safeguard the rights of media houses while covering any media story;
- Maintain standards of media houses during telecast of any news story so that the various classes of society are not offended by any coverage
- Maintain program code and keep a check on the quality of news so that the nation at large has access to healthy and quality news programs.

Following international Instruments, Conventions and Treaties have been discussed:

- 1 International Convention concerning Use of Broadcasting in the Cause of Peace, 1936
- 2 U.N. Charter 1945
- 3 American Declaration of the Rights and Duties of Man 1948
- 4 Universal Declaration of Human Rights 1948
- 5 European Convention for Protection of Human Rights and Fundamental Freedoms 1953
- 6 International Convention of Civil and Political Rights, 1966

7 UNESCO Mass Media Declaration 1978

8 Charter for a Free Press (1987)

The researcher has studied relevant statutory provisions relating to media in U.K. namely:

1 Malicious Communications Act 1988

2 Broadcasting Act 1990

3 Human Rights Act 1998

4 Communications Act 2003

5 Digital Economy Act 2010

6 Independent Television Commission Program Code

7 Ofcom Broadcasting Code

Existing regulatory framework related to print media, social media and electronic media has been studied.

1 Print Media

- Press Standards Board of Finance
- Press Complaints Commission
- Leveson Regulation Reforms
- Royal Charter 2013
- International Press Standards Organisation (IPSO)
- Editors' Code of Practice
- Press Recognition Panel
- Independent Monitor for the Press (IMPRESS)

2 Electronic Media

- Office of Communications (Ofcom)
- British Broadcasting Corporation (BBC)
- Broadcasting Standards Commission

3 Social Media

- Body of European Regulators for Electronic Communication

As all three forms of media are starkly different from each other, each of them requires a different mode of regulation. Again, as Indian laws are in the nature

of those found in USA and UK hence researcher has studied the laws and regulatory bodies in USA and UK.

Relevant provisions of following Acts and Regulatory bodies of USA have been studied:

1. Statutory Provisions

- Espionage Act 1917
- Sedition Act 1918
- Smith Act 1940
- Communications Decency Act 1996
- Telecommunications Act 1996
- Digital Millenium Copyright Act 1996
- Broadcast Decency Enforcement Act 2005
- Free Flow of Information Act 2013

2. Regulatory Framework

- Federal Communications Commission (FCC)
- Media Bureau
- International Bureau
- Fairness and Accuracy in Reporting (FAIR)
- Newseum Institute
- American Society of News Editors
- National Association of Broadcasters (NAB)
- Internet Free Expression Alliance

The major Acts in India which provide for regulation or penalty in relation to media have been studied. These Acts are as under:

- Press and Registration of Books Act
- Indian Telegraph Act 1885
- Newspaper (Incitement to Offences) Act, 1908
- Indian Penal Code
- The Cinematograph Act 1952
- The Drugs and Magic Remedies (Objectionable Advertisements) Act 1954
- The Young Persons (Harmful Publications) Act 1956

- The Copyright Act 1957
- Defence of India Act 1962
- The Parliamentary Proceedings (Protection of Publication) Act 1977
- The National Security Act 1980
- Indecent Representation of Women (Prohibition) Act 1986
- The Cable Television Networks (Regulation) Act and Rules 1995
- Information Technology Act 2000

Like USA and UK, India also has regulatory bodies to look over the functioning of all forms of media. These regulatory bodies are as under and the same have been studied in the research:

- The Press Council of India
- Indian Broadcasting Foundation
- Broadcasting Content Complaints Council (BCCC)
- Broadcast Audience Research Council (BARC)
- News Broadcasters Association (NBA)
- News Broadcasting Standards Authority (NBSA)
- Ministry of Communications and Information Technology
- Telecom Regulatory Authority of India (TRAI)
- Prasar Bharati

In addition to these bodies, several legislative attempts were made for enactment of new Bills and guidelines for a more indepth check over the media functioning. However, the said attempts were not successfully passed as Acts and implemented. The same are listed below:

- Communications Convergence Bill 2000
- Broadcasting Services Regulation Bill 2007
- Self-Regulation Guidelines for Broadcasting Sector 2008
- The Cable Television Networks (Regulation) Second Amendment Bill 2011
- The Press and Registration of Books and Publications Bill 2011
- Print and Electronic Media Standards Bill 2012
- Cinematograph Bill 2013

Chapter Four discusses the judicial approach of Hon'ble Supreme Court in respect of media. As the Constitution of India nowhere specifically provides for the media's right to freedom of speech and expression, the same has been provided through landmark judgments decided by Supreme Court of India wherein it has laid down the right of media to freedom of speech and expression. While the Court has laid down and reiterated this right through some cases and gone to the extent of striking off laws which hinder an individual's right to freedom of speech and expression, it has also laid down guidelines wherever the media has crossed this freedom beyond limit. Media has often been the subject matter of judicial decisions in the past decade. In its various decisions over a period of time, Supreme Court has at some places, detested the media wherever it has taken excessive liberty and laid down guidelines to be followed in future while at other places, supported media by going to the extent of striking down laws which seemed to be a restriction on the freedom of speech and expression. Some of the major case laws that have defined the freedom of speech and expression to media are discussed below:

- **Shreya Singhal vs. Union of India: AIR 2015 SC 1523**
- **Aveek Sarkar and another v. State of W.B. and others. (AIR 2014 SC 1495)**
- **Ratan N Tata vs. Union of India (AIR 2014(Supp) 827)**
- **Rajat Prasad vs. CBI (AIR 2014 SC (Supp) 1236)**
- **Mohammad Ajmal Mohammad Amir Kasab vs. State of Maharashtra (AIR 2012 SC 3565)**
- **S. Narayan, Editor-in-Chief, Hindustan vs. Hon'ble High Court of Allahabad through Registrar General: (2011 AIR SCW 5761)**
- **S. Khushboo v. Kanniammal (AIR 2010 SC 3196)**
- **Ajay Goswami vs. Union of India: (AIR 2007 SC 493)**
- **R. Rajagopal v. State of T.N. and others (AIR 1995 SC 264)**
- **Samaresh Bose vs. Amal Mitra (AIR 1986 SC 967)**
- **Sakal Papers P. Ltd. Vs. Union of India: (AIR 1962 SC 305)**
- **Indian Express Newspapers Bombay P. Ltd. Vs. Union of India (AIR 1986 SC 515)**

Also, several cases of media trials and paid news that came to limelight in recent past have been discussed.

Chapter Five includes the study and analysis of questionnaire in order to extract information pertaining to usage and awareness of media laws in various groups of society. The study being a non-doctrinal research, questionnaire method has been used and the same was passed to lawyers, judges, law students, company secretaries and general public. Responses from them were collected and the data has been analysed in this Chapter.

The value of media freedom comes from the way it serves the interests of public and audience.³Hence, the researcher has surveyed through questionnaire from different groups of profession in society.

Chapter Six deals with suggestions and conclusions based on the research work. The same have been made after a thorough and extensive research carried through doctrinal and non-doctrinal studies. It has been concluded that since social media came into existence and its usage started being spread till a common man, the electronic media has somewhere lost its grip of monopoly. With electronic media, most of the information communication was a one-way path with only news channels broadcasting the news reports and events. But with social media, information communication is both sided and can be responded to through tweets, videos, images, etc. Anyone who is not a professional journalist also can report a news event by sharing photos and videos around him on the platform of social media. For the reason of continuing to have the upper hand in journalism and news reporting, media has resorted to indulging in activities of media trials and sting operations. At the same time, running media house requires huge budgets which if media undertakes only the objective of social service, cannot be fulfilled. Hence, media has to balance between earning respectable amounts without making profit only as its sole motive on one hand and on the other hand it has to give service to the society as its powers of presenting picture of the world before the society are enormous. For this reason, media uses its powers to present party-specific positive reports in lieu of monetary favors which results in paid news. Thus, the media's right

³ Jacob Rowbottom, Media Freedom and Political Debate in the Digital Era Pg. 492 (2006) 69(4) MLR 489-513

to freedom of press has been misused in recent years. Likewise, news channels now are a 24x7 business unlike the one hour slot as was broadcasted on Doordarshan decades ago. Increasing number of satellites, media corporates finding India a lucrative ground, readily available internet access, easy to carry smart devices have made news penetration easier in every level of society. News channels now need to keep themselves running by reporting news stories throughout day and night continuously. Sometimes, the same is done by compromising with quality of news by giving a gargantuan shape to a minor bit of information. For e.g. few years ago, the news story of a young boy “Prince” slipping and falling into an abandoned but open borewell was in limelight for as many as 48 hours. The news story was continuously repeated alongwith the entire rescue operation being aired throughout. The news story did not have any national or international, political or other implications except portraying the necessity of safety measures in regard to open borewells in rural areas. Broadcasting a single news story and stretching the broadcast for almost 2 to 3 days also simultaneously means that other news events in a continuously evolving nation and world have been neglected. At instances like these, it appears that media needs to rethink about how to give time slots to each news report considering the sensitivity, urgency and requirement of it being brought to the notice of viewers across the nation. Likewise, in 2008 the terrorist attack on Bombay was broadcasted live so rigorously that not only citizens of India, who needed to be informed of the same came to know of it but also those who had planned the attack were watching the live telecast and being updated in order to make their next move. Such a step on part of media simply to gain TRPs and public attention need to be discouraged. Media has a social responsibility of informing the citizens but it cannot be at the cost of attempting an attack on the national security specially when it was already under threat during the attack.

The regulation of media is inevitable with an extensive rise in users of social media, switching of news platforms to social media and simultaneous existence of print as also electronic media. Newspaper sales might have declined due to rise of social and electronic media but all the same it stands firmly in today’s scenario with tough competition from the other two. Millions of people still find it convenient to

go through news in traditional form of newspapers rather than switching to electronic or social media. News articles, editors columns, advertisements, government notifications and circulars – all of them are a regular feature of newspaper thus bringing the fact to the light that freedom of speech and expression is being availed through print media even today.

Likewise, electronic media has been on the rise in past two decades with several 24x7 news, entertainment, sports and music channels getting the platform of television. News channels like Aaj Tak, Times Now, Republic, India TV, etc. need to report news coverages from India as also from other parts of the world for running the news channel all day long. These news reports need to be complete in all aspects before being broadcasted as they are the source of information as also will generate a picture of society or a nation to the viewers at large. Free news reporting is one part of the picture which needs to be balanced with respecting the restrictions imposed on the news channels. Media trials prove helpful in limited cases where the case seems to have reached a dead end without justice delivered to the parties but they need not be hyped, exaggerated and broadcasted to an extent where judges actually deciding the cases themselves feel sagging under the weight thereof. Likewise, practices of paid news must be discouraged because it has a potential to put power in wrong hands by showing party highlighting films concentrating on political parties in the garb of a news story. Sting operations

If either of them is given a free reign, the implications will equally be visible on the other two as well and if regulated internally, the mischiefs will hardly come to light. Considering both the aspects, it has been concluded that media regulation needs to be done internally and externally by different and exclusive bodies.

Needless to say, free media can exist only in a free democracy and true democracy is possible only with the free media. Both are complimentary to each other. The media helps to preserve and promote democracy by safeguarding the independence of its institutions including of itself and ensuring their accountability. No democratic society can exist or can be conceived of without a free media which is its lifeline and at the same time the democratic values alone can nurture a free media. Since 1990s India has witnessed an explosion in electronic media and online news

services. Media has acquired such great control on the mind of masses that now it controls and shapes the likings, dislikings and interest in different segments of news items to a considerable extent. If compared to print media, electronic and social media have grown and multiplied much faster due to easy availability, instant access, prompt reporting and visual backup.

1.10 Literature Review

The researcher has reviewed the works of several researchers which have been done from various nationwide universities. The research works reviewed are from the period of 1993-2017. The said works have been obtained from “Shodhganga” website by using search terms such as “freedom of speech and expression”, “freedom of press”, “electronic media”, “social media”, and “Article 19”. From the search results found, the researcher has reviewed only those works which were found relevant or closely connected to his current research.

Singh G. (2017) in her research titled “**Role of Freedom of Electronic Media in Indian Democracy**” has worked on the research question whether the mischief of censorship has been correctly addressed by the existing laws and legislations?

Iyer Venkatesh B. (2017) in his research titled “**Study of impact of internet and other media before print media**” has conducted the research with following objectives, i.e. 1.To understand the present scenario of print media in India specifically with respect to the state of Gujarat. 2.To understand the evolution of print media in India and analyse its current challenges 3.To understand the adaptation of print media in the current competitive scenario 4.To study the readership behaviour of consumers in Gujarat. 5.To study the consumer’s and industry’s perceptions of newspapers in relation to other media.

Mittal AK (2016) in his research “**Trial by media and its impact upon judicial trial a critical study**” has undertaken research with following objectives i.e. to analyse the role of investigative Journalism in social downfall or enlistment, to judge the effects of judicial activism by media on the society and Government machinery, to determine the

subsequently effects of media trial on the society, to access the pressure groups affecting the media activities, to evaluate the legislative & constitutional provisions relating to electronics media activities, to develop new legal concepts to tackle and control media activities, to discover control mechanism to restrict media in fleshing wrong news, to disclose the mystery of scams through electronic media & effecting judicial approach

Following were the research questions of the said research: What is the role of investigative Journalism in social downfall or enlistment?, What are the effects of judicial activism by media on the society and Government machinery?, How determine the subsequently effects of media trial on the society?, How access the pressure groups affecting the media activities?, How to evaluate the legislative & constitutional provisions relating to electronics media activities?, How to develop new legal concepts to tackle and control media activities?, How to discover control mechanism to restrict media in fleshing wrong news?, How to disclose the mystery of scams through electronic media & effecting judicial approach?

The research titled “**Right to freedom of speech and expression with special reference to decency and morality**” by Sen, Shameek (2016) has been made based on the hypothesis that freedom of Speech and Expression is a sacrosanct Human Right that needs protection in all its facets. Pre-censorship of any form leads to a serious compromise of such right. Although there have been differences between human rights systems on the necessity, extent and basis of imposition of prior restrictions on speech owing to the cultural specificities, there has been an overall consensus on the need to minimise the imposition of any prior restraint. Apart from very specific situations where it is absolutely necessary, mandatory pre-censorship of any form across all types of media especially on grounds of obscenity should be largely done away with and replaced by other forms of post facto imposition of liability. The pre-censorship mechanism should be replaced by a normative system of regulation based on scientifically determinable parameters, and such regulation should be predominantly carried out by stakeholders of the concerned sector of the media, rather than by the state. The role of the state should be restricted to giving a statutory recognition to such self-regulatory model, such that any kind of

subterranean censorship and the possibility of a consequent chilling effect on this fundamental freedom does not arise

Indraneel, Saleel S (2016) in his study titled “**The role and accountability of the media in the Indian democracy**” has carried out the research with the objectives of identifying the rights of the media, assessing the limitations imposed upon the rights of the media, finding out the methods of transgression of these limitations by the media, critically analysing the concept of media trial, assessing the impact of media trial upon the public as well as the legal system, finding out whether the media is accountable; and if yes, to what extent, making 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, suggesting a few steps to curb the dictatorial aspirations of the media

Kumar Ashok (2015) has researched on “**A Legal Study of media in India with reference to electronic technology vis a vis media trial**”. His research has been conducted on the hypothesis that The basic idea of freedom of speech and expression is as old as the Human civilization. II.The Government has consistently rejected demands by news papers for permission to import newsprint directly. III.The establishment of a Broadcasting council/Media Council to examine complaint against the corporation and unfairness or bias in media, may be a good solution. IV.Through speech and expression one can learn about their human and political economical, Developmental rights and process of development. V.Right to speech and expression is oxygen’s for democracy and development for country. VI.Sting operations affect various rights of human being. VII.The Media publishes the version of either the police or the defense selectively, while the trial is in progress.

Kumar N. (2015) has researched on “**Role of Indian Media: Covering General Elections**”. Researcher has covered topics like relation between mass media, democracy and elections, exit polls and opinion polls and the accuracy of their

surveys, paid news syndrome and elections in the light of increasing number of news channels. The study has been conducted with following objects:

- (i) To understand role of media during elections in Indian context;
- (ii) To understand special features of electronic media especially television news channels during their involvement in election;
- (iii) To know the effectiveness of forecasting of media in pre and post election results;
- (iv) To identify factors influencing media's role during elections.
- (v) To understand the utility and significance of media strengthening democratic institutions in India with special reference to election;
- (vi) To understand the perception of media professionals regarding role of media.

The researcher has assumed the hypothesis that:

- (i) Mass media play an active role during elections
- (ii) Mass media, especially television news channels has usurped the political parties traditional role of reaching out to electorate.
- (iii) Exit polls fail to give right predictions in elections.
- (iv) Pre-post poll and exit poll surveys need major changes in their techniques to prove themselves right in Indian context;
- (v) Paid news is a big threat to the fair, free and level playing elections.

It has been suggested at the end of study that media must pick up people's issues and focus on them during elections as there is a growing disconnect between political masters and people and media should effectively bring it out in open.

Arora M. (2015) has conducted a research on “**Role of law as a regulator for electronic media: a socio-legal study**”. She has done a in-depth study on Article 19(1)(a) with special reference to electronic media and how far reasonable restrictions affect the functioning of electronic media. The laws and proposed bills directly or indirectly regulating electronic media have also been discussed. Finally, freedom of electronic media in relation to responsible journalism has been analysed. Main focus of study is to:

- (i) Analyse the various provisions of laws regarding electronic media;
- (ii) Coverage and extent of electronic media;

- (iii) Accountability of electronic media;
- (iv) Freedom of electronic media and interests of society.

Object of the study is to find the regulatory laws in respect of electronic media and how far the freedom of media is serving interests of public.

Following suggestions have been made at the end of study:

- (i) Existing laws and rules regulating electronic media are more than sufficient to streamline the working. A seamless web of laws and authorities makes media regulation a complex task. The need is the proper implementation of these laws which can provide media an honourable position.
- (ii) Electronic media namely private TV channels should be brought under the purview of RTI Act so that some accountability comes into media operation and management.
- (iii) Programs showing crime, obscenity, etc. which create a negative impact on viewer's minds should be banned and programs in nature of progress, stability and unity must be broadcasted so that harmony spreads amongst the people through the medium of electronic media.
- (iv) Electronic media should telecast programs giving knowledge to illiterate, rural and poverty ridden people relating to employment opportunities.
- (v) In case of terrorist or bomb blast attacks, electronic media should not give live coverage of hostage crisis. It should block information that may help terrorists. It should not disclose information on rescue operations.
- (vi) Media should avoid unnecessary repetition of archival footage which may agitate the mind of viewers.
- (vii) Broadcasting Services Regulation Bill 2006 should be passed so that private broadcasting service is regulated in objective and competitive manner.

Maurya A.(2015) has researched on the topic “**Regulation of social media in cyber space: A critical study of regulatory mechanism with special reference to India**”. The researcher has discussed problems posed by social media like hate speech, identity theft, copyright infringement, etc. and the laws and authorities governing social media. The researcher has also analysed issues of extra territorial jurisdiction in light of social media offences as well as laws regulating social media

in countries of USA, U.K. and India. Finally, international bodies governing the internet have been explained alongwith critical issues and proposed models. The study has been conducted with the object of making critical analysis of effectiveness of governing laws and media regulatory bodies and to study the extra territorial jurisdiction of legal system in case of social media offences committed outside a state's territory. The researcher has worked on the hypothesis that social media regulatory mechanism in India is more subversive and ineffective and has failed to address the challenging issues of new communications mediums as witnessed in various incidences of social media mischief. The researcher has made several suggestions namely:

- (i) Restructuring and reorganizing the social media by devising newer authorities and organizations that shall ensure freedom and liberty on the internet.
- (ii) Planning of international agreement for cases where international bodies are involved in governance of internet.
- (iii) In respect of India, necessity has been found that India should sign Mutual Legal Assistance Treaties with other countries until the provisions of Criminal Procedure Code are incapable of investigation of crime in foreign countries.
- (iv) There is a need for international agreement that when international bodies involved in governance of internet arrive at certain conclusion after due consultation, it should be made compulsory for the participating nations to follow the conclusion.
- (v) Principle of 'right to be forgotten' should be implemented worldwide in order to protect privacy of the users.
- (vi) Authorities and other mechanisms should be devised and developed both at national and international level so that the watchdogs may be effective and vigilant for ensuring better global commitment for protecting common freedoms and liberties of mankind.
- (vii) A common global commitment which may be incorporated in form of treaty/protocol or convention.
- (viii) Till the time scholars may reach at some mutually accepted terms, they may formulate principles like Common Concerns of Freedom and Liberty Principle so

that a common agreement on protection of basic freedoms and liberties may be argued for coming times.

- (ix) A legal, moral and ethical code should be devised for social media application developers and there should be a body for granting approval to properly devised social media applications.
- (x) There is a need to enact a law covering the rights, duties and responsibilities of social media agencies/users/ISPs. This law should be drafted keeping in view the international scenario of the related laws. The law should be in consonance with existing laws which are presently governing various issues of social media in India.

Trivedi B. (2015) has made a study on “**Political Communication A Comparative study of mass media**”. The researcher has studied the perceptions of adult citizens and communicators in political communication through mass media as well as flaws visible in political communication and manners of removing them. The study has been conducted with the object of understanding scope, limitations, reach and dimensions of political communication through mass media in India.

Study has been conducted on the hypothesis that present channels of mass media of political communication do not effectively transmit political content that should make the viewers politically informed and aware a function of a mature democracy. It has been concluded and suggested that:

- (i) Discrepancy of free flow of information in Government owned media as well as in print medium is a drawback in mass political communication system. Flow of information should be consistent with the event and not based on either interpretative reporting or self-conceived notions or pressurized projection from other sources.
- (ii) Communicators have to make full use of resources at their disposal to bring public awareness in vast class of people. However, it is a matter of deep concern that audio visual media attempts least to avail the benefits of this strength it has. On the contrary, it is presenting stereo typed projections which have only monotonous effect. Even assessment of public response is not carried out as it ought to be. With the limitations of communicators, they can deliver much better projections than they

currently present. Their concepts have to be changed and they have to work for public interest and provide stimulated analytical perspective to them.

- (iii) A team of independent expert communicators should be set up with the full authority to provide money to the needy newspaper agencies if they behave in projecting public interest.

The subject of research by **Gifty (2014)** is “**Right to Privacy and Freedom of Press – Conflicts and Challenges**”. The researcher has studied history of right to privacy and freedom of press and has also provided a comparative analysis of right to privacy and freedom of press in U.K., USA and India. The concept of Investigative Journalism and protection of privacy has also been explained in great detail. The researcher has also studied how contempt proceedings can be balanced between media freedom and privacy in subjudice matters. Finally role of Press Council of India has been explained in light of the above. The researcher has concluded that there are no specific laws protecting privacy in India and some of the Acts like Indecent Representation of Women (Prohibition) Act, 1986, Cable Television Networks (Regulation) Act 1995, provisions relating to defamation under the Indian Penal Code do not expressly refer to privacy but are referring only to some of its attributes like defamation, morality, obscenity, etc. Researcher has suggested:

- (i) To give more punitive powers to Press Council of India who currently is in the position of a toothless tiger due to its limited powers of censure, warning and admonition.
- (ii) An exclusive legislation on privacy also has been suggested in addition to necessary constitutional amendments.

Article 21 and 19(2) should be amended suitably to incorporate right to privacy. Making this amendment would uplift the morale of an ordinary citizen of a country instead of living in fear of anytime being pulled out of their secured homes to be scandalized in the open public by the media.

Anand N. (2014) has researched on “**Role of the press in political mobilization: A comparative analysis of colonial and independent India**”. The research covers

areas like political communication and political mobilization, press and political mobilization in India alongwith case study on Gandhi and comparative analysis on the role of press in colonial and independent India. How mass media affects general public has been also discussed in great detail. Object of the study is to find various functions performed by mass media of communication, role of press in political mobilization and finding role of political communication in political socialisation and opinion formation. It has been concluded that:

- (i) Under some circumstances, mass communication facilitates the creation of organizations by focusing attention on an issue and altering individuals who share common attitudes about the issue to the desirability of forming some kind of association.
- (ii) Media serves as intentional or unintentional recruiters for small groups that wish to expand their membership.
- (iii) In some cases, mass communication facilitates creation of organizations by focusing attention on an issue and altering individuals who share common attitudes about the issue to desirability of forming some kind of association.

In a broader sense the political process as a whole is influenced by access to the means of communications and that the mass media are highly diverse in content and in forms of organizations and include a very wide range of activities which could have effects on society.

Kumar S.(2013) researched on the subject “**Gandhi’s practice of media ethics and its relevance in India**”. M.K. Gandhi developed a model for journalists to practice development journalism with a purpose to improve the society. He believed that the role of newspapers was only public service. The researcher has conducted the study with following objects:

- to explore the value and ethics of journalism practiced by Gandhi,
- to find out the relevance of Gandhian concept of journalism,
- to find out the opportunities and challenges to the Gandhian model of journalism.
- To find out the possible way of Gandhian model of journalism together with commercialization of media.

It has been stated that Gandhi was actively associated with print media through newspapers and weeklies. He had good communication skills to spread awareness in the nation and he focused on welfare of society. Mahatma Gandhi's sole purpose of journalism was to serve the society at a large scale and it was his mass oriented approach and ethics based journalism that inspires and guides journalists even today. Further, the researcher has also discussed gray areas like conflict of media's objectives of social service and profit and whether facts should have an upper hand over the opinions or vice versa. The researcher has concluded that in present scenario, most of the media organizations are becoming 'social entertainers' and there is no place for mass-oriented content on most of the TV channels today. Even newspapers lack in-depth study or research on subjects relating to the nation and events have become more important than issues. It has been suggested that Gandhian trait of positive journalism is highly relevant for development today. Gandhi developed a model for journalists to practice development journalism with a purpose to improve the society. He believed that the role of newspapers was only public service hence he wrote a series of stories on various issues such as health, birth control, women empowerment, etc. He consistently wrote on the importance of educating rural masses and this approach is still relevant in India with a major population of illiterate section.

Iqbal A. (2013) has researched on the topic “**Legal Control over Electronic Media in India**”. The research amidst others, covers areas like state control over electronic media, license and content regulations, constitutional aspects and present control over electronic media. His work attempts to examine existing legal framework of electronic media. The research has been done with the object of finding the regulatory problems faced by electronic media in India and whether existing laws are sufficient to tackle the problems or not. The research has been carried out on the hypothesis that existing laws for media regulation in India are scattered and a sui juris law is required to control the electronic media. It has been suggested that a Code on Electronic Media Authority in India should be implemented as TRAI Act and Cable networks Regulation Act are incapable of covering all the issues in present

day media. The powers under the Code shall be specific. The penalty in the Code must be enforceable, effective and realistic. Parties committing offence may be classified under (i) Persons including broadcast listening and watching persons, (ii) Broadcasters and (iii) the State. Fine for all three groups shall be different.

Mehta K. (2013) in her study titled “**Freedom of Speech and Expression**” has highlighted on concept, meaning and scope of freedom of speech and expression. She has made her study in context of Right to Information Act in its national and international perspective. She has further focused upon the role of judiciary for the protection of Right to Information in India and its impact on people in society, namely the voters, consumers, prisoners, etc. The study has been made with main objective of analyzing the working of Right to Information Act, 2005, its applicability to various branches of society and the objects achieved by implementation of the said Act. The hypothesis tested is that:

- (i) Rejecting information demanded under RTI Act is a violation of Article 19(1)(a).
- (ii) Right to receive or acquire information is actually not being properly enjoyed by common masses of country as they are unaware that some rights have been provided to them by the Constitution and other statutory laws of the land.

It is a doctrinal study. The researcher has concluded that:

- (i) Even though Parliament has passed the RTI Act with the objective to bring transparency, openness and accountability in the working of public authorities, but general public is still facing several problems, i.e. administrative and public, in accessing information.
- (ii) The problems are lack of training to Public Information Officers, poorly maintained official record, culture of secrecy prevalent in Govt. offices, rude attitude of officers, poor quality of information provided, etc.
- (iii) The researcher has also revealed in her study that right to information is a fundamental right and in case non-supply of the information demanded, delay in providing the information, wrong supply of information, rejection of application without assigning any reasons by the Public Information Officer at the first stage should be treated as violation of the fundamental right to information under Article

19(1)(a) of the Constitution and remedies under Articles 32 and 226 of the Constitution should also be granted.

It has been suggested by researcher that:

- (i) There is a need to include private bodies in the meaning of public authorities;
- (ii) In the RTI Act, 2005, it is necessary that the word “person” should be substituted in place of “citizen” so as to expand the sphere of RTI Act.
- (iii) There should be suomotu or pro-active disclosure of information.
- (iv) Government should make some provisions in the Act for periodical review to know the functioning of every Govt. department and for penalizing those officials who do not follow the provisions laid down u/s. 4 of the Act.
- (v) Government should design training programs for the public information officers so that they are made fully aware of the mechanism of their department. Thus they will be able to give correct information called for under RTI Act 2005 at the first instance to the applicant and the need for applicant approaching the appellate authority shall not arise.
- (vi) The long list of exemptions from disclosure of information laid down u/s. 8, 9, 24 should be reduced to the level of reasonable restrictions provided under Article 19(2) of the Constitution of India. Govt. should take effective steps for making suitable amendments under the provisions of the RTI Act.
- (vii) NGOs should be given vast powers to access information from the Public Departments on behalf of educationally, economically and socially weaker sections of the country.

Walia J. (2012) in the study on “**Expanding horizons of freedom of speech and expression and the judicial response**” has studied conceptual dimensions like evolution and historical perspective of freedom of speech and expression in India and international legal regimes of the said freedom in nations like England, USA, Australia, etc. Study has been carried out on the hypothesis that the legal framework is not adequate to confront the emerging challenges before the freedom of speech and expression particularly the media which includes the press, electronic and broadcasting media as well as new media.

She has also made a detailed study on constitutional and legislative measures as well as international treaties, covenants, etc. that emphasize providing the said freedom to all people across the world. Finally, judicial response to the freedom of speech and expression in India has been studied and which rights are encompassed within this freedom have been studied. The study concludes by emphasizing upon the need to define “decency or morality”, protection of individual privacy and even lack of effective media policy. Following suggestions have been made at the end of study:

- (i) Nation needs national privacy policy to protect individual rights in the instant and automated information-communication age.
- (ii) There is no definite and clear definition of “obscenity” in law and it is required that the legislature must remove this anomaly by giving a proper definition to the term. Also, men or women have not been categorized as the perpetrators of such offences in any law and hence punishments have not been prescribed which needs to be done. The term “good faith” has not been defined in any statute even though the exceptions of law of indecent representation permit depiction on good faith.
- (iii) Media fraternity needs to take a serious look of this issue and do self-regulation and self-monitoring with extreme care and caution. The system of reward and punishment may be introduced by way of policies by The Press Council of India whereby reward may be given to those who are able to portray women in a decent manner and likewise, punitive action may be taken against those who defy the norm.
- (iv) Citizens have a right to know but the government often wishes to be secretive. Phrases like official secrets, sensitive information, etc. give considerable room to the government to be secretive under the garb of protecting national interest. What constitutes ‘public interest disclosures’ needs to be clearly defined. The legal protection should apply to specific disclosures only involving an illegality, criminality, breach of regulatory law, miscarriage of justice, danger to public health, safety and damage to environment, etc.
- (v) Judgments of Courts are public documents and can be commented upon, analyzed or criticized but it has to be in dignified manner without attributing motives. Before placing before public whether on print or electronic media, all concerned have to see

whether any such criticism has crossed the limits and if it has, then resist every temptation to make it public.

- (vi) Our country should take a lead as the developing country and find out a proper forum where objectionable matters are heard. There is a dire need to amend the Constitution abolishing the distinction of inner space jurisdiction and outer space jurisdiction.
- (vii) There should be some rigorous research-based method to guide the decision-making process as opposed to rejecting political cartoons on grounds of ‘political sensitivity’ and ‘ambiguity’. In current era of extra-legal censorship, strict policies and regulations are required so that censorship is governed by reason and not by popular sentiments.
- (viii) There is a need for codification of the privileges of members of Parliament and legislators and appropriate amendments to the Official Secrets Act to enable the press to function properly and effectively.
- (ix) There is a need for self-regulation in the media besides framing the code of ethics to be observed by it. Failure to observe the code should result in penal sanctions.
- (x) There is a need to ensure that the right of freedom of media is exercised responsibly. It is for media itself and other concerned to consider as to how to achieve it.
- (xi) In contemporary times, there is a need for an integrated National Media Council which has adequate control over every aspect of news dissemination whether by press, news broadcasters or news websites.

The title of research made by **Paul S. (2012)** is “**The Press Council – An experiment in guarding free speech**”. An in-depth study has been made on the history, constitution, procedures of Press Council of India. Simultaneously, problems and issues faced by the PCI have been studied and solutions also have been suggested. Researcher has tried to study whether the Council has succeeded or failed in performing its functions. The major **suggestions** made are as follows:

- (i) The statutory nature of Indian Press Council which is its foremost advantageous feature should not only be retained but also strengthened by making a provision for

compulsory placement of adjudications of the Council in Parliament or the State legislatures.

- (ii) Regional press councils should be established apart from the central council which should be converted into an appellate authority.
- (iii) Researcher has also suggested that delay in pronouncement of adjudications by the Council should be avoided and adverse adjudications must be published and follow-up actions in regard of the same should be kept under constant review.
- (iv) The Council should be made a permanent body like the upper House of Parliament with provision for triennial retirement of half of the membership in various categories. Care should be taken that all regions are represented equally once regional press councils are established.
- (v) For the effective functioning of Press Council, it should be given some teeth based on the principle of golden mean between moral and punitive sanctions.
- (vi) In order to make the Press Council an effective body, all those engaged in professional of journalism shall be brought under its disciplinary authority.
- (vii) All laws affecting the press should first be referred for opinion of the Council. Modifications shall be affected in existing laws relating to parliamentary privileges, contempt of court, defamation, official secrets etc. as suggested by the Press Council.
- (viii) The Council should also have the power to order immediate correction of glaring misstatements published in a newspaper. This is important as otherwise irreparable damage would be done to the reputation and prestige of an individual or an institution by the time an adjudication is pronounced by the Council.
- (ix) The Council should ensure publication of its adverse adjudications in a proper manner and follow-up actions shall be kept under constant review.
- (x) The Council shall be bold enough to pass severe indictments against the authorities which would enhance its dignity and moral authority.

Dhevarajan Pa (2008) has made a research titled “**Fourth Estate – Social Values**”. The study has been made under various heads such as A General Note on Mass Media, Politically Oriented News Media - A Critical Appraisal, Link Between

News Media and Society, News Media in Shaping Social Values and Eliciting Its Reactions, Electronic Gadgets Versus Newspaper, Future of the Fourth Estate

The title of research made by **Ahmad, B. (1997)** is “**Freedom of press and the supreme court: an appraisal**”. The present work is based upon Doctrinal Research Methodology, Being library based work the text books, reference books, journals, re-ports of various commissions appointed to look into the various aspects of the press have been used extensively. Beside above stated sources dissertations and doctoral thesis have also been used in the accomplish-ment of the present work.

The title of research made by **Reddy A Raghunaha. (1993)** is “**Freedom of the press under Indian Constitution: A Juridical Study**”. The said study is conducted with objectives:

1. To evaluate the role of judiciary in relation to freedom of the press in American and Indian Constitutions;
2. To analyse the various facets of the right to information under the Indian Constitution.
3. To study the various laws that are designed to undermine the freedom of press in India.
4. To study the role of the Press Commission and Press Council concerned for the protection of freedom of the press
5. To evaluate the role of the press for strengthening the roots of democracy.

The studies that are presently available mostly focus upon the following and how the present research differs from each of the study is discussed below:

- (i) The study has been conducted with sole question Whether the mischief of censorship has been correctly addressed by the existing laws and legislations? [**Singh G. “Role of Freedom of Electronic Media in Indian Democracy”(2017)**]

The present research does not deal with issues of censorship. It focuses on freedom of speech and expression and the extent of its use/misuse by various ways in social and electronic media.

- (ii) The study has been conducted with object of understanding the present scenario of print media in India specifically with respect to the state of Gujarat and the evolution of print media in India, adaptation of print media in the current competitive scenario and to study the readership behaviour of consumers in Gujarat as also the consumer's and industry's perceptions of newspapers in relation to other media. [*Iyer Venkatesh B. - Study of impact of internet and other media before print media (2017)*]

The present research does not deal with state-wise scenario but gives a overall picture of evolution of media across the world and in India.

- (iii) Another research has been conducted to analyse the role of investigative Journalism in social downfall or enlistment, to judge the effects of judicial activism by media on the society and Government machinery, to determine the subsequent effects of media trial on the society, to access the pressure groups affecting the media activities, to evaluate the legislative & constitutional provisions relating to electronics media activities, to develop new legal concepts to tackle and control media activities, to discover control mechanism to restrict media in fleshing wrong news, to disclose the mystery of scams through electronic media & effecting judicial approach. [*Mittal AK "Trial by media and its impact upon judicial trial a critical study"(2016)*]

The present research considers not only media trials but also the menace of fake and paid news which have taken a rise as social and electronic media have given new platforms of reaching out to public.

- (iv) The research titled "**Right to freedom of speech and expression with special reference to decency and morality**" by **Sen, Shameek (2016)** revolves around the issues of censorship and pre-censorship.

The present research does not deal with censorship but studies media trials, paid news, fake news, sting operations in light of advancing social and electronic media technology.

- (v) **Indraneel, Saleel S (2016)** in his study titled "**The role and accountability of the media in the Indian democracy**" has carried out the research with the objectives of identifying the rights of the media, assessing the limitations imposed upon the rights

of the media, finding out the methods of transgression of these limitations by the media, critically analysing the concept of media trial, assessing the impact of media trial upon the public as well as the legal system, finding out whether the media is accountable; and if yes, to what extent, making 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, suggesting a few steps to curb the dictatorial aspirations of the media.

The present research studies not only media trials but also fake news, paid news, sting operations and the legislations safeguarding the rights of citizens and the media as also the judicial decisions in India on the subject.

- (vi) Freedom of speech and expression in respect of Right to Information Act, role of judiciary for the protection of Right to Information in India and its impact on people in society, namely the voters, consumers, prisoners, etc., RTI Act in its national and international perspective. [*Mehta K. -“Freedom of Speech and Expression”(2013)*]

The present research does not involve study of the RTI Act. It focuses on how freedom of speech and expression affects the modern day forms of evolving media, (i.e. print, social and electronic media). It discusses the national and international legislations as well as regulatory bodies which keep the check on media so that freedom of press is available to them but simultaneously the reasonable restrictions under which they have to exercise the said freedom are also taken care of.

- (vii) Evolution and historical perspective of freedom of speech and expression in India and international legal regimes of the said freedom in nations like England, USA, Australia, constitutional and legislative measures as well as international treaties, covenants, etc. that emphasize providing the said freedom to all people across the world. Judicial response to the freedom of speech and expression in India and rights encompassed within this freedom. [*Walia J., “Expanding horizons of freedom of speech and expression and the judicial response” (2012)*]

The present research has been carried on in respect of laws relating to regulation of print, social and electronic media in USA, UK and India as well as to find out the awareness about paid media and media trials.

- (viii) Relation between mass media, democracy and elections, exit polls and opinion polls and the accuracy of their surveys, paid news syndrome and elections in the light of increasing number of news channels.**[Kumar N., “Role of Indian Media: Covering General Elections”(2015)]**

The abovementioned research deals with how media covers general elections, exit polls, opinion polls, etc. The present study however has been carried out in context of print, social and electronic media and how modern technologies have resulted in newer challenges and need to regulate media. Focus is also on paid media, sting operations and media trials.

- (ix) Article 19(1)(a) with special reference to electronic media and how far reasonable restrictions affect the functioning of electronic media. The laws and proposed bills directly or indirectly regulating electronic media have also been discussed. Finally, freedom of electronic media in relation to responsible journalism has been analysed.**[Arora M., “Role of law as a regulator for electronic media: A socio-legal study”(2015)]**

The abovementioned research focuses only on electronic media and its regulations. The present research deals with all three forms of media, viz. print, electronic and social media because today, we see media convergence, or a combination of all three forms of media in use together.

- (x) Problems posed by social media like hate speech, identity theft, copyright infringement, etc. and the laws and authorities governing social media, issues of extra territorial jurisdiction in light of social media offences as well as laws regulating social media in countries of USA, U.K. and India. Finally, international bodies governing the internet have been explained alongwith critical issues and proposed models.**[Maurya A., “Regulation of social media in cyber space: A critical study of regulatory mechanism with special reference to India”(2015)]**

In the above research, the researcher has worked on the hypothesis that social media regulatory mechanism in India is more subversive and ineffective and has

failed to address the challenging issues of new communications mediums as witnessed in various incidences of social media mischief. The present research has been carried out on hypothesis that the current laws are inadequate to control and regulate the media.

- (xi) Perceptions of adult citizens and communicators in political communication through mass media as well as flaws visible in political communication and manners of removing them. [Trivedi B., *“Political Communication: A Comparative study of mass media”*(2015)]

The researcher has studied the perceptions of adult citizens and communicators in political communication through mass media as well as flaws visible in political communication and manners of removing them. Present research however focuses on freedom of speech and expression, reasonable restrictions thereupon in USA, UK and India and how far public is aware of media syndromes like paid news, media trials, etc.

- (xii) **Kumar Ashok (2015)** has researched on **“A Legal Study of media in India with reference to electronic technology vis a vis media trial”**. His research has been conducted on the hypothesis that The basic idea of freedom of speech and expression is as old as the Human civilization. II.The Government has consistently rejected demands by news papers for permission to import newsprint directly. III.The establishment of a Broadcasting council/Media Council to examine complaint against the corporation and unfairness or bias in media, may be a good solution. IV.Through speech and expression one can learn about their human and political economical, Developmental rights and process of development. V.Right to speech and expression is oxygen’s for democracy and development for country. VI.Sting operations affect various rights of human being. VII.The Media publishes the version of either the police or the defense selectively, while the trial is in progress.

The present research studies not only media trials but also fake news, paid news, sting operations and the legislations safeguarding the rights of citizens and the media as also the judicial decisions in India on the subject.

- (xiii) Areas like state control over electronic media, license and content regulations, constitutional aspects and present control over electronic media as well as existing legal framework of electronic media. **[Iqbal A., “Legal Control over Electronic Media in India”(2013)]**

The present research differs because the landmark judgment of Shreya Singhal vs. Union of India was delivered in the year 2015. The said judgment and its implications on use of media have been analysed in the present study.

- (xiv) History of right to privacy and freedom of press, comparative analysis of right to privacy and freedom of press in U.K., USA and India, concept of Investigative Journalism and protection of privacy, balancing of contempt proceedings between media freedom and privacy in subjudice matters and role of Press Council of India in light of the above. **[Gifty, “Right to Privacy and Freedom of Press – Conflicts and Challenges”(2014)]**

The above research deals in-depth with media and individual’s right to privacy. It has not covered areas like media trials and paid media.

- (xv) Areas like political communication and political mobilization, press and political mobilization in India alongwith case study on Gandhi and comparative analysis on the role of press in colonial and independent India and how mass media affects general public. **[Anand N., “Role of the press in political mobilization: A comparative analysis of colonial and independent India”(2014)]**

The present research is a study of legislations pertaining to freedom of speech and expression in USA, UK and India and how far they successfully or otherwise have been able to regulate the print, social and electronic media.

- (xvi) Gandhian concept of journalism, opportunities and challenges to Gandhian model of journalism. **[Kumar S., “Gandhi’s practice of media ethics and its relevance in India”(2013)]**

The present research has not covered Gandhian concept of journalism. It deals with print, social and electronic media and laws regulating them in USA, UK and India.

- (xvii) History, constitution, procedures of Press Council of India and problems and issues faced by the PCI alongwith suggestions. Researcher has tried to study whether the

Council has succeeded or failed in performing its functions. *[Paul S. “The Press Council – An experiment in guarding free speech”(2012)]*

The said research has covered only print media. Present research studies all three forms of media prevailing today viz. print, social and electronic media and its regulatory bodies in USA, UK and India.

The title of research made by **Reddy A Raghunaha. (1993)** is “**Freedom of the press under Indian Constitution: A Juridical Study**”. The said study is conducted with objectives to evaluate the role of judiciary in relation to freedom of the press in American and Indian Constitutions to analyse the various facets of the right to information under the Indian Constitution, to study the various laws that are designed to undermine the freedom of press in India, to study the role of the Press Commission and Press Council concerned for the protection of freedom of the press and to evaluate the role of the press for strengthening the roots of democracy.

The present research deals with the origin and development of media and the national and international legislations related to media. Also judicial decisions in regard to print media, electronic and social media have been discussed at length.

Apart from above research works, some of the books and research papers have been reviewed as under:

Divan Madhavi G. in her book “**Facets of Media Law**”⁴ has dealt with constitutional issues and other subjects like contempt of court, privileges of legislatures and the right to information which have significant contemporary relevance. The views expressed by author on diverse subjects are marked by originality and an incisive study of the ramifications of those subjects. The book thoroughly discusses subjects like decency, morality and privacy in media age.

A book titled “**Law and the Technologies of the Twenty-First Century**”⁵ by Rogers Brownsword and Morag Goodwin provides a contextual account on the way in which law functions in a broader regulatory environment across different

⁴ Eastern Book Company, 2nd Edition (2013)

⁵ Cambridge University Press (2012)

jurisdictions. It identifies and clearly structures the four key challenges that technology poses to regulatory efforts, distinguishing between technology as a regulatory target and as a tool, and guiding the reader through an emerging field that is subject to rapid change. By extensive use of examples and extracts from the texts and materials that form and shape the scholarly and public debates over technology regulation, it presents complex material in a stimulating and engaging manner.

Narendra Arya in his book on **Social Media** has dealt with several issues regarding social media. In Chapter 2 of the book, author has made a detailed analysis to suggest that social media is not replacing the traditional mode of journalism. It suggests that traditional journalism and social media both can run together. However, author accepts this fact that old ways to journalism is changing and those journalists who refuse to accept the change will soon find no place left in this field. The book highlights on social media but theme of the writing is centric to kinds of media. Neither the legal perspective of social media nor abusive use of social media has been discussed.

In **Internet Law**⁶ by **Chris Reed**, the author takes a global view of fundamental legal issues raised by the advent of internet as an international communications mechanism. The book highlights the approaches and analytical methods that a lawyer requires when dealing with internet-related issues and explains the problems that every country's law will need to resolve. The book integrates legal and other materials to support the discussion of how technological, economic and political facts are shaping the law governing the internet. Global trends in the development of these legal issues are addressed and the effectiveness of potential mechanisms for legal change that are applicable to internet law are also examined.

In relation to freedom of speech and expression over the social media, a book titled **"Free Speech in the New Media"**⁷ edited by **Thomas Gibbons** is a major title. The book is collection of some quantitative research works done on the theme of free

⁶ Cambridge University Press, 2nd Edition

⁷ Routledge (2009)

speech in social media. Part 1 of the book is related to research works on free speech and converged media. Part 2 relates to public service broadcasting and Part 3 includes collection of articles on content standards. Several essays on beliefs, indecency, advertising and content regulation in European Community have been discussed.

A book titled “**Governance, Regulations and Powers on the Internet**”⁸ edited by **Eric Brousseau** et al. is another important literary work on the research subject. Chapter 6 i.e. “**Co-regulation and the rule of law**” by **BenoltFrydman** et al is a major chapter in the book. It discusses about co-regulation of internet. Co-regulation has been defined in this chapter as a legal device designed to put pressure on the points of control to achieve some regulatory result. The chapter analyses United States self-regulatory measures of internet with co-regulatory measures. It also analyses the prospects of co-regulation of internet in the European Union and sums up with the study of evolving pattern of internet regulation in China.

Chapter 10 of **Introduction to Internet Law and Policy** by **Rodney Ryder** is on the topic Defamation and Internet: Analysing Risks and Liabilities under Indian Law. It discusses the concept of defamation under Indian law and then figures out the modes in which defamation can be caused.

A book titled “**Regulating the Changing Media: A Comparative Study**” edited by **Eric Brosseau** et al. assesses the effects of changing technologies on the capacities of law to regulate the media and in particular to examine the extent to which it remains possible for governments and other public authorities to shape the changing media in such a way as to ensure that important social values are not neglected. In this book the capacity of radically different legal and administrative systems to cope with fast moving and radical change is compared with the aim of understanding more about law, regulation and the media.

⁸ Cambridge University Press

In the wake of rising of social media, changing patterns in news dissemination have occurred. Journalists now often rely on social media platforms like Twitter, etc. crowd sourcing is now available through social media, facts and stories are now a part of “Google” search results and almost all traditional newspapers now have their websites with latest news as and when it happens alongwith “E-paper” archives of several years. Reporter blogs and open newsrooms invite community participation in the editorial process itself. In this light, an article “**Social Media and Press**” written by **Prof. Lili Levi, University of Miami, School of Law** explores some particular challenges for the democratic press by new reality of social media.

Alexandra Paslawsky in her article “**The Growth of Social Media Norms and Governments attempts at Regulations**” discusses the growth of internet and development of norms as a means of internet governance. Development and expansion of the internet in United States, U.K. and Egypt has been discussed followed by discussion of emergence of internet norms and standards established by technological and engineering groups. The article also discusses Role of social media in London blasts, Govt. policies of U.K., US and Egypt in dealing with social media.

S.Sivakumar in his book “**Press Law and Journalists – Watchdog to Guidegod**”⁹ critically examines the role of the Press in contemporary society, presents a theoretical justification for the protection of free speech and discusses the interpretation of free speech doctrine in the internet age along with the analyses of authorities existing in India and abroad. The book also deals with the interface between press and executive, legislature and judiciary; balancing the rights viz., information, privacy, libel and the doctrinal labels; press ombudsman role and attitude towards the redressal of disputes by the Press Council.

⁹ Universal Law Publishers/LexisNexis, 1st Edition 2015

In **Press and Media Law Manual**¹⁰, Vidisha Barua extensively discusses several legislations pertaining to press and media laws.

The present research i.e. *A Study on Freedom of Speech and Expression in respect of Social and Electronic Media* focuses on:

- (i) Development of media since the invention of printing press till the present day technological advancements. How printing press initially was the only major form of communication and sending information and how today, several other forms of social and electronic media have taken over print media in terms of communicating in a faster and more convenient manner. In any manner, all three forms of media have their own pros and cons and despite the advantages of social and electronic media, print media is still in vogue today due to its traditional and well-established features.
- (ii) National and international legislations, conventions and treaties worldwide which protect an individual's freedom of speech and expression in USA, UK and India. Furthermore, how the legislations have been drafted so as to include freedom of press and to what extent the reasonable restrictions as applicable to an individual are applicable to the press have been discussed. Bills pertaining to media regulation in India that were proposed to be enacted but have been withheld due to one reason or the other have been also analysed. Likewise, regulatory bodies in USA, UK and India that govern and regulate the content of programs and news presented by media houses have also been discussed.
- (iii) Judicial response or authorities that have defined the freedom of speech and expression as available to print, social and electronic media today. Time and again, Supreme Court has focused upon freedom of speech to be inclusive of freedom of press even though it has not been specifically mentioned in Constitution of India. Just like freedom of speech and expression given to an individual is subject to restrictions, the same is applicable to freedom of press. Considering how giving

¹⁰ Universal Law Publishers 2004

absolute freedom might result in transgress of functions and end up in cases like paid media, media trials, showing explicit content or live coverages of terrorist attacks simply to increase TRPs, etc. reasonable restrictions have been rightly made applicable even to media houses.

- (iv) Non-doctrinal study to find out awareness about legislations pertaining to freedom of speech and expression as well as awareness about media trials and paid media. It has been concluded that media regulation cannot be a one-sided affair but needs to be done at dual level – viz. internally by media companies as also externally by government or non-media authority established for this purpose. Right to free press is a sensitive right and the extent of it needs to be determined each and every time a news story is covered to respect the rights of those involved in the news story as also the rights of audience and readers to know the event. Again, freedom of press has been highlighted more even recently as social media has come into picture. Social media opens the path to making anything a two-way conversation rather than merely keeping it a one-way communication. The same was not possible with print and electronic media wherein news channels merely reported the events without knowing the public approach to the same. However, with social media, each and every single reader can voice his opinions on the websites, blogs, news sites, etc. Hence, the freedom of press to inform needs to be balanced against freedom of readers to know and reciprocate. Instances of fake news, media trials will increase if freedom of press is misused and media channels make a rush towards broadcasting news stories without verifying the authenticity of the sources.

CHAPTER 2

DEVELOPMENT OF MEDIA

2.1. Introduction

The steady growth of science and technology has given many gifts to the modern day man. Endless researches and continuous experiments have made many inventions possible. Today, devices that were once merely a dream for millions have become a part of common day-to-day equipments. Thanks to scientific growth, the world that was once extremely difficult to even comprehend, has come down to man's fingertips. Anybody in any part of the world can be contacted in within a couple of minutes without any hassles. Likewise, what happens in one corner of the world can be informed to the rest of the world in just a couple of minutes. Not only informing, but with the help of modern day powerful satellites, the event can be broadcasted live to the entire world. Gone are the days when people used to eagerly wait for morning newspaper or evening news to be broadcasted in order to find out what's happening across the country and throughout the world.

Older forms of media like publishing books and newspapers used to require expensive and huge sized printing press but its circulations was limited only to a fraction of people, i.e. those who lived in the same nation or state. When electronic media took over, the broadcasting via radio and television again relied on expensive equipments, satellites and studios to transmit signals around a country, regionally or globally. The rise of social media in the recent years has made a significant change in the way communication is made, be it a personal one like chats and conversations or a public, like sending news and other information. Communication today can be made merely with the help of a mobile phone and internet connection instead of having to rely on newspapers, letters, telegrams, huge television sets or radios, cable connections, etc. Not only that but sending information through social media is also comparatively faster to any other previous mode. Thus, prior to social media, both print and electronic media were expensive as well as time and space consuming forms of news transmission.

Talking of media, today it is an entity in itself. It is powerful enough to not only inform people but even influence their decisions. Print and electronic media, which were once upon a time the only forms of media have taken a major setback against modern day form of media, namely the social media. Needless to say, the journey has been long and difficult but the fruits that are being reaped today have made it a worthwhile one. News, be it political story, election poll, sports event, share market prices, weather forecasts, global events, festive celebrations, etc. is now easily accessible due to continuous progress of social and also to an extent, electronic media. The main advantage of social media is that once a user connects to the internet, he has access to a platform that is at once global and free. The modern day devices like smartphones, laptops, Bluetooth, wifi enabled cameras, etc. have made the news reporting much faster as compared to the previous forms of news communication.

The major functions of media can be summed up as under¹¹:

- (i) Media as a mass communicator is the most suitable and effective instrument to act as a catalyst of social change;
- (ii) Media can educate both, people and those in power about the need for change and facilitate debate and discussion on the pros and cons of different measures suggested for bringing it about and at the same time suggest such measures itself.
- (iii) Media can organize public opinion in support of best of such measures and also pursue them with political and administrative executive and keep constant pressure on them to adopt and implement the same.
- (iv) Media can monitor the performance and progress of the measures and expose the inaction, inefficiency, negligence, waste and corruption in implementing them.
- (v) Media is the best means to keep reminding people of their duties and responsibilities for building the new society and in exhorting them to discharge their obligations for attaining the goals.
- (vi) Media can enlighten the people about difficulties and obstructions created by national and international forces and vested interests in achieving the progress towards the goals by using various means and devices.

¹¹ Sawant P.B. "Tasks For a New Society", 3 Mainstream Nov. 20, 1999

- (vii) Media can warn people of the dangers to national interests and to goad them to redouble their efforts.
- (viii) Media makes democratic rule real and effective by acting as an intermediary between people and the authorities. It informs the people of acts of omission and commission of public administration and in turn serves as the forum for ventilating the grievances and aspirations of the people and for reaching them to the concerned authorities.
- (ix) Being fourth organ of estate, it is responsibility of media to help in building the nation and to implement the objectives of Constitution and to promote social justice and equality, stability and unity and peace, progress and happiness for all.

The list by no means is exhaustive because the reach of each form of media has increased as compared to its predecessor. For instance, debates, interviews, live coverages, etc. were possible only after electronic media came into existence after print media and hence electronic media was dutybound to responsibly conduct the same. Likewise, when social media got over, it gave freedom of expression a new meaning with people finding themselves a new platform to make themselves heard. Thus, functions of media have increased with each step.

Social scientists in general argue that the media performs three basic functions namely reporting events, interpretation of events and socialization. The ways these functions are performed affect the course of both domestic and international politics. The composite processes of gathering, evaluation, editing, producing and presenting news are illustrative of the enormous salience of media in domestic and foreign policy-making.¹²

2.2 Definitions

Some of the major terms that need to be conceptualized for the purpose of this study are as under:

2.2.1 Communication

Communication can be said to be a two-way process of reaching mutual understanding between two or more persons through a medium in which participants exchange information, opinions and views, news, ideas and feelings but also create

¹² Vora Batuk, "Media Manipulation: A Fast-growing Business" Pg. 26 May 14, 1994, Mainstream

and share meaning of this exchange of ideas. In general, communication is a means of connecting people or places.¹³ Communication is a process by which information is exchanged between individuals through a common system of symbols, signs or behavior. If the term is pluralized, the same comes to mean a system for transmitting or exchanging information, i.e. wireless electronic communications.¹⁴ In general, the word 'communication' refers to people interacting in ways that at least one of the parties involved understands as messages.¹⁵ Thus, a mutual transfer and exchange of information through a commonly understood medium can be termed as 'communication'. A personal communication maybe between two persons or more through a conversation, chat, etc. while a public communication maybe between a larger group for e.g. communication of news through a news channel to the audience. In either case, essence of communication lies in sending information, thought or idea from one side to the other and being reciprocated with a response thereto.

2.2.2 Mass Communication

Mass Communication involves sharing ideas across a large audience either at a given point or through an extended time frame and usually involves professional communicator. Mass communication includes newspapers, magazines, books, films, television, radio and recordings.¹⁶ Mass communication is technology-enabled process by which messages are sent to large faraway audiences.¹⁷ Mass communication is a process in which a person, group of people, or an organization sends a message through a channel of communication to a large group of anonymous and heterogeneous people and organizations. The sender of the message is usually a professional communicator that often represents an organization. Some of the major types of mass communication are:

- Journalism, such as news.
- Political campaigning

¹³www.businessdictionary.com/definition/communication.html (Visited on April 26, 2017)

¹⁴www.merriam-webster.com (Visited on April 26, 2017)

¹⁵ Joseph Turow, *Media Today – An Introduction to Mass Communication* (Routledge, 3rd Ed., 2009)

¹⁶ Jean Folkerts and Stephen Lacy, *The Media in your Life – An Introduction to Mass Communication*, 24 (Pearson Education, 2004)

¹⁷ Vivian, *The Media of Mass Communication*, 27 (Pearson Education, England, 11th edn., 2013)

- Advertising, which includes communications attempting to induce purchasing behavior¹⁸

Mass communication is the imparting, informing or exchanging information on a larger scale to a wide range of people.¹⁹ The purpose of mass communication maybe either to inform, to persuade, to amuse or to enlighten.²⁰ Mass communication is the process of expeditious distribution of mechanically or electrically produced duplicate copies of information to a heterogeneous and often large number of individuals.²¹ Thus, mass communication refers to sending any information to the public at large across the world through the media, be it print, electronic or social media. Newspapers, news channels, e-papers, TV channels, etc. are some of the forms through which mass communication usually takes place.

2.2.3 Media

Having information from any part of the world on any subject at the finger tips instantly has become possible since media invasion which initially was due to the advent of internet. Media is spread, functioning and utilized everywhere. It has influenced not only our society at large but also our lives and even the moral values defining us. The term media traditionally was just an obscure Latin plural for the word 'medium'. Afterwards as the businesses flourished, advertisers began to speak of placing ads in different media. The original means of mass communication were print – magazines, journals, newspapers, etc. but collectively they were all considered a 'publication'. Afterwards when electronic media developed and radio and television entered the commercial market, it was felt that the term 'publications' would remain limited only to print media. Hence, needing a term that would encompass all means of communication, namely the print as well as electronic forms of communication, the term 'media' came to be considered.²² Media is the vehicle

¹⁸ www.study.com/academy/lesson/what-is-mass-communication-definition-theories-quiz.htm (Visited on April 26, 2017)

¹⁹ En.oxforddictionaries.com/definition/mass_communication (Visited on April 26, 2017)

²⁰ Vivian, *The Media of Mass Communication*, 16 (Pearson Education, 11th Ed., 2013)

²¹ R. Terry Ellmore, *NTC's Mass Media Dictionary*, 351 (NTC Publishing Group, 1996)

²² Joseph Turow, *Media Today – An Introduction to Mass Communication* 20 (Routledge, 3rd Ed., 2009)

used to convey information to an audience. Also, the materials on which data and instructions are recorded can be considered as media.²³

2.2.3.1 Mass Media

Mass media are the technological instruments, i.e. newsprint, televisions, radios through which mass communications takes place.²⁴ Mass media are the various vehicles used for sending information to a mass audience, i.e. radio, television, books, newspapers, etc.²⁵ According to McQuail, the mass media can be defined in terms of politics as well as in terms of culture. In respect of politics, the mass media have gradually become:

- an essential element in the process of democratic politics by providing an arena and channel for wide debate, for making candidates for office widely known and for distributing diverse information and opinion;
- a means of exercising power by virtue of the relatively privileged access that politicians and agents of government can generally claim from the media as a legitimate right.

In respect of culture, the mass media:

- constitute a primary source of definitions of and images of social reality and the most ubiquitous expression of shared identity;
- are the largest focus of leisure time interest, providing the shared 'cultural environment' for most people and more so than any other single institution. Also, media are steadily increasing in economic significance, as media industries grow, diversify and consolidate their power in the market.²⁶

In a study conducted by Jennifer Alejandro, she has stated that mass media is already a thing of past and today wider changes are occurring in media industry mainly due to the widening reach of social media networks. Today, it is all about personal media. According to her, in past years, news reporters were either given a lead or went out to find a story. In stark contrast, today any citizen can and often sends a story to media for raising a social cause or sometimes even for personal motives

²³ R. Terry Ellmore, *NTC's Mass Media Dictionary*, 356 (NTC Publishing Group, 1996)

²⁴ Joseph Turow, *Media Today – An Introduction to Mass Communication* 17 (Routledge, 3rd Ed., 2009)

²⁵ R. Terry Ellmore, *NTC's Mass Media Dictionary*, 351 (NTC Publishing Group, 1996)

²⁶ Eoin Devereux, *Understanding the Media*, 7 (Sage Publications, 1st Edn., 2003)

through Facebook posts, Tweets or Digg so that by the time a story is assigned to a reporter, it has already been molded and told in a context to the world. The reporter now has to take that into consideration as well and find some angle to the story that is not yet being talked about.²⁷

2.2.3.2 Print media

Print media is the earliest form of media communication. However, despite its ancient origins, it still continues to be a part of everyday media in market today. The Free Dictionary defines print media as a medium that disseminates printed matter.²⁸ It is a very narrow definition and merely gives the idea that print media is a means of distributing printed material. The Oxford Reference defines it in greater detail. It states that broadly any written or pictorial form of communication produced mechanically or electronically using printing, photocopying, or digital methods from which multiple copies can be made through automated processes can be termed as “print media”.²⁹ To put it more concisely, it is any form of ‘ink and paper’ communication that is not hand-written or hand-typed, including books, circulars, journals, lithographs, memos, magazines, newspapers, pamphlets, and periodicals.³⁰

2.2.3.3 Electronic media

Even while print media was in market, a new form of media started coming into daily use, namely the “electronic media”. The Cambridge Dictionary defines “electronic media” as ways of communicating information that are electronic rather than using paper, i.e. television and internet.³¹ The Business Dictionary defines “electronic media” as broadcast or storage media that take advantage of electronic technology. They may include television, radio, internet, fax, CD-ROMs, DVD and any other medium that requires electricity or digital encoding of information.³² Electronic media is information or data that is created, distributed and accessed using a form of electronics, electromechanical energy or any equipment used in electronic communications. Access to electronic media can be had through

²⁷ Journalism in the Age of Social Media, Reuters Institute Fellowship Paper, University of Oxford 2010 Available at <http://youngjournalistsjourney.wordpress.com/2015/02/08/media-2-0/>

²⁸ Available on www.thefreedictionary.com/print+media (Visited on 9.1.2018)

²⁹ Available on www.oxfordreference.com/view/10.1093/oi/authority.20110803100346392 (Visited on 9.1.2018)

³⁰ Available on www.oxfordreference.com/view/10.1093/oi/authority.20110803100346392 (Visited on 9.1.2018)

³¹ Available on dictionary.cambridge.org/dictionary/English/electronic-media (Visited on 9.1.2018)

³² Available on www.businessdictionary.com/definition/electronic-media.html (Visited on 9.1.2018)

electronic devices like television, radio, computer, cell phones, etc. which transport information to and from us by means of electronic involvement.³³ Thus, electronic media is usage of electronic devices for communication. It differs from the earlier print media in terms of speed and accessibility because it is a faster mode of communication than the print media. Also, it can be accessed on any electronic device and not necessarily on any single base like paper in case of print media.

2.2.3.4 New media

Formerly, computers were made and used for making a man's work easy. Complicated and long calculations, equations, entering, storing and sending data, making attractive presentations, playing inbuilt games, etc. were some of the major functions of computer. The rise of digital technologies in the last decade that also work on the basis of computers and internet have led to availability of products and services that provide information as well as entertainment. Today, social media, storing and sharing pictures and videos, personal blogs, news websites are a major use of computers and the same are typically termed as "new media". New media maybe referred to as those forms of digital media that are interactive and thus incorporating two-way communication by use of some form of computing. The major advantage of new media over earlier forms of media is that it can be very easily processed, stored, transformed, retrieved, hyperlinked and easily searched for and accessed.³⁴ This is helpful considering how information today is coming from all parts of the world in great details. Again, it is from every segment, be it political, economical, sports, space, everyday affairs, etc. If all this information keeps multiplying without having an exact manner of retrieving it at the right time, the same will be utterly useless.

Social media is also a part of new media. It may be defined as a group of internet-based applications that build on the ideological and technological foundations of the worldwide web which allows the creation and exchange of user-generated content.³⁵ Social media has actually democratized media. One-way

³³ Available on www.catgraphics.co.za/index.php/media-solutions/electronic-media (Visited on 9.1.2018)

³⁴ Available on online.seu.edu/what-is-new-media/ (Visited on 10.1.2018)

³⁵ Andreas Kaplan, Michael Haenlein, "Users of the world, Unite! The Challenges and Opportunities of Social Media" (2010) 53(1) Business Horizons 61

conversations between anchor/author and viewer/reader are now two-way in realtime. The benefits this brings to transparent, robust journalism far outweighs any collateral damage such a free and at times fiery exchange can cause.³⁶ In the world of social media, the line between citizen and journalist has become increasingly blurred. A person even though without any previous experience in journalism, needs a smartphone or laptop to share information on a social network to write an article or a blog.³⁷

The term ‘new media’ covers the emergence of digital, computerized or networked information and communication technologies in the later part of 20th century. Most technologies described as “new media” are digital and they can be manipulated, networked, interacted, compressed and dense. While cyberculture is the study of various social phenomena that are associated with the internet and network communications, New Media is concerned with cultural objects and paradigms. They are cultural objects which use digital computer technology for distribution and exhibition and include but not restricted to internet, web sites, computer multimedia, etc. The language of New Media is based on the assumption that all cultural objects that rely on digital representation and computer-based delivery do share a number of common qualities. New media is reduced to digital data that can be manipulated by software as any other data. New Media operations can create several version of the same object.

Thus, New Media can be understood as the mix between older cultural conventions for data representation, access and manipulation and newer conventions of data representation, access and manipulation. i.e. as seen on several news channels today, news is communicated by the newsreader as was traditionally done and simultaneously, softwares are used that graphically represent the same through animations, scrolling news, etc.³⁸

³⁶ Merchant Minhaz, “Are Supreme Court judges right in saying social media must be regulated?” (Available at <https://www.dailyo.in/lite/politics/supreme-court-judges-social-media-trolls-free-speech/story/1/20059.html>) (Visited on 5.11.2018)

³⁷ Laura Click “From Sketch Pads to Smart Phones: How Social Media has changed coverage of the Judiciary” (Available at <https://www.ncsc.org/home/social-media/2-4-how-social-media-has-changed-coverage-of-the-judiciary.aspx>) (Visited on 5.11.2018)

³⁸ B.K. Chaturvedi and Dr. S.K. Mittal, *Mass Communication – Principles and Practices*, 828 (Global Academic Publishers 2ndedn., 2016)

2.2.3.5 Media Convergence

Convergence refers to content traditionally confined to one medium appearing on multiple media channels.³⁹ Convergence is the integration of mass media, computers and telecommunications into a common technological and institutional base.⁴⁰ Accordingly, media convergence is the phenomenon involving interconnection of information and communications technologies, computer networks and media content. It brings together the computing, communication and content – and is a direct consequence of the digitization of media content and popularization of internet. Media convergence transforms established industries, services and work practices and enables entirely new forms of content to emerge.⁴¹

As man is currently living in an information society due to the ever-growing and ever-changing technological scenario, he has several sources of information to his end. Starting from print media which was the earliest form of media to radio, TV and computers, which are a major form of electronic media and internet today via its platform called “social media” - have all led to giving a new image to conventional mass media. This merge up of all forms of media is known as the media convergence. The said convergence can be found visible in rise of the internet, integration of communication technologies, merging of media empires, changing regulations, etc.⁴² Media convergence refers to different forms of media converging. This may reflect the convergence of types of content, such as advertising that is incorporated within the story line of a motion picture. The term is also used to refer to technological convergence.⁴³ It is a term referring to the merging of previously distinct media technologies and media forms resulting from digitization and computer networking.⁴⁴

³⁹ Joseph Turow, *Media Today – An Introduction to Mass Communication* (Routledge, 3rd Ed., 2009)

⁴⁰ Straubhaar and LaRose, *Media Now – Communications Media in the Information Age*, 5 (Wadsworth/Thomson Learning, California, 2nd edn., 2000)

⁴¹ www.britannica.com/topic/media-convergence (Visited on April 26, 2017)

⁴² Straubhaar and LaRose, *Media Now – Communications Media in the Information Age*, 5 (Wadsworth/Thomson Learning, California, 2nd edn., 2000) (Bibliography)

⁴³ Jean Folkerts and Stephen Lacy, *The Media in your Life – An Introduction to Mass Communication*, 12 (Pearson Education, England, 2004)

⁴⁴ www.thecanadianencyclopedia.ca/en/m/article/media-convergence/ (Visited on April 26, 2017)

Traditionally, all throughout the history, media was referred to as any form of media, namely the print media which included newspapers, books, magazines, etc. the electronic media, which included television, radio, telegraph, etc. and the social media which includes social networking websites, blogs, etc. All were considered distinct technologies and all belonged to their respective industries. However, since the digitization and computer networking have merged, they have resulted in breaking down this compartmentalized media structure leading to the integration of all media as well as enabling immediate and global exchange of every kind of content. This convergence is visible in several forms, i.e. rise of internet, integration of communications technologies, merging of media empires, new lifestyles, new careers, changing regulations and shifting social issues to name some of them.⁴⁵ Today multiple forms of media content – books, radio and television programs, music, movies, newspapers can be accessed on computers or smart phones at one's convenience and without any cost.

2.3 Development of media

Man cannot live in isolation. He needs to communicate with other people of his kith and kin, peer groups, family, relatives, society, and so on for his needs, obtaining and passing information, keeping in touch with current affairs, etc. When the number of people went on increasing, more and more groups were formed and almost everyone needed to communicate with one another. Initially it was a difficult task considering how the people were spread all across the world and there being no major forms of communication except talking, exchanging views and opinions in person, sending letters, etc. In the recent past, media world has seen a significant and remarkable change. Apart from the electronic media, which mainly consisted of television and radio, now there are several new electronic devices which are faster and more convenient. Laptops, palmtops, electronic notebooks, iPads, smartphones, etc. have changed the way how communication is made. No more a man needs to sit glued in front of a television screen at his home and wait for the evening slot in order to get the world or local news. Similarly, even women or children need not stay back and

⁴⁵Straubhaar and LaRose, *Media Now – Communications Media in the Information Age*, 5 (Wadsworth/Thomson Learning, California, 2ndedn., 2000) (Bibliography)

wait for their favorite daily soaps or live sports events. Modern day technology has brought it all to the fingertips of a person, wherever he is, whenever he wants it. Satellites, internet connectivity and faster and easier devices now help in communicating and broadcasting news events, sports events, daily soaps, and almost everything that used to be a exclusive part of television sets alone, in the very hands of man.

The media in India is not a homogeneous institution nor is it a single institution. Apart from the differences of the medium, the print and the electronic, it consists of several independent, autonomous and heterogeneous units. These units are run in different languages, at different levels, from village to the national, by individuals representing different educational, social, cultural and ethnic backgrounds and operated for different considerations and with different motives. There are big, medium and small newspapers with circulation ranging from about 100 to 1200000. Some have editions not only from capitals of different States, but also from each district of some States. Some newspaper groups and electronic media outlets have newspapers and channels in different languages while some media barons run both the print and electronic media.⁴⁶

2.3.1 Evolution of media timeline

A detailed timeline of the major media inventions starting from the earliest form of communicating through printed material, development of print media and eventual evolution of electronic mediaas well as recent rise of internet and smartphones can be drawn up as below⁴⁷:

Period	Event
2000 yearsbefore birth of Christ	Mediterranean civilization used technology to create a system of movable type of pressing signs into clay.
600 AD	Chinese were the first to invent the art of printing. They made wooden blocks to print letters. This was started during the

⁴⁶ Sawant P.B., Tasks for a New Society (4 Mainstream, Nov. 20, 1999)

⁴⁷ Briggs, A. & Burke, P. *A Social History of the media: From Gutenberg to the Internet.* (Cambridge, UK: Polity, 2005)

	period of Tang Dynasty in 600 AD.
1041	Chinese printer Pi Sheng printed books using movable type made of hundreds of clay blocks bearing Chinese ideograms.
1295	The said printing technology was introduced to Europe when Marco Polo returned from his travels in China.
1446	Development of movable metal type by Gutenberg. Wood was carved so that letters stood in relief on tiny blocks that could be rearranged into different words. Blocks were then inked so that multiple copies of documents could be made.
1455	Gutenberg's assistant Peter Schoffer realized that metal could be used instead of wood to produce cleaner letters and remove the fuzzy look that the wood used to generate. He used this method to print the English Bible.
1490	Printed books widespread in Europe
1500	Literacy grows and books began to be published in thousands and circulated in much larger numbers
1500	Printing presses with Gutenberg technology were setup in every European city
1501	Aldo Manuzio designs a smaller and less expensive book to replace larger ones. It turns out to be the beginning of modern paperback book editions.
1560	News-sheets with serial numbers started being printed in some towns of Germany and Switzerland
1618	Weekly newspapers started coming out in English, French, Dutch and German languages from Amsterdam in Holland.
1621	English printers started their own news sheets.

1639-1640	Puritans ship modern printing press to American colonies and print America's first book, <i>The Bay Psalm Book</i> – delivered to Cambridge, MA
1640	Cambridge Press issued first book in British North American colonies as well as religious pamphlets and materials.
1665	Oxford Gazette later renamed as London Gazette was started. It was published twice in a week.
1690	Ben Harris, a British journalist, printed <i>Publick Occurrences</i> , first newspaper in the English colonies
1702	First Daily newspaper <i>The Daily Courant</i> made appearance in England.
1704	John Campbell, an American, published <i>Bostob Newsletter</i>
1741	Andrew Bradford & Benjamin Franklin introduced competing magazines in British colonies. Meanwhile, weekly newspapers existed in larger colonial cities, reprinting items from Europe and each other.
1783	First daily newspaper of America was printed in Pennsylvania.
1790	First U.S. copyright law was enacted.
1791	American Congress passed First Amendment to the Constitution allowing for Freedom of the Press
1822	Babbage invents the computer
1832	Books began getting published with paper jackets
1860	'Dime novels' are printed on cheaper quality of paper for increasing the sales
1875	By this time, US had as many as 257 public libraries where

	citizens could access books freely. Cheaper reprints also began getting published in series called 'libraries'.
1876	Graham Bell invented the telephone
1877	Thomas Edison introduced phonograph which could record and play back sound. The print media i.e. books, newspaper and magazine industries continued to flourish.
1844	Telegraph invented by Morse.
1846	Newspapers begin to use telegraph to send news.
1888	William Dickson devised motion picture camera.
1888	Hertz transmits and receives first radio waves
1895	Guglielmo Marconi transmitted first message by radio waves. Not only could news travel from its source to an editor's desk as fast as the wires could carry it, but news also could travel from the editor or commentator to the public as fast as it could travel across the air waves.
1920	Press release was invented
1927	Philo Farnsworth discovered how to pick up moving images electronically for live transmission. Radio Act creates commission to allocate radio frequencies
1932	U.S. movie industry institutes voluntary censorship
1933	Nazis began book burning in Europe
1934	Federal Communications Commission was established Communications Act covers broadcasting and telecommunications

1939	Pocket books entered paperback market
1941	Mass distribution system was started for increasing the book circulation
1948	Invention of transistor radio First cable television system came into existence.
1949	First commercial electronic computer is produced
1962	First communications satellite, first digital phone network and earliest pagers came into existence.
1969	US military established computer network that became known as 'internet'.
1978	Cellular telephone service began in United States
1980s	National Science Foundation creates the basis of the Internet
1986	Electronic Communications Privacy Act introduced; American Encyclopedia was published on CD-ROM
1991	Internet made available for commercial use HTML code was written and it marked the beginning of World Wide Web (www). This creation set the stage for current uses of the book.
1995	Radio begins transmitting over the Internet; Books started being sold online
1996	Telecommunications Act and Communications Decency Act passed.
1998	Newspaper, music sites proliferate on internet US alone had as many as 70000 book titles in circulation and

	nearly 50000 publishers
2000s	Growth of broadband as a medium of accessing internet
2001	E-books started getting published.
2003	Online retailer Amazon.com scanned entire texts of nearly 120K books for internet users to buy online and thus increased the demand for electronic books as compared to the traditional printed books.
2007	Amazon Kindle was invented. It was the first automated reading device and revolutionary platform for displaying e-books or other text for readers. ⁴⁸
2008	BookSnap technology was developed. It helped in making scanning process of books quicker thus making digital PDF format books more readily available in electronic format.

2.3.2 Evolution of Print Media

The history of print media is an ongoing cycle of several varying factors such as innovation in science and technology, challenges rising due to newer forms of media, changes in society occurring due to media, attempts by government to restrict media's political powers and also anticipations by public for improving the newspaper quality and better features. The evolution of print media can be studied further by dividing the evolution under two major heads viz., evolution of print media in the world and evolution of print media in India:

2.3.2.1 Evolution of print media in the world

After invention of print, the various forms of print media started coming into daily use across the world. The major forms of print media are discussed below:

⁴⁸ Sarah Dyer, Com 9660 (Evolution of the Book – A Historic Timeline, 2nd Ed., 2000)

2.3.2.1.1 Newspapers

Newspapers are one of the earliest forms of information communication available today. Newspapers provide ample information on current affairs, political events, sports, weather, international news, science & technology, etc. Not only information but even through photojournalism, newspapers provide an insight to what is taking place across the world. Originally, newspapers were printed on a weekly basis, but today, we have daily newspapers and hence it is the responsibility of print media to provide the most accurate picture of what it is publishing, because it is the duty of media to give a fair and unbiased picture of the world before the society at large. In ancient Rome, “Acta Diurna” or government announcements were published regularly. They were the earliest form of newspapers. “The Peking Gazette” published from China is considered the first newspaper. In initial stages, it was handwritten and distributed to the readers but later, it began to be printed and circulated.

According to the World Association of Newspapers, the first newspaper in modern sense was published by Johann Carlous in 1605. In 1609, another newspaper was started from Germany called “File” and from Venice known as “The Gazette”. Even in USA, a newspaper called “Publick Occurrences” and “Daily Paper” that started in U.K. were forced to close down very soon enough.

A newspaper commonly has the following contents namely:

- News relating to political affairs, current events, global happenings, local news, etc.
- Graphics i.e. political cartoons, comics, information graphics like data, graphs, tables, etc.
- Opinions, i.e. editorial opinions on issues that affect the society, views from distinguished writers, editors, authors, etc.
- Advertisements, i.e. classified ads, display ads, etc.
- Photojournalism or telling a news story with the help of photographs of actual events taking place.

Thus, a general newspaper is a mixture of several forms of story telling so that it can reach out to all forms of audiences in society. Simultaneously, we also have special newspapers which carry news stories of a specific nature or in the light of a single

area only. Thus, newspapers like The Economic Times or The Financial Express greatly cover the economic background of the nation, share market details, news features relating to business world, etc. Worldwide, newspapers are more often private and subject to less government scrutiny as compared to electronic media. Newspapers do not use public resources such as spectrum of radio waves and unlike broadcast, cable TV or telephones, they do not require government involvement in setting technical standards. Newspapers do often depend on government controls over newsprint production or importation, but as countries grow more democratic they tend to relax such controls and to treat newsprint as just another business.⁴⁹

2.3.2.1.2 Books and magazines

Magazines began to develop in the early 1700s, at about the same time as newspapers. The first American magazines published were American Magazine, General Magazine and Historical Chronicle. They were started in 1741, almost 10 years after the magazines originated in Great Britain. During the American Revolution from 1775 to 1789, many magazines also took a more political tone. Thomas Paine edited Pennsylvania Magazine which urged revolution in 1775-1776. Many magazines of the same period were primarily political essays, though many also had humor and topics of other subjects. After the American Revolution, a new sense of cultural independence fostered new magazines. Early American magazines were aimed at the better-educated and wealthy elite and a small but growing middle class. Portfolio (1799) was the first magazine of political nature that achieved a vital nationwide circulation. The Saturday Evening Post (1821-1969) was a literary weekly magazine that became immensely popular. It covered weekly events, politics, art, short stories, reviews, etc.

The Industrial Revolution that began in England in the late 18th century had a major impact on magazine technology.⁵⁰ Likewise, the rise of magazines into a major mass medium was propelled by some of the factors that also drove mass newspapers, i.e. increased literacy, improved print technology, greater personal income, lower

⁴⁹ Straubhaar and LaRosse, *Media Now- Communications Media in the Information Age*, 496 (Wadsworth, California, 2ndedn. 2000)

⁵⁰ Jean Folkerts and Stephen Lacy, *The Media in your Life – An Introduction to Mass Communication*, 168 (Pearson Education, England, 2004)

production costs and growing urban population. Also, magazines gave consumers more choices than ever before and were published with specific genres like investigative magazines, digests, pictorial magazines, news magazines, etc.⁵¹ Today, across the world, there are magazines for endless topics like beauty and fashion, business and commerce, art and craft, education and career, health and grooming, photography, automobiles, electronics, science and technology, etc.⁵²

2.3.2.3 Origin of press in India

The print press was the first major form of communication to the public at large. Newspapers followed by books, magazines and other forms of printed material were published and circulated in various parts of states for sending information whether local, national or even international. Photo stories also found space in print media as photojournalism came into existence and journalists started telling news through a single picture itself. The same was not possible when news was relayed through radio thus creating a limitation. As the world started welcoming various forms of print media, the effect of the same was also eventually visible in India. The major events of origin of press in India are as under⁵³:

Period	Event
1556 A.D	Printing press introduced in India.
1780	Englishman named J.A Hichey started the first English Newspaper Bengal Gazette at Kolkatta.
1784	Another paper named Calcutta Gazette was started
1785	Richard Johnson started Madras Courier published from Chennai
1789	Bombay Herald became the first newspaper to be published from

⁵¹ Straubhaar and LaRosse, *Media Now- Communications Media in the Information Age*, 65 (Wadsworth, California, 2ndedn. 2000)

⁵² B.K. Chaturvedi and Dr. S.K. Mittal, *Mass Communication – Principles and Practices*, 32 (Global Academic Publishers 2ndedn., 2016)

⁵³ www.shareyouressays.com/103996/history-of-journalism-and-the-evolution-of-print-mediaessay (Visited on April 26, 2017)

	<p>Mumbai.</p> <p>Generally, these newspapers printed things concerning with and mainly being of interest to the British residents in India. As there was no freedom of press nor any press related laws in India during that period, authorities could use censorship as well as pre-censorship provisions on these newspapers.</p>
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The publishing and circulation of newspapers underwent a remarkable growth during the First World War. The oldest and most famous newspapers in India are⁵⁴:

1832	Bombay Samachar (Gujarati)
1838	Times of India (English)
1864	Pioneer (Lucknow)
1868	Amrit Bazar Patrika (English)
1888	MalayalaManorama

2.3.3 Evolution of Electronic Media

After print media, electronic media marked a new dawn in the communication system. Electronic media provided much more than what the traditional print media offered. Print media could only send information through books, newspapers and magazines and it could publish only photographs. Also, what was communicated in print was already a thing of past. Electronic media on the other hand, could send information through use of voice, pictures, videos and even broadcast live coverages.

People could hear news through radio, watch movies, documentaries, etc. on television sets and even in cinemas. Electronic media gave birth to new forms of entertainment as well as education.

⁵⁴www.shareyouressays.com/103996/history-of-journalism-and-the-evolution-of-print-mediaessay (Visited on April 26, 2017)

2.3.3.1 Audio Media

Radio was the first electronic mass medium and politicians, corporate groups, advertisers, etc. easily recognized its potentialities. Radio allowed millions of people throughout the nation to listen simultaneously to the same message. Today, even though several new electronic technologies are available, radio has still not lost its fame and people everywhere use it as much as any other mass medium for information, news and entertainment.⁵⁵ As mentioned in timeline above, Edison developed phonograph in 1877 which became a major breakthrough in the history of audio media and a vital mass medium. After World War I ended, over 2 million players were being made and sold annually by over 200 manufacturers. The sales of records also soared from 23 million in 1914 to 107 million in 1919. Later, Marconi created the wireless telegraph using radio waves to carry messages in Morse Code by use of long and short bursts of radio noise. It was the first ever practical use of radio and also a major step in its development.⁵⁶ By 1915, technology to send and receive music and voice became well established. Radio stations were setup which ensured that radio would be a mass medium for sending content to several radio owners rather than remaining a wireless telephone.

During the 1920s, radio became a mass medium due to increasing number of radio stations, households with radio receivers, forms of financing radio and nature of programming. In US itself, the number of licensed commercial AM stations increased from 30 in 1922 to 618 in 1930. Network broadcasting flourished as companies like National Broadcasting Corporation, Columbia Broadcasting System, Mutual Broadcasting Network and American Broadcasting Company joined and competed with each other by gradually increasing their network stations.

During the 1930s and 1940s, radio became the electronic bridge to world affairs, quality entertainment, national sports events and urban progress. The 1930s and 1940s were the Golden Age for radio. The number of homes with receivers, the interest of advertisers and the types of programming expanded rapidly. News,

⁵⁵ Jean Folkerts and Stephen Lacy, *The Media in your Life – An Introduction to Mass Communication*, 223(Pearson Education, England, 2004) (Bibliography)

⁵⁶ Straubhaar and LaRosse, *Media Now- Communications Media in the Information Age*, 132 (Wadsworth, California, 2ndedn. 2000)

comedy, drama, mysteries and entertainment news emerged in radio programming. As the medium matured, audiences began to regard radio as a reliable source of news and information. Between 1930 and 1940, the number of radio sets in United States increased from 13 million to 41 million.⁵⁷

Radio networks did well through 1947 about the same time that film theater attendance peaked (1946), but as television quickly rose in prominence, becoming the main national source of mass entertainment, network radio began to slip. The number of network affiliates dropped from 97% of all AM stations in 1947 to 50% in 1955, while network revenue dropped even more. Despite this major setback, the downfall of radio was partially revived by the growth of FM radio in 1960s. FM radio had higher fidelity sound but a shorter range essentially only within the line of sight of the radio transmitter. In 1982, a new round in the recording format wars began with the introduction of compact disc recording. This marked the beginning of digital innovation that would eventually change many aspects of both the recording and radio industries.⁵⁸

When internet-based radio became feasible during the mid 1990s, the new medium required no licensing and stations could broadcast from anywhere in the world without the need for over the air transmitters.⁵⁹ Between 1991 and 2001, there was a substantial rise in radio programming delivered over the internet. Number of stations programming over the internet increased from 56 stations to as many as 5000. It was estimated that despite erratic quality, by the end of 1990s, 31 million people worldwide would be listening to internet radio everyday. Post internet radio, satellite radios were developed. As satellite service accommodated radio listening on long trips, signals were not lost as car moved from one signal area to another. The development of digital radio and installation of satellite receivers in cars gave satellite a big boost.⁶⁰

⁵⁷ Jean Folkerts and Stephen Lacy, *The Media in your Life – An Introduction to Mass Communication*, 227(Pearson Education, England, 2004) (Bibliography)

⁵⁸ Straubhaar and LaRosse, *Media Now- Communications Media in the Information Age*, 139 (Wadsworth, California, 2ndedn. 2000)

⁵⁹ B.K. Chaturvedi and Dr. S.K. Mittal, *Mass Communication – Principles and Practices*, 511 (Global Academic Publishers 2ndedn., 2016)

⁶⁰ Jean Folkerts and Stephen Lacy, *The Media in your Life – An Introduction to Mass Communication*, 243(Pearson Education, England, 2004)

2.3.3.2 Visual Media

The history of television is a history of technology and policy, economics and sociology and entertainment and news. Since its advent, television has not remained as it was invented but has changed drastically decade after decade. From the traditional black and white television set boxes to modern day 3D television sets, TVs have come a long way ahead. Today, several households have more than one television and family members can choose watching their genre individually in comparison to how one television set was surrounded and watched by the entire locality in the initial years. Television has revolutionized the communication of news, politics and information. It has been a major breakthrough in communicating and entertaining. Media would not have developed as much as it has today, had it not been for television. The major events in invention of television are as under⁶¹:

Year	Development
1884	German inventor Paul Nipkow invented first rotating disk that allowed transmission of pictures over wire. It was the first electromechanical television scanning system in the world. The rotating disk would rotate at a fast speed, while light passed through the holes to create a picture on a screen.
1920	Vladimir Zworykin invented cathode ray tube called kinescope and started a new era in the history of TV. Before the kinescope was invented, televisions were mechanical. The cathode ray tube was not required just for transmission but transformed the television into electronic device.
1923	Charles Jenkins invented mechanical television called radiovision which transmitted one of the first moving images. Jenkins promoted his theories in technology of television alongwith other inventors when they transmitted the first live pictures onto a screen. This pioneer in the history of television is also famous for

⁶¹ Sabatejulia.wordpress.com (Visited on May 3, 2017)

	creating first television station in North America.
1924	John Baird invented the first pictures in motion that were televised in Europe. He later transmitted the human face onto a screen and during World War II invented the first color picture tube. Though colour televisions became common in American households much later, Baird significantly contributed to the history of television.
1930	American farmer named Philo Farnsworth made a huge progress in history of TV when he discovered a way to transmit images onto a screen by the use of 60 horizontal lines that made the picture clearer. He also invented dissector tube which became the basic device for today's television sets.
1939	Electronic televisions were introduced to US.
1950s	By 1955 almost half the houses in US had started using televisions. In 1953, colour broadcasting was started
1960s	Dramatic changes took place in television sales and technology as better technology started being available commercially
1970s	Color TV sets became popular and affordable. First home video cassette recorder was invented.
1990s	900 million TV sets were found to be used around the world.
2000s	Television signals were started being transmitted in both analogue and digital formats
2010s	3d television was invented

In India, television sets entered the consumer market in 1959 with black and white televisions. For 30 years, the only source of entertainment was one national channel namely Doordarshan which catered to all sorts of programs namely entertainment, current affairs, informative, etc. The economic reforms of 1991 as well as the

liberalized access to communication technology allowed foreign media companies entry into the country and Indian companies' entry into television. During that period itself, attempts at delivering news in different manners had begun with programs like The World This Week and News Tonight ignoring the government press release style of DD news bulletins and giving detailed news with indepth analysis. The first 24x7 news channel "Star News" began in 1998 followed by "AajTak" in 2000 and by 2014 there were 400 in more than 15 languages.⁶²

2.3.3.3 Internet

Internet has changed the manner of communicating today. It can be easily called the basis of all of the prevailing social media as we see today. The picture of media would be incomplete if the history internet remains unmentioned. It has left behind all other forms of media in terms of speed, accuracy and authenticity. Even though each form of media had its major era and a setback, the internet has found a unique place and seems here to stay for a longer time period than any other form of media ruled.

Affectionately known as the "Information Superhighway" internet has the power to communicate about anything under or even beyond the sun. Websites can be accessed in a jiffy with the feature of a "hyperlink" which instantly connects to the referred document or topic. These are known as hypertext documents by which online articles, webpages, and other information across the world can be cross-referred to any document. Clicking from one topic to another within the same document takes one to different sites, in seconds without exiting from present document thus weaving a "web". The huge amount of information on the super highway can be easily and effortlessly accessed through browsers which are special software that list out the various topics available on the net without bogging one down with technical sounding sites or addresses.⁶³The major developments in how internet became commonly used world across are as under:⁶⁴

⁶²Shailaja Bajpai "The World Came Home: The History of Television in India" Available at <http://www.indianexpress.com/article/entertainment/television/the-world-came-home-2932048/> (Visited on 15.2.2018)

⁶³ Gupte Aamod, "WWW: Wonderful World of Wisdom" April 99, The Lawyers Collective

⁶⁴ Kim Ann Zimmermann, "History of Computers: A Brief Timeline" (Available at <http://www.livescience.com/20718-computer-history.html>) (Visited on May 8, 2017)

Period	Development
1965	Two computers at MIT Lincoln Lab communicate with one another using packet-switching technology.
1968	Beranek and Newman Inc. unveiled the final version of Interface Message Processor specifications.
1973	Global networking became reality as the University College of London (England) and Royal Radar Establishment (Norway) connect to Advanced Research Projects Agency Network (ARPANET). The term “internet” was born.
1974	The first Internet Service Provider (ISP) was born with the introduction of a commercial version of ARPANET, known as Telenet.
1976	Queen Elizabeth II hit the “send button” on her first email.
1979	USENET formed to host news and discussion groups
1981	The National Science Foundation provided a grant to establish the Computer Science Network (CSNET) to provide networking services to university computer scientists.
1983	The Domain Name System (DNS) established the familiar .edu, .gov, .com, .mil, .org, .net, and .int system for naming websites.
1984	William Gibson, author of “Neuromancer” was the first person to use the term “cyberspace”.
1985	The first dot-com domain name was registered on March 15, years before the World Wide Web marked the formal beginning of Internet history. The Symbolics Computer Company, a small Massachusetts computer manufacturer registered Symbolics.com.
1990	Tim Berners Lee, researcher at CERN, the high-energy physics

	laboratory at Geneva developed HyperText Markup Language (HTML), giving rise to the World Wide Web.
1991	CERN introduced the World Wide Web to the public.
1992	The first audio and video were made available on internet. The phrase “surfing the internet” started becoming popular.
1993	The number of websites reached 600 and the White House and United Nations went online.
1996	Sergey Brin and Larry Page developed the Google search engine at Stanford University
1999	The term Wi-Fi became part of the computing language and users begin connecting to the Internet without wires.
2004	Mozilla’s Firefox 1.0 introduced against Microsoft’s Internet Explorer.
2007	iPhone was launched and it brought several computer functions to become a part of smartphone.
2010	Apple unveiled the iPad changing the way consumers viewed media and jumpstarted the dormant tablet computer segment.

The internet is often described as the ‘information superhighway’. While books, newspapers, television and radio can be compared to a road where the flow of traffic is well organized, access being provided at major intersections, the internet offers thousands of capillary junctions and sprawling, unchartered access to obscure nether regions of the mass media, much of it still under construction. This analogy serves to indicate the sheer enormity and scope afforded by the internet, which is the most important aspect of the world wide web or an international network of computers connected with one another. Compared to other media, the growth of the internet has been remarkably rapid. While the proportion of American households with cable television connections increased from 13 per cent of the total in 1975 to 60 percent

twenty years later, it took just four years for half the households in US to be connected to the world wide web from just a few in 1991. In 1993, the number of internet users was doubling every three months. At the end of 2007, according to Internet World Stats, the total number of internet users all over the world was 1.3 billion. The influence of the internet has created the need for some kind of regulation but the rapidity of its growth renders it difficult.⁶⁵

A simultaneous view is that while internet may help make expression less expensive and unmediated, it allows users to select information that conforms to their pre-existing views and to exclude opposing arguments through filtering technology. Thus, the user can now use the media to avoid being confronted with opposing points of view.⁶⁶

2.3.4 Evolution of Social media

The term ‘social media’ was unheard of till as long as 2000. However, today, almost entire world is a part of it in one way or the other. The term “social media” primarily refers to internet or cellular phone based applications and tools to share information among people. It includes popular networking websites like Facebook, Twitter etc. and bookmarking sites like Reddit. It involves blogging and forums and any aspect of an interactive presence which allows individuals the ability to engage in conversations with one another, often as a discussion over a particular blog post, news article or event.⁶⁷ It refers to forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages and other content like pictures, videos, etc.⁶⁸

According to Michelle Chmielewski, one of the founder members of Synthesio, a firm with team of global innovators dealing in social technology, social media is not about what each one of us does or says, but about what we do and say together, worldwide, to communicate in all directions at any time, by any possible digital

⁶⁵ParanjyGuhaThakurta, *Media Ethics – Making and Breaking News*, 210 (Oxford Press, 1stedn., 2009)

⁶⁶ Jacob Rowbottom, *Media Freedom and Political Debate in the Digital Era* Pg. 496 (2006) 69(4) MLR 489-513

⁶⁷Available at <http://www.businessdictionary.com/definition/social-media.html> (Visited on May 17, 2017)

⁶⁸www.merriam-webster.com/dictionary/socialmedia (Visited on May 17, 2017)

means.⁶⁹ While some use social media for expressing their opinions, others use it for keeping in touch with relatives, and yet many others use it for entertainment and leisure purposes. Such is the impact, that now it would be impossible to imagine a world without social media. Simultaneously, in addition to computers and laptops, which were mainly used for accessing the social media, during the last decade, “Fourth screen” technology – namely, smartphones, tablets, etc. has changed social networking and the way we communicate with one another entirely. What used to sit on our desks now conveniently fits in the palm of our hands, allowing us to effortlessly utilize functionality once reserved for multiple devices wherever we go. People may not be able to watch television sets for all day long but they can access social media through their smartphones for not only getting information of what is happening around the world but also keeping in touch with people who are miles away from them.⁷⁰

Developments of social media can be mainly divided in two parts namely the pre-internet period and the post-internet period. Invention of internet did not in itself create the world of social media. The pre-internet developments were relatively slow and social media emerged mainly after internet was invented and came in daily use. Some of the major developments that shaped the social media as we see today are as under⁷¹:

Year	Development
1979	<p>Bulletin Board Systems</p> <p>This was the first pre-internet online forum through which users could message each other and exchange, upload and download files through a central system that could be accessed from a modem.</p>
1980	<p>Usenet</p> <p>It operated in several ways just like the Bulletin Board Systems. It relied on constantly changing conglomeration of servers that shared</p>

⁶⁹<http://heidicohen.com/social-media-definition/> (www.synthesio.com/about) (Visited on May 17, 2017)

⁷⁰ Available at www.digitaltrends.com/features/the-history-of-social-networking/ (Visited on May 13, 2017)

⁷¹ Available at <http://www.ifactory.com.au/news/brief-history-social-media/> (Visited on May 15, 2017)

	messages in 'newsfeeds'.
1981	<p>CompuServe</p> <p>Though this service had initially originated in 1970s as a mainframe computer communication system, it expanded into the public domain during the 1980s. Through its main features, users could create and access online forums, share files, chat and message each other using internet based email addresses.</p>
1985	<p>AOL</p> <p>AOL became much more famous for spreading popularity of internet rather than its use as a social networking website. However, it was AOL that started member-created communities and a searchable member profile database.</p>
1995	<p>Classmates.com</p> <p>It was the first social media site which provided service of searching people online mainly the old and familiar school contacts.</p>
1997	<p>SixDegrees.com</p> <p>The name was based on the theory of Six Degrees of Separation suggesting that everyone is only six connections away from everyone else. It lasted from 1997 to 2001.</p>
2000	<p>By the year 2000, around 100 million people had access to the internet and people started using it for online social conversations and engagements mainly through discussions, chats and viewing each other's profiles.</p>
2002	<p>Friendster</p> <p>It was in several ways just a more popular and refined version of SixDegrees.com. Today, it does not fall in social media category but</p>

	exists as an online gaming network.
2003	<p>LinkedIn</p> <p>It became immensely popular in business communities. Even today it has managed to not only survive but even flourish and progress.</p> <p>MySpace</p> <p>During its initial period itself, over 1 million signed up on this website thus redefining the social media. However, its fame did not last long and gave away to the highly competitive social media market.</p>
2004	<p>Facebook</p> <p>It became the most famous social media website with as many as 1.79 billion active users. Its main features included NewsFeed which kept updating as users submitted their posts, photos, comments, etc. throughout the day. It is also considered as the pioneer of social media marketing for business.</p>
2005	<p>YouTube</p> <p>YouTube became famous for its video uploading facility. Today, a variety of videos ranging from full-fledged movies, sport events, music, political debates, TV serials, and even personally shot videos can be found on YouTube. It was purchased by Google a year after it was founded.</p>
2006	<p>Twitter</p> <p>Initially Twitter competed with Facebook for global domination but due to its character limit of 140 characters while posting or commenting anything played a major role in limiting its audience. Still, today it has an estimated 320 million users.</p>

2009	<p>WhatsApp</p> <p>WhatsApp started as an alternative to SMS or short message service available in regular mobile phones. The application now supports sending and receiving a variety of media: text, photos, videos, documents, location as well as voice calls. The messages and calls are secured with end-to-end encryption meaning that no third party including WhatsApp can read or listen to them. As the ‘About us’ link on its website suggests, “behind every product decision is our desire to let people communicate anywhere in the world without barriers.”</p>
2010	<p>Flickr</p> <p>It was one of the earliest photo sharing websites that leant solely on its facility of providing space to upload and share photographs online. Thus, it made people take photographs while travelling, eating, shopping, etc.</p>
2010	<p>Instagram</p> <p>Instagram changed the way world took photographs. Its main features included adding filters and hashtags to the photos so that people could search photos of similar nature easily. Similarly, with an array of filters, Instagram changed the way people edited their photos before sharing with the world. Today it is used by more than 600 million monthly users.</p>
2010	<p>Pinterest</p> <p>Pinterest provided its users the features of not only uploading pictures just like Instagram but simultaneously also scrolling through feeds and create virtual pin boards. Pinterest has continued to grow beyond its first big fans from the crafting and decorating communities.</p>

2011	SnapChat Snapchat's USP is that images or 'snaps' are auto-deleted after sometime. Its user base continues to grow with the company claiming to have over 160 million daily active users.
2014	WhatsApp was acquired by Facebook. Two years later, in Feb 2016, WhatsApp had a user base of over one billion making it the most popular messaging application.
2015	Periscope Periscope is Twitter's latest livestreaming app but not as famous as the Facebook Live

The above table suggests that social media is being used by different classes of people in different manners. Thus, people who want to communicate through opinions, ideas, witty remarks, sarcasm, etc. prefer to use Twitter whereas people who want to communicate through their photographs mainly use Instagram, Tumblr, etc. Yet more that people who are fond of watching videos from world over as well as sharing their own use YouTube. Likewise, Facebook and Whatsapp which are the most famous of social media are used by all classes of people alike to keep in touch with others. Thus, social media is famous because it caters to all classes of people. Communication that used to be only through speech and words can now be done through pictures and videos. It need not be only to those whom persons know but to the world at large. People have fans from worldover "following" them in Instagram and Twitter and opinions are being "tweeted" from miles across. Communication has now a new mode namely "social media".

2.3.4.1 Major platforms of social media

As discussed above, social media has seen rise of several platforms over a period of time. New platforms are introduced with better features and several of them are often targeted at an audience with specific likes. It is not just communicating function that is being performed by social media. For individuals, it is also expression of the self

be it through words, pictures or videos. Likewise, for corporates, it is the promotion of their products and discovering new market strategies. A leading statistical page “Statista”⁷² claims that in 2019, there will be around 258.27 million social network users in India, up from close to 168 million in 2016. Also, the most popular social networks in India are Facebook and YouTube followed by messaging app, WhatsApp.

Some of the major platforms of social media which have the maximum number of users throughout the world are as under:

2.3.4.1.1 Facebook

Facebook is a leading social media and social networking service company having its headquarters at California. It was founded in 2004 by Mark Zuckerberg who is also currently its Chairman and CEO. It has more than 2 billion monthly active users as of June 2017. The users can search people familiar or otherwise, across the world, post their photographs and videos, exchange messages, discuss current topics, launch event pages, promote company products, create group pages, discussion forums, play games, use software applications etc. As Facebook gives each user a profile space, every user can post his pictures, videos, activities, likes, personal favorites from any field on his page, which can be then seen or accessed by others with similar profiles. Even business companies rely on Facebook to promote their products by advertising on user pages. Due to its high popularity, it has often faced privacy issues from its users for which it keeps coming up with checks at regular intervals. Simultaneously, several cases of fake news and hate speech have also arose for which Facebook continues finding counteractive measures. Initially, Facebook was available only to Harvard students and only on personal computers but as its fame grew, the service became available worldwide and also on smartphones, laptops and tablets.

Almost every media house, news channel, political figure have their Facebook page, which keeps the latest news stories coming up on the social page. Again, all of them

⁷²Statista is an online statistics, market research and business intelligence portal. It provides access to data from market and opinion research institutions as well as from business organizations and government institutions in English, French, German and Spanish. As one of the world’s most successful statistics databases, the platform consists over 1500000 statistics on over 80000 topics from more than 18000 sources.

have high number of followers who keep sharing the news stories as and when they appear, thus spreading the news continuously. Considering the widespread news coverage and followers Facebook is getting, it also recently announced about creating a new news section in its video streaming platform which will exclusively feature breaking news stories.⁷³ While in a study conducted by Pew Research Center⁷⁴, it was found that as of August 2017, two-thirds (67%) of Americans report that they get atleast some of their news on social media, according to a statistical data page⁷⁵, in 2020, the number of Facebook users in India is expected to reach 262 million up from 194.11 million in 2017. The data signifies that world across, social media is becoming one of the largest platforms not only for entertainment or keeping in touch with friends and family but also for accessing day-to-day news as its users are increasing significantly in large numbers.

2.3.4.1.2Whatsapp

More than 1 billion people in over 180 countries use WhatsApp to stay in contact with family and friends at anytime of the day. It offers basic services like messaging and calling as well as advance services like sharing photos and videos, text and PDF files as well as creating groups for conversations with specific topics. Whatsapp was founded by Jan Koum and Brian Acton in 2009 but Facebook bought it in 2014.⁷⁶ However, it continues to operate as a separate app and aims at maintaining a rapid and reliable messaging service throughout the world. It is basically meant to work on smartphones but is also accessible on desktops though not in large numbers. In its most recent update, it launched an end-to-end encryption of all its messages and calls meaning that no third party including WhatsApp could access them. The update was made available to let people communicate through their product anywhere in the world without barriers. It has also come up in September 2017 with a separate business platform that enables companies to provide customer services to users at

⁷³ Jonathan Shieber “Facebook is creating a news section in Watch to feature breaking news” Available on “<http://www.techcrunch.com/2018/02/12/facebook-is-creating-a-news-section-in-watch-to-feature-breaking-news/>” (Visited on 12.2.2018)

⁷⁴ Elisa Shearer, Jeffrey Gottfried “News Use Across Social Media Platforms 2017” (Available at <http://www.journalism.org/2017/09/07/news-use-across-social-media-platforms-2017/>) (Visited on 12.2.2018)

⁷⁵ Available on <http://www.statista.com/statistics/304827/number-of-facebook-users-in-india/> (Visited on 12.2.2018)

⁷⁶ “About” – www.whatsapp.com

scale. In India itself, WhatsApp crossed 70 million monthly active users in India in 2014 which increased to 200+ in February 2017.

2.3.4.1.3 Twitter

Twitter is a multilingual news-oriented and social networking service site founded by Jack Dorsey in 2006. The users of Twitter can express themselves by “tweeting” on the page which are mainly in form of opinions and messages. The said tweets were initially restricted to 140 characters only but since November 2017, the number of characters has been increased to 280. Registered users can read as well as comment and post their own tweets while the unregistered users can only read what has been posted by others. While in 2012, more than 100 million users posted 340 million tweets a day, in 2016, it increased to 319 million monthly active users. Today, celebrities as well as political figures, both actively use Twitter in order to “tweet” the latest news from their side in a nutshell. The same can be “retweeted” by those following them, thus spreading the word ahead. Likewise, hashtags help in locating a topic and prevailing discussions related to the same. Again, as the characters of a tweet are limited, which were initially 140 and currently 280, it becomes easy to go through the several hundreds of news stories which are simultaneously flowing through the page by shifting the focus from one to another.

In a study conducted by Pew Research Center⁷⁷ aiming at understanding how news and information habits relate to the use of Twitter and Facebook in America, it was found that the rise in the share of social media users getting news on Facebook or Twitter cuts across nearly every demographic group. Yet another major finding was that when it comes specifically to news and information about government and politics, Facebook users are more likely to post and respond to content, while Twitter users are more likely to follow news organizations. Use of Twitter, thus grew among both users under 35 (55% to 67%) and those ages 35 and older (47% to 59%) while

⁷⁷ Michael Barthel, Elisa Shearer “The Evolving Role of News on Twitter and Facebook”, Available at <http://www.journalism.org/2015/07/14/the-evolving-role-of-news-on-twitter-and-facebook/> (Visited on 14.2.2018)

on Facebook, news use grew among both men (44% to 61%) and women (49% to 65%)⁷⁸.

2.3.4.1.4 YouTube

YouTube is an American video-sharing website founded in 2005 by Steve Chen, Chad Hurley and Jawed Karim and is parented by Google since its launch. It allows users to upload, view, rate, share, add to favorites, report and comment on videos as well as subscribe to other users. It offers a wide variety of user-generated and corporate media videos wherein majorly available content includes video clips, TV shows, music videos, films and trailers, short films, documentaries, audio recordings, live streams, etc. While all YouTube users can upload videos of a duration of 15 minutes each, those users strictly complying with community guidelines of the page may be able to upload videos upto 12 hours in length as well as live streams. Both private individuals as well as large production companies have utilized YouTube to grow their audiences.⁷⁹ As of July 2015, more than 400 hours of video content were uploaded to YouTube every minute and according to YouTube CEO Susan Wojcicki, more than 1 billion hours of content are consumed on the platform every single day of March 2017.⁸⁰

Since YouTube started gaining popularity amongst people of several age groups, citizens are creating their own videos about news and posting them. They are also actively sharing news videos produced by journalism professionals. Meanwhile, the news organizations are taking advantage of citizen content and incorporating it into their journalism. Finally, consumers or the viewer audience are open to news from both, citizens as well as professionals. It was also revealed that the most popular news videos on YouTube tended to depict natural disasters or political upheavals usually featuring intense visuals. Yet another major finding was that news events are inherently more ephemeral than other kinds of information but at any given moment, news can outpace even the biggest entertainment videos. People have an in-borne

⁷⁸ Available at <http://www.mediapost.com/publications/article/255762/breaking-news-facebook-and-twitter-a-popular-sour.html> (Visited on 14.2.2018)

⁷⁹ <http://en.m.wikipedia.org/wiki/YouTube> (Visited on 17.4.2018)

⁸⁰ Available on <http://www.statista.com/topics/2019/youtube/> (Visited on 17.4.2018)

curiosity and keenness to visually witness intense visuals like hurricanes, tsunamis, earthquakes, etc. as well as politically powerful speeches addressing problems of the nations amidst other issues. YouTube turned out to be an application for the people who need not stay before TV all the time waiting for such speeches or news but they could directly search in the YouTube application whatever they found appropriate or the most viral videos were already on the YouTube main list. Also, it was found that unlike in traditional TV news, the lengths of the most popular news videos on YouTube varied greatly.⁸¹ The high usage of YouTube for viewing news videos can be figured out from the fact that the number of views of the 20 most watched news videos on YouTube in the week following the earthquake in Japan in 2011 was as high as 96 million. Though the news media worldwide provided extensive coverage of the disaster and its aftermath, millions of people also turned to YouTube for viewing the “viral” videos which were recorded by the first-eye witnesses of the disaster themselves.

2.3.4.1.5 Instagram

Instagram is a mobile, desktop and internet-based photo-sharing application and service that allows users to share pictures and videos either publicly or privately to pre-approved followers as well as to worldwide users. It was created by Kevin Systrom and Mike Krieger in 2010 and is owned by Facebook since its launch. Users can also apply various digital filters to their images and add locations and hashtags to their posts which helps linking the photos up to other content with similar nature. As of September 2017, Instagram has 800 million monthly active users worldwide. In United States itself, the current Instagram penetration rate is 32%.⁸² However, despite seeing as high as 424% year to year growth in engagement, which is the largest increase of any platform, less than 40% of newspapers are on Instagram.⁸³

⁸¹ Available on <http://www.journalism.org/2012/07/16/youtube-news/> (Visited on 17.4.2018)

⁸² Instagram – Statistics and Facts Available on www.statista.com/topics/1882/instagram/ (Visited on 15.2.2018)

⁸³ Ashley Alexander “Why and How Newspapers should use Instagram” Available on <http://www.newsmediaalliance.org/newspapers-instagram/> (Visited on 15.2.2018)

2.3.4.2 Features of social media

After discovery and commercialization of computers, the computer networks or interlinking computers with one another played a major role in the eventual rise of social media. As the internet service was added to computers, socializing and communicating became even more convenient. Social media is a commonly known term today. There are three hallmarks of social media: Evolution, Revolution and Contribution. First, it is an evolution of how we communicate, replacing email in many cases. It's a revolution as for the first time in history we have access to free, instantaneous, global communication. Finally, social media is distinguished by the ability of everybody to share and contribute as a publisher.⁸⁴ Social media has evolved so rapidly in a short time span itself, it is almost a revolution in the world of communication and contribution thereto. No more is news and news reports an exclusive arena of journalists and news rooms alone. Anyone with a smartphone and internet connectivity can contribute to news-reporting as well as receiving news.

Social Media are the platforms that enable the interactive web by engaging users to participate in, comment on and create content as means of communicating with their social graph, other users and the public. Social media has the following characteristics:

- It encompassed wide variety of content formats including text, video, photographs, audio, PDF and Powerpoint.
- Allows interactions to cross one or more platforms through social sharing, email and feeds.
- Involves different levels of engagement by participants who can create, comment or lurk on social media networks.
- Facilitates enhanced speed and breadth of information dissemination.
- Provides for one-to-one, one-to-many and many-to-many communications.
- Enables communication to take place in real time or asynchronously over time.
- Is indifferent to devices. It can take place through computers, laptops, smartphones or tablets.

⁸⁴ Available at <http://heidicohen.com/social-media-definition/> (Visited on May 17, 2017)

- It extends engagement by creating real-time online events, extending online interactions offline, or augmenting live events online.⁸⁵

Interacting on social media on the go is more feasible in present world as compared to any other earlier form of communicating. The major reasons are the easy availability, accessibility and user-friendly nature of social media. Thanks to the internet and social media, the whole world has become interconnected and communication, entertainment as well as accessing worldwide information is just a fingertip away. Social media is a major change in how we get our information. Waiting for morning newspapers is passe. One can access news apps in his mobile right in his room even without switching on the TV. Now we get information, 24/7 and on the fly, from anywhere, online, on our phones, and through the social platforms. Social media allows us to network, to find people with like interests.⁸⁶ It is an ever growing and evolving collection of online tools and toys, platforms and applications that enable all of us to interact with and share information. Increasingly, it's both the connective tissue and neural net of the web.⁸⁷

Thus, social media can be said to be a modern day virtual world wherein all the activities which were earlier possible only through meeting people personally can be carried out without the need to meet them. Be it communicating to long distance relatives, making yourself heard to the people in respect of any current affairs, sharing your personal photos with everyone, finding the whereabouts of and chatting with old acquaintances, social media covers all possible aspects of communication in a much convenient and simpler way.

⁸⁵<http://heidicohen.com/social-media-definition> Heidi Cohen is the Chief Content Officer of Actionable Marketing Guide. It provides with marketing insights on social media, content marketing and mobile – including the ever expanding world of connected devices and the Internet of Things. (www.heidicohen.com/about) (Visited on May 17, 2017)

⁸⁶Gini Dietrich is the founder and CEO of Arment Dietrich, a digital marketing communications firm based in Chicago. She speaks on business-to-business topics such as social media bootcamp, new trends in digital communication etc. (www.armentdietrich.com/about) (Visited on May 17, 2017)

⁸⁷ Ann Handley is the chief content officer of MarketingProfs. It provides marketing experts to individual marketers, teams and even entire marketing organizations in large corporations. (www.marketingprofs.com) (Visited on May 17, 2017)

2.3.4.3 Social Media in numbers

Social media has become a necessity of modern day society. It has not only affected the frequency of communication greatly but several studies show that social media has had a severe impact on the conventional media. It has changed the reporting pattern of news channels, viewership patterns of audience as well as readership patterns of those who prefer to read newspapers and magazines. What people communicated to each other in person or through letters from distant countries can now be communicated through social media within a couple of minutes. Chats, Messengers, Video chats, live feeds, photo sharing, etc. have enhanced the quality of social media in the sense that not just communicating a short message, but completing it with every aspect possible – i.e. an emoticon or a photograph, a video clip or an album has now become possible. In fact, people even post and share more photographs, selfies and their present location, etc. mainly to either remain an active member on social media or often to grab attention of friends and family. All of these ever-increasing and simultaneously ever-improving features of social media have had their effect on the traditional forms of media too. As people tend to keep moving, commuting and travelling, it is not possible to have an access to television news channels all the time. Likewise, even newspapers have their limitations as to language and availability. In the wake of all this, social media which can be accessed through mobile phones, smartphones, digital notebooks, etc. has become the most used source of news throughout the world. Almost every newspaper now has its own website which in addition to regular online news also gives the option of accessing e-paper as well as e-archives which store the newspapers dating back to several months or years. Likewise, news channels also keep giving live feed as well as live TV option which broadcasts the same content as the news channel. Such developments have thus greatly affected the viewership patterns of news channels and readership patterns of newspapers. Some of the major statistics about current usage of social media are listed below⁸⁸:

- (i) 92% of teenagers are online every day and 71% use more than one social network. In total, 31% of the global population engage in social media.

⁸⁸ Available on www.ninjaoutreach.com/rise-social-media-facts/ (Visited on July 31, 2017)

- (ii) 1.23 billion people log onto Facebook every day for an average of 17 minutes. 18% of participants surveyed reported that they could not even go a few hours without checking their news feed.
- (iii) Every second there are on an average 4.17 million likes and 293000 statuses being updated.
- (iv) Even the traditional sources of news, namely TV, radio and newspapers have been greatly affected by the rise of social media. 85% of social media users surveyed said that they relied on Twitter and Facebook for their news when they wake up. 68% of millennials in particular, consume most of their news through Facebook and 24% of high school students get their news through Instagram. So wide is the spread of social media that even the traditional sources have found themselves using it for staying in the existing market. Thus, while news channels have their websites being updated with latest video footages, newspapers have websites with e-papers as well as archives of papers since several years.

Different social networks have different characteristics. Facebook attracts a more mainstream and slightly older audience but has also become the default for students. Twitter, the fastest growing social network and also the most talked about is far smaller, but is used extensively for information and news sharing amongst professionals. Its audience is younger and more technically aware. News-related social networks like Digg, Stumbleupon and Reddit are popular in the USA but have made less headway in the UK. It has been observed that the popularity and time spent with social networking sites is changing the way people spend their time online and the way in which they share and interact in their daily lives. This is creating new challenges for the media. Social networks provide competition to traditional publishers for consumer attention and at the same time they are opening up new ways of engaging and connecting with audiences.⁸⁹

Several studies have been conducted in the past decade to highlight how social media has found widespread users across the world and how even news reporting is immensely being carried out through social media. According to a study conducted

⁸⁹Nic Newman, *The Rise of Social Media and its impact on mainstream journalism*, 42(Reuters Institute for the Study of Journalism)

by ING News Division in 2014, social media has had a huge impact on news and journalism. Social media has forced its way into journalism and has become a news source not only for the general public but for journalists as well. While social media is generally seen as unreliable by nearly a third of journalists (32%), it still serves as a main news source for roughly 50% of journalists. Fact-checking has also decreased since the emergence of social media.⁹⁰ This has been corroborated by the huge amount of journalists (80%) that have published without checking facts first. The key findings of this study are:

- (i) According to 50% of journalists, social media are the main source of information despite low degree of reliability;
- (ii) “Publish first, correct if necessary” is the order of the day. In other words, fact-checking has decreased to 44% while crowd-checking which has rose to 55% is becoming more important. Only 20% of journalists always check their facts before publishing. Almost half of journalists said they published most of their stories as quickly as possible to correct later if necessary.
- (iii) 60% journalists said they feel less bound by journalistic rules on social media than with traditional media such as a newspaper article. They act differently on social media than in traditional media, sharing their personal opinion more openly on social media, despite the fact that journalists are seen as being objective and reporters of news facts relating to events of general importance.

Thus, it is immensely clear that the social media is here to stay and shall have a tremendous effect on each and every aspect of daily life. Newsrooms, government, celebrities, local news channels – almost each and every sphere has been connected to social media in one form or another. Starting with exclusive websites which give information about the respective channel as well as information on the go, and entering social media sites like facebook, twitter, etc. through the form of pages, communities, tweets, posts, videos and photographs – social media has become an indispensable part of imparting information not only because it is fast and easy to convey, but also because the readers, viewers, internet users of social media can express their own ideas and thoughts in respect of a particular aspect. It is no longer

⁹⁰ Available on <http://www.nyfa.edu/student-resources/social-media-in-journalism/> (Visited on August 4, 2017)

a one-sided communication but has almost become a two-way conversation as the citizens have been given a platform through which they can share their opinions to the world at large.

2.3.4.4 Effects of Social media

The rise of social media has drastically changed political discourse and public engagement. Instead of citizens looking for their political leaders with folded hands, the politicians themselves are using social media to reach till them. Also, considering the large platform which social media has given to a common man, people are trying to balance themselves between filtering and multiple opinions. Some of the major ways in which social media has affected the existing society are as under⁹¹:

2.3.4.4.1 Social media exposes diversity

Social media exposes the pluralism in our society. It brings forward the previously unheard and often unconsidered groups of society to a common platform wherefrom their voices can be heard. According to Emran Milan⁹² has uniquely compared social media to an echo chamber wherefrom a person shouting to make his voice heard also in return gets the voices of others in similar condition or circumstances. Likewise, a news event gets responses be it positive, negative or even neutral just within few hours of its posting. Thus social media exposes man to the “actual diversity and plurality of opinions.”

In a research conducted by the Pew Research Center⁹³ in 2014 in the United States, research was conducted on the usage and manner of usage of social media by news channels as well as consumption of news by audience through the channel of social media was also studied. The major findings of this study were as under:

- (1) In response to the question “How do social media sites stack up on news?” it was found that roughly two-thirds or as many as 64% of U.S. adults use the Facebook and half of those users get news through Facebook. Thus, nearly 30% of the general

⁹¹ <http://socialmediaweek.org/blog/2016/09/rise-social-media-affects-civil-society> (Visited on July 31, 2017)

⁹² Director of Social Market Foundation

⁹³ “How social media is reshaping news” (Available at www.pewresearch.org/fact-tank/2014/09/24/how-social-media-is-reshaping-news) (Visited on August 14, 2017)

population in U.S. relied on Facebook for getting news. After Facebook, YouTube was used by 10% of adult population and Twitter was used by 8% of population for getting news.

- (2) In response to the question “How do social media users participate in news?” it was found that half of the social network site users have shared news stories, images or videos and nearly 46% have discussed news issues and events on social media sites. In addition to sharing news on social media, a small number are also covering the news themselves, by posting photos or videos of news events. Nearly 14% of social media users posted their own photos of news events to a social networking site while 12% had posted videos.
- (3) In response to the question “How do social media users discover news?” it was found that though Facebook being an important source of website referrals for many news outlets, users who arrived on news sites via Facebook or through search engines, spent far less time and consumed relatively less number of pages than those arriving directly on the news site. Thus, visitors who used news media website directly spent roughly three times as long as those who browsed it through search or Facebook and viewed nearly five times as many pages per month.
- (4) In response to the question “What’s the news experience like on Facebook?” it was found that as many as 73% of users used Facebook for getting entertainment news followed by 65% users using it for news of their community, 57% users using it for getting sports related news followed by 55% users who got news relating to nation, politics and government while only 51% users got crime-related news through Facebook.
- (5) In response to the question “How does social media impact the discussion of news events?” it was revealed that social media doesn’t always facilitate conversation around the important issues of the day. It was also revealed that Facebook and Twitter users were less likely to want to share their opinions in many face-to-face settings, especially if they felt their social audience disagreed with them.

2.3.4.4.2 Changing the pattern of consumption

Social media has greatly changed the way people consume content. Today, 1 out of every 10 persons uses social platforms as their main source of news.⁹⁴ Despite the huge diversity of population and variety of people each with their own set of ideas and beliefs, social media has evolved well to serve one and all. Not only does it rapidly communicate what's happening around the world, it also receives the feedback and opinions to it. No longer is it just a one-way communication but has rather transformed into a two-way conversation with multiple responses dropping in continuously.

2.3.4.4.3 Giving voice to the unheard

Nick Pickles⁹⁵ highlights popular social platform "Twitter's" function as an open platform. According to him, due to social media, everyone has a voice and people can now tell their own story. No longer does one need to amass public and stand in front of a physical crowd in order to share his opinions. Social media has given this privilege to every man in the comfort of his own home.

2.3.4.4.4 Raw feedback through social media

Till a decade ago, politicians campaigned and promoted their party through speeches, personally meeting the citizens, newspapers, etc. However, after people started getting exposure of social media, almost every politician shifted the concentration on social media reason being that it saved time, money and the politician could simultaneously reach almost every citizen in a short period itself. Also, there were no checks or balances on the feedback they received by promoting their websites, pages, blogs, write-ups, etc.

2.3.4.4.5 Makes politicians more accessible

Politicians, MLAs, MPs, CMs, etc. are more accessible after rise of the internet. Several politicians have a webpage of their own wherein complete personal details,

⁹⁴Nic Newman, Lead Author of Reuters Institute Digital News Report 2016

⁹⁵ Head of UK Public Policy for Twitter

party details, developments and even contact details of the politician are available which help a common citizen in easily reaching the politician with his grievance without having to take an appointment and wait endlessly for the politician's busy schedules.

2.4 Challenges before electronic and social media

Media has indeed come a long way since its origin in print form. Every age witnessed a new form of media as print media gave away to electronic media which was eventually taken over by the social media. As the world became faster and wider, need was found for rapid communication of who's who, current affairs and political ups and downs. Decades ago people relied upon morning newspaper and midnight news slot on Doordarshan to find what's happening in the nation and across the world. Today, that idea seems laughable as we all have become used to 24x7 news channels, e-papers, ever-growing debates and discussions. Social media is not just about getting to know new people or chatting with relatives across the world. It is now a major source of news and information as well.

Despite all its attractive features, social media isn't devoid of its flaws. Its rise has also given birth to vices like issues of identity theft, faking personality, creating false accounts sometimes even false websites, cloning government sites, spreading false news or rumors without verifiable data, etc. Likewise, many people also suffer from over-usage of social media and are always on the edge about being "notified", "tweeted", "commented", "tagged/hashtagged" or "mentioned". A person's identity is changing from who he is in real life to how many friends and followers he has in cyber world. Almost everyone we meet is engrossed and pre-occupied on their mobile phone thus creating lacuna of communication in actual world. It might not be wrong to say that though social media may have connected us to each and everyone, known or unknown in the virtual world but we are disconnected from each other from the physical one.

Seen from the other perspective, social media is creating cutthroat competition amidst corporate houses and news channels to be the first one to bring forth a news story. Social media would not have evolved without evolution of electronic media

which was originally where all the news was communicated. However, since social media has come into picture, the news stories from every field are now available not only on respective news channels through electronic media but also through the websites through social media. The added feature on social media is that every news report, video, article provides space for commenting by the readers and viewers. A high number of tweets and tags to any single news report are the way in which a news report is considered as successfully communicated. This encourages the news channels to work harder on their news stories and deliver faster compared to their rival parties. In this very process, the basic norms are often forgotten and news stories are made more sensational for added fame. Political parties collaborate with news channels for presenting their positive image mainly before the elections. News channels indulge in marketing political parties under the name of telecasting news and sometimes even go to the extent of giving their own verdict under the garb of news to highly contested litigations pending before the Supreme Court even before the Supreme Court has decided the case which often creates an apprehensive anxiety in the entire nation as to the final outcome.

Likewise, in case of electronic media, the high cost of establishing a media outlet-whether print or electronic, the huge profit potential and the enormous power that can be wielded to acquire political and administrative clout to run their other industrial and business empires have brought in a big way a few affluent individuals and families, and the corporate sector in media business including the news agencies. This phenomenon has led to a near monopoly in media. With the emergence of multi media multi nationals, the world is faced with prospect of virtual monopoly of a few individuals over the news and views. The prospect of the news and views being controlled and manipulated of the people being misled and deceived to serve particular interests has increased.

News channels are amateurish, childish in their “me first” claims, irritating in their competitive sensationalism, more irritating in their loudness, superficial, repetitive and often plain unprofessional. New journalism may have its weaknesses but functionally it merely reflects the reality around it.⁹⁶

⁹⁶ George T.J.S., “For Real Scoundrels, Look Beyond Media, Pg. 39, Mainstream, April 1-7, 2011

Need of the hour seeks some sort of checking mechanism on the freedom of speech and expression on social and electronic media. Printed material like books and pamphlets also have adult content which is inappropriate for all age groups. Often has it been noticed that children and women get exposed to vulgar and indecent content on television channels and on websites. Amidst all these, it is felt that laws are required for keeping a control on the unchecked use of freedom of speech and expression. Countries like USA and UK have several legislations which control almost each and every segment of media. On the other hand, there are exclusive bodies like Press Council of India and Broadcasting Complaints Council and others in India which desire internal regulation of the respective subjects for which they have been formed. Considering these several aspects, questions may arise as to which form of regulation would be most appropriate for media houses and to what extent should freedom of press be given to them.

CHAPTER 3

LEGISLATIONS: NATIONAL & INTERNATIONAL

3.1 Introduction

Fundamental rights are enshrined in Part III of the Constitution of India and it can be even called the Magna Carta of India. The rights in the said Chapter help in strongly guaranteeing certain fundamental rights to each and every citizen of the nation and they cannot be violated by anyone. Not only in India but in almost all modern Constitutions of other nations, fundamental rights have been guaranteed to the citizens of those nations and that indicates the necessity for securing such rights to the people. In case of *Golak Nath vs. State of Punjab*⁹⁷ Hon'ble Supreme Court has gone to the extent of saying that fundamental rights are the modern name for what have been traditionally known as "natural rights". The Constitution of India has guaranteed freedom of speech and expression to every citizen. This freedom could be curtailed by Legislature only if the restrictions imposed were reasonable and they are made in interests of any of the several specified grounds mentioned in the Article.

Apart from the said freedom, there are other fundamental rights available to the citizens, which can be classified either by their applicability or by their contents. If classified by applicability, some provisions relating to Fundamental Rights are limited to citizens, i.e. Article 15, 16, 19, 29, 30. Rest of the provisions of this Part are applicable to citizens as well as aliens or non-citizens, to all persons residing within the territory of India for the time being and subject to its jurisdiction, i.e. Article 21. Likewise, if classified by contents, while some of them impose limitations upon State action (i.e. Article 14, 15(1), 16, 18(2), 19, 20-22, 31), there are other provisions which are limitations upon the freedom of action of private individual as well (i.e. Art. 15(2), 17, 18(1), 23(1), 24). Further, some other rights belong only to a section or community (i.e. Art. 26, 29(1), 30). Difference between the two classes is that where the rights have been guaranteed against state action, no

⁹⁷ AIR 1967 SC 1643

constitutional remedy lies against breach of such right by private individuals, unsupported by the state action. Fundamental rights operate as a limitation upon State action, collectively and also individually.

The term “State” has been defined in Article 12 of the Constitution so as to offer guidance to the Courts while deciding cases involving State and bodies covered under the said word. Thus State includes not only the organs of government, but also other bodies exercising legal authority.⁹⁸ Accordingly, Art. 12 extends not only to the Legislature and Executive organs of the Union and the State, but also the instrumentalities of government whether acting under statutory authority or not, a local authority as well as any body of persons exercising statutory powers whether such powers are governmental or non-governmental.⁹⁹

As such, there is no separately guaranteed freedom of speech or for that matter, even freedom of press or of media in the Constitution of India but freedom of speech covers freedom of press and media. Media which is popularly referred as fourth estate of our democracy serves as a medium of communication between government and the public. Sometimes it provides voice to the voiceless and at other times, serves as a watchdog against misdeeds of government. Due to media, several times, politicians, ministers and high-ranking officers have been caught indulging in corruption, bribery, nepotism, sex scandals etc. and their stories have reached to the public at large sometimes through TV sets and internet news and sometimes through print media. Thus, media has a very powerful impact on minds of those who access it. Hence, it is of utmost importance that media should be regulated properly so that information can be provided to the viewers in a fair and impartial manner.

The present chapter discusses in detail several legislative and constitutional provisions related to freedom of speech and expression in U.S., U.K., Australia and India as the laws of India have been heavily borrowed from English laws. Likewise, reasonable restrictions on free speech and media also are similar in all the nations. Further, international charters and conventions the clauses and articles of which govern the signing nations have been discussed to identify how far the international

⁹⁸Bashesar vs. I.T. Commissioner, AIR 1959 SC 158

⁹⁹Rajasthan State Electricity Board vs. Mohan Lal, AIR 1967 SC 1856

regulatory bodies recognize and implement this significant right. Also, major legislative provisions pertaining to freedom of speech and expression as are found in other Acts prevailing in the nation as well as legislative attempts of implementing further Acts which provide for regulating free speech of media shall be discussed.

3.2 Meaning of Freedom of Speech and Expression

At the very outset, freedom of speech and expression would imply the rights of every citizen of nation in connection to speaking out his thoughts, views, opinions, be they in favor of or against any topic of national, political or social interest without fear of any restraint or punishment. Each person has his intellect and an ability to see, grasp and analyze the situation in his own special manner. The same may or may not be in conformation with the overall opinion in that regard but that does not restrict anyone from not making his opinion heard. It maybe published or printed in print media, telecast or relayed in electronic media or posted, blogged, tweeted on social media. Media gives ample space to everyone though in different levels to society for making their opinions heard to the world at large. This right of an individual is known as freedom of speech and expression.

3.2.1 Origin of freedom of speech and expression

The origins of the freedom of speech can be found in ancient Greece where the citizens pioneered free speech as a democratic principle. The ancient Greek word “parrhesia” meant “free speech or “to speak candidly”. The term first appeared in Greek literature around the end of fifth century B.C. During the classical period, parrhesia became a fundamental art of the democracy of Athens. Leaders, philosophers, playwrights and everyday Athenians were free to openly discuss politics and religion and even to criticize the opinions and decisions of government in some settings.¹⁰⁰

The term “speech” maybe defined as “a spoken expression of ideas, opinions, etc. that is made by someone who is speaking in front of a group of people.”¹⁰¹ Oxford Dictionary defines the term as “the expression of or the ability to express thoughts and feelings by articulate sounds.” Thus, speech is expressing the thoughts,

¹⁰⁰ Available at <http://www.history.com/topics/freedom-of-speech> (Visited on 24.4.2018)

¹⁰¹ Available at <http://www.merriam-webster.com> (Visited on 30.11.2016)

ideas and opinions held by a person in respect of a subject, which he chooses to present verbally to another person or even in front of a crowd.

The term “expression” means “the act of making your thoughts, feelings, etc. known by speech, writing or some other method”.¹⁰² Oxford Dictionary defines the term as “the action of making known one’s thoughts or feelings.” According to Halsbury’s Laws of England, the expression “freedom to express” incorporates both the right to receive and to express ideas, information and secrecy of private communications. However, they are all subject to reasonable restrictions so that while exercising the freedom, an individual does not trespass similar rights of other individual. Freedom of speech and expression includes liberty to propagate one’s personal views as well as views of other people on their behalf. Whenever there are issues involving public interest, they may be raised either by one and all or by one who represents the voice of all and the same shall still be a part of freedom of speech and expression. The right to acquire as well as get ideas and information about matters of common interest is also covered therein.

When used together, the term “speech and expression” can be said to mean “an oral and verbal communication of ideas, thoughts and opinions held by a person in regard of any subject which he chooses to speak and convey to another person or even to a large crowd.” Freedom of speech is the right to express opinions without government restraint. Over the years, several judgments of Hon’ble Supreme Court and High Court have interpreted the term in the cases before them. Some of the major interpretations that have been found are as under:

- (1) Freedom of expression means the right to express one’s convictions and opinions freely by word of mouth, writing, printing, picture or in any other manner. It would thus include not only the freedom of the press but expression of one’s ideas by any visible representation such as by gestures and the like, by banners and signs¹⁰³, and through radio, cinema, television, etc.¹⁰⁴

¹⁰² Available at <http://www.merriam-webster.com> (Visited on 30.11.2016)

¹⁰³ Lovell vs. Griffin (1938) 303 US 444

¹⁰⁴ Mane Sachin Babruvan, “A Critical Study on Right to Freedom of Speech and Expression and Role of Media in Indian Democracy”, (2017)

- (2) Further, it is important to note that the freedom of speech and expression includes the liberty of expressing or propagating not only one's own views but also includes the right to propagate or publish the views of other people. The most common example of propagating views of others is that this freedom also includes freedom of the press.¹⁰⁵
- (3) Expression cannot be done by an individual to his own self. In order to express, a second party is inevitably required to whom the ideas are expressed or communicated. To surmise, expression includes the idea of publication, distribution and circulation.¹⁰⁶
- (4) Freedom of speech and expression includes freedom to hold opinions, to seek, receive and impart information and ideas either orally, by written or printed matter or by legally operated visual or auditory devices such as radio, cinematograph, gramophone, loudspeaker, etc. In short, it is the freedom of communication of one's ideas through any medium.¹⁰⁷
- (5) It includes the right not only to give but also to acquire and import ideas and information from others about matters of common interest. Thus, it includes right to be informed as well.¹⁰⁸
- (6) Freedom of speech includes freedom of discussion also. A discussion helps in exchange of knowledge, ideas and viewpoints and beliefs between two persons. Freedom of speech includes dissemination of knowledge according to one's own ideas so long as that does not infringe the collective interests or the object is not purely commercial.¹⁰⁹

Article 19(1)(a) does not specifically mention about freedom of the press, but it is a settled view of Apex Court that the freedom of speech and expression includes freedom of press and circulation. Freedom of the press is simply an emanation from concept of fundamental right of freedom of every citizen.

¹⁰⁵ Express Newspapers vs. Union of India AIR 1958 SC 578

¹⁰⁶ Romesh Thappar vs. State of Madras (1950) SCR 594

¹⁰⁷ Hamdard Dawakhana vs. Union of India (1960) 2 SCR 671

¹⁰⁸ Hamdard Dawakhana vs. Union of India (1960) 2 SCR 671

¹⁰⁹ Valentine vs. Chrestensen (1942) 316 US 52

In *Romesh Thappar vs. State of Madras*¹¹⁰ it was held that freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion, no public education so essential for the proper functioning of process of popular government is possible. Thus, freedom of “speech and expression” means right to express one’s own convictions and opinions freely by words of mouth, printing, pictures or any other mode. It includes expression of one’s ideas through any communicable medium or visible representation such as gesture, signs and the like. From the cases decided from time to time, it can also be concluded that media also has the freedom of speech and expression. Initially, it was available to print media as it was the sole media in nation but later as electronic and social media came into the domain of common man, the same were also entitled to this freedom albeit not without giving rise to certain controversies of the extent of use of this freedom. Likewise, just as a citizen’s freedom of speech and expression is subject to reasonable restrictions, the same follows for media as well.

3.3 Need and object of Freedom of Speech and Expression

Historian Bury in his book *History of Freedom of Thought*¹¹¹ has stated that freedom of expression is a “supreme condition of mental and moral progress.” In an American case¹¹², Supreme Court observed that, it is absolutely indispensable for the preservation of a free society in which government is based upon the consent of an informed citizenry and is dedicated to the protection of the rights of all, even the most despised minorities. Thus, the said freedom is available to all irrespective of their social status. In yet another case, it was held that the maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means is a fundamental principle of our constitutional system.¹¹³

Even in India, the vitality of free speech has been emphasized upon by Supreme Court in its judgments. In *Union of India vs. Motion Picture*

¹¹⁰ AIR 1950 SC 124

¹¹¹ J.B. Bury, *History of Freedom of Thought*, P. 239 (Library of Alexandria, 1913)

¹¹² *Speiser vs. Randall* (1958) 357 US 513

¹¹³ *Stromberg vs. California* (1931) 283 US 359

Association¹¹⁴, it was held that free speech is the foundation of a democratic society. A free exchange of ideas dissemination of information without restraints, dissemination of knowledge, airing of different viewpoints, debating and forming one's own views and expressing them, are the basic ideas of a free society. This freedom alone makes it possible for people to formulate their own views and opinions on a proper basis and to exercise their social, economic and political rights in a free society in an informed manner. Restraints on this right have been jealously watched by courts. In *S. Rangarajan vs. P Jagjivan Ram*¹¹⁵ it was held that the democracy is a Government by the people via open discussion. The democratic form of government itself demands by its citizens an active and intelligent participation in affairs of the community. Democracy can neither work nor prosper unless people go out to share their views.

It has also been held in one case¹¹⁶ that freedom of thought and expression and the freedom of press are not valuable freedoms in themselves but are basic to a democratic form of government which proceeds on the theory that problems of the government can be solved by free exchange of thought and by public discussion of various issues facing the nation. This right is one of the pillars of individual liberty – freedom of speech which has always been guarded by Constitution. Thus, it is implicitly clear that the Apex Courts even in India have safeguarded the freedom of speech and expression of an individual. No person can express himself without putting forth his ideas, thoughts and expressions before others. Only a healthy exchange of conversations, political views and debates can ensure that the freedom of speech and expression is amply available to every citizen of the nation. Failure on part of State or authority to provide such freedom may result in failure of democracy itself.

The purpose of free expression is derived from widely accepted promise that the proper end of man is realization of his character and potentialities as a human being. Free expression is an integral part of this development of ideas, mental

¹¹⁴ AIR 1999 SC 2334

¹¹⁵ (1989) 2 SCC 574

¹¹⁶ *Express Newspapers P Ltd. Vs Union of India* (1986) 1 SCC 133

exploration and of the affirmation itself.¹¹⁷ By means of free speech, we are bestowed with a mechanism that helps in establishing and maintaining a reasonable balance between stability and social change. That is to say, what has been achieved needs to be maintained and what is yet to be achieved must be made known to all by means of free speech. Thus, all members of society should be able to form their own beliefs and communicate them freely to others.

Freedom of speech and expression to an individual helps in governing his own self rather than being governed as per the whims of someone else. Free expression is a must for exchange of ideas which are necessary for self-governance without any hindrance. The people of the nation who are governors of the democracy must have freedom to choose all ideas that may be helpful in formulating a public policy. The self-governance rationale also has several other factors in addition which are sometimes assumed as independent purposes for free expression. Firstly, free expression helps in preventing the sealing of interest in government. As democracy presumes that Governments continue to change after their terms are over, their powers will continue to change hands from time to time. In case this process comes to an end, democracy will also cease.

Also with the help of free expression, political stability becomes more possible. Thus, politicians who lost the elections will not resort to violence if they have had a fair chance to be heard. Free speech also serves to “check the abuse of power by public officials” by providing to the citizenry the information needed to exercise their veto power when the decision of public officials pass certain limitations. Thus, due to freedom of speech and expression, self-governance becomes much more possible and effective.

Likewise, free speech is indispensable for determination of truth. Truth may be different in the opinion of different people but to sum up, it would be what the majority of people assume it to be. The critical question is not how well truth will advance absolutely in conditions of freedom but how well it will advance in

¹¹⁷ Massey, Massey on American Constitutional Law, 798-799 (Aspen Publication, 2nd Ed., 2005)

condition of freedom as compared with some alternative set of conditions.¹¹⁸ People who believe that truth is a knowable but not necessarily a verifiable concept also firmly agree that free expression is critical for finding truth. Free speech and expression are hence inevitable in man's quest for search of truth. Also free speech can serve in checking abuse of power by public officials. As abuse of power is an immensely serious evil due to government's power to employ legitimized violence, checking value becomes necessary. Public opinion should be freely exchangeable so that there is a check on the government's powers of legitimized violence.

The practice of free expression also cultivates virtues of tolerance and self-restraint amidst those practicing it. Justice Holmes noted that free expression does not mean "free thought for those who agree with us, but freedom for the thought we hate."¹¹⁹ In an increasingly culturally diverse society, these virtues are inevitable for preservation and maintenance of the societal norms. Thus, this purpose is in a manner related to self-governance too.

These objects can be fulfilled only by strict adherence of freedom of speech and expression throughout the nation. Considering what role freedom of speech and expression can play in a society for its citizens, and what will be the plight of removing the same, the said freedom has been specifically mentioned in numerous international instruments, conventions and treaties.

3.4 Meaning of "media regulation"

Forms of media in India have multiplied extensively in past two decades. Earlier there were only few state-owned channels under the control of national broadcaster Doordarshan while today foreign-owned channels and joint ventures from Star and NDTV to Zee and MTV, etc. rule the market. Simultaneously, alongwith international and foreign channels and websites, even national, regional and local broadcasters have grown and they are often owned and run by capital derived from India which is linked to powerful elite interests including regional and national politicians and large newspaper groups. Several unethical and often illegal practices

¹¹⁸Durga Das Basu, Commentary on the Constitution of India (Vol.2) Pg. 2370 – (Wadhwa Publications, Nagpur, 8thedn., 2007)

¹¹⁹United States vs. Schwimmer 279 US 644 (1929)

have been found taking place and there is an urgent need for a strong well defined regulatory framework and enactment.

Some of the major vices found in media are listed below:

- (i) threats by elites and political interests to the independence of journalists;
- (ii) paid news;
- (iii) misreporting of news by media and often defaming individuals;
- (iv) bribery, corruption that links lobbyists
- (v) sale of editorial space and airtime for advertisements¹²⁰

In light of this scenario, it has become inevitable that the media should be regulated not from inside but from an external body with sufficient checks and punitive powers. According to Justice Ravindran, Indian media requires regulation but the extent of regulation is a matter of discussion. Regulation maybe in either of the following forms:

- (i) A complete statutory regulation of media through a regulator whose members are appointed by the government;
- (ii) An independent regulation by a regulator who decides the extent of regulation.
- (iii) Non-statutory independent regulator appointed by trade associations
- (iv) Non-statutory self regulation where every media entity creates and provides its own grievance redressal mechanism.¹²¹

According to late Justice J S Verma, “when you acquire great strength, you should realize that there is danger of its misuse. Therefore, self-regulation is the best way so that there is no justification for outside intervention to regulate.”¹²²

Presently no single Indian media body exists which entirely oversees either the content and ethics or even the ownership of all these diverse media platforms. There have been disputes with government bodies due to unrestricted cross media ownerships. However, media industry has strongly resisted attempts of external regulation on the ground that such regulation will interfere with its freedom of

¹²⁰ShakuntalaBanaji, “Regulating the Media in India – An Urgent Policy Priority” (blogs.lse.ac.uk) (2013)

¹²¹ Nikhil Pahwa, “On Self-Regulation of media in India – Notes from Law Commission Consultation” Oct. 9, 2014 (Visited on 25.11.2016)

¹²²Vinod Mehta “For media, self-regulation is best” (M.timesofindia.com/edit-page (Visited on 25.11.2016)

expression. Again, according to media, self-regulation of the press is sufficient to protect public interest and hence no external regulation is required.

3.5 International Instruments, Conventions and Treaties

International instruments refer to the worldwide treaties, conventions and major international documents which are drafted and implemented in respect of rights common and vital to the population of every country. So vital is the right of free speech to an individual that even international instruments and treaties have recognized it. The parties signing thereto need to ratify and implement the same in their respective nations. Some of the major international instruments wherein this important right has been recognized are as under:

3.5.1 Universal Declaration of Human Rights 1948

The Charter of the United States came into force on 24.10.1945. The Statute of the International Court of Justice is an integral part of this Charter. However, the Charter did not define or specify any human rights nor any means to implement them in the Member States. Hence, a need arose to adopt various international instruments relating to human rights so as to remove the need for lack of provisions relating to human rights in the U.N. Charter. Accordingly, the first important document Universal Declaration of Human Rights 1948 was adopted which specified various human rights mainly concentrating on civil, political, social, economic and cultural rights. The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10th Dec., 1948 at Paris after severe flagrant violation of human rights during Second World War. It is also as Magna Carta and is the first globally accepted expression of rights to which all human beings are inherently entitled. The said Declaration has been further divided into various parts as under, each of which is dedicated to a specific set of rights:

- (a) Preamble;
- (b) General Part (Article 1, 2)
- (c) Civil and Political Rights (Article 3-21)
- (d) Economic, Social and Cultural Rights (Article 22-27)

(e) Concluding Chapter (Article 28-30)

The main object of the Declaration was to define the meaning of words “Fundamental freedoms” and “human rights” as mentioned in the United Nations Charter which is binding on all member states. Article 19 of Universal Declaration of Human Rights provides for freedom of opinion and expression including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers

3.5.2 International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights mainly elaborated the rights mentioned in the Universal Declaration of Human Rights 1948. The said Covenant is a part of International Bill on Human Rights and India has ratified it in the year 1979. It is mainly divided into following parts:

- (a) Preamble;
- (b) Part I: Right of self determination
- (c) Part II: General provisions, i.e. Duties of State, right during emergency and interpretation
- (d) Part III: Civil and Political Rights
- (e) Part IV: Enforcement machinery
- (f) Part V: Saving Provisions
- (g) Part VI: Concluding Provisions

Article 19 of the said Covenant entitles every individual to right to hold opinions without interference including freedom of expression which include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Special duties and responsibilities have been attached on part of citizens for the exercise of rights provided for in this Article. Hence it is subject to certain restrictions but these shall only be such as are provided for by law and are necessary either for respect of the rights or reputations of others or for the protection of national security or of public order or public health and morals.¹²³

¹²³ Available at http://www.claiminghumanrights.org/opinion_expression_definition.html (Visited on 13.8.2018)

3.5.3 American Declaration of the Rights and Duties of Man

Prior to adoption of Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man was the world's first international human rights instrument of a general nature. Article 4 of the said Declaration provides for right to freedom of investigation, opinion, expression and dissemination. It states that every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

3.5.4 European Convention for Protection of Human Rights and Fundamental Freedoms

Article 10 of the European Convention for Protection of Human Rights and Fundamental Freedoms states that "everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring licensing of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

3.5.5 UNESCO Mass Media Declaration 1978

The UNESCO Mass Media Declaration was proclaimed by the General Conference of United Nations Educational, Scientific and Cultural Organization at its twentieth session in Paris on 28.11.1978. Article II(1) states that the exercise of freedom of opinion, expression and information recognized as an integral part of human rights and fundamental freedoms is a vital fact in the strengthening of peace and international understanding. Art. II(2) provides that access by the public to

information should be guaranteed by the diversity of sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. For this purpose, journalists must have freedom to report and the fullest possible facilities of access to information. It is also important that the mass media be responsive to concerns of peoples and individuals, thus promoting the participation of public in the elaboration of information. Also, if mass media are to be in a position to promote the principles of UNESCO Mass Media Declaration in their activities, it is essential that journalists and other agents of mass media in their own country or abroad, must be assured of protection guaranteeing them the best conditions for exercise of their profession.

Article IV of the said Declaration states that the mass media have an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding in order to promote human rights, equality of rights as between all human beings and all nations and economic and social progress. Equally they have an important role to play in making known the views and aspirations of the younger generation. Article V states that in order to respect freedom of opinion, expression and information and in order that information may reflect all points of view; it is important that the points of view presented by those who consider that the information published or disseminated about them has seriously prejudiced their efforts to strengthen peace and international understanding, to promote human rights or to counter racialism, apartheid and incitement to war be disseminated.

3.5.6 Charter for a Free Press (1987)

This Charter includes provisions as per suggestions and approvals of journalists from several nations at the Voices of Freedom World Conference on censorship problems held in London in 1987. Several provisions supporting free flow of news and information within a nation as well as across the nations were mentioned in the Charter. The major ones of them are:

- (i) Censorship, direct or indirect is unacceptable; thus laws and practices restricting the right of news media freely to gather and distribute information must be abolished,

and government authorities national or local, must not interfere with the content of print or broadcast news or restrict access to any news source.¹²⁴

- (ii) Independent news media, both print and broadcast must be allowed to emerge and operate freely in all countries.
- (iii) There must be no discrimination by governments in their treatment, economic or otherwise of the news media within a country. In those countries where government media also exist, the independent media must have the same free access as the official media have to all material and facilities necessary to their publishing or broadcasting operations.
- (iv) States must not restrict access to newsprint, printing facilities and distribution systems, operation of news agencies, and availability of broadcast frequencies and facilities.
- (v) Legal, technical and tariff practices by communications authorities which inhibit the distribution of news and restrict the flow of information are condemned.
- (vi) Government media must enjoy editorial independence and be open to a diversity of viewpoints.
- (vii) There should be unrestricted access by print and broadcast media within a country to outside news and information services and the public should enjoy similar freedom to receive foreign publications and foreign broadcasts without interference.
- (viii) National frontiers must be open to foreign journalists. Quotas must not apply and applications for visas, press credentials and other documentation requisite for their work should be promptly approved. Foreign journalists should be allowed to travel freely within a country and have access to both official and unofficial news sources, and be allowed to import and export freely all necessary professional materials and equipments.¹²⁵
- (ix) Restrictions on the free entry to the field of journalism or over its practice, through licensing or other certification procedures must be eliminated.

¹²⁴ Available at <http://slulibrary.saintleo.edu/c.php?g=368038&p=2487227> (Visited on 13.8.2018)

¹²⁵ Available at <https://www.rferl.org/a/1347296.html> (Visited on 13.8.2018)

- (x) Journalists like all citizens must be secure in their persons and be given full protection of law. Journalists working in war zones are recognized as civilians enjoying all rights and immunities accorded to other civilians.¹²⁶

3.5.7 The Madrid Principles on the Relationship between the Media and Judicial Independence (1994)

The International Commission of Jurists and the Spanish Committee of UNICEF held a meeting through several legal experts and media representatives in order to examine the prevailing relationship between media and judicial independence as guaranteed by UN Principles on Independence of Judiciary, 1985 as also to formulate principles addressing the relationship between freedom of expression and judicial independence. The Preamble to the meeting stated that “freedom of the media, which is an integral part of freedom of expression is essential in a democratic society governed by the Rule of Law and that it is the responsibility of the Judges to recognize and give effect to freedom by media by applying a basic presumption in their favor and by permitting only such restrictions on freedom of media as are authorized by the International Covenant on Civil and Political Rights and are specified in precise law.” It was observed that the media has an obligation to respect the rights of individuals, protected by the International Covenant and independence of judiciary. The principles which are minimum standards of protection of the freedom of expression were divided as follows¹²⁷:

3.5.7.1 Basic Principle

- Freedom of expression (as defined in Article 19 of the Covenant), including the freedom of the media – constitutes one of the essential foundations of every society which claims to be democratic. It is the function and right of media to gather and convey information to the public and to comment on administration of justice, including cases before, during and after trial, without violating the presumption of innocence.

¹²⁶ Available at <https://www.rferl.org/a/1347296.html> (Visited on 13.8.2018)

¹²⁷ Law Commission of India: 200th Report on Trial by Media Free Speech and Fair Trial under CrPC 1973, August 2006

- This principle can only be departed from in the circumstances envisaged in the International Covenant on Civil and Political Rights.
- The right to comment on administration of justice shall not be subject to any special restrictions.

3.5.7.2 Scope of Basic Principle

- The Basic Principle does not exclude the preservation by law of secrecy during the investigation of crime even when investigation forms part of judicial process. Secrecy in such circumstances must be regarded as being mainly for benefit of persons who are suspected or accused and to preserve the presumption of innocence. It shall not restrict the right of any such person to communicate to the press, information about investigation or the circumstances being investigated.
- The Basic Principle does not exclude the holding in camera of proceedings intended to achieve conciliation or settlement of private disputes.
- The Basic Principle does not require to broadcast or record court proceedings. Where this is permitted, the Basic Principle shall remain applicable.

3.5.7.3 Restrictions

- Any restriction of the Basic Principle must be strictly prescribed by law. Where any such law confers a discretion or power, that discretion or power must be exercised by a Judge.
- Where a Judge has a power to restrict the Basic Principle and is contemplating the exercise of that power, the media as well as affected person shall have the right to be heard for purpose of objecting to the course of that power and if exercised, a right of appeal.
- Laws may authorize restrictions of the Basic Principle to extent necessary in a democratic society for the protection of minors and members of other groups in need of special protection.
- Laws may restrict Basic Principle in relation to the criminal proceedings in the interest of administration of justice to the extent necessary in a democratic society

for the prevention of serious prejudice to a defendant as well as for preventing serious harm or pressurizing a witness, a member of Jury or a victim.

- Where a restriction of the Basic Principle is sought on grounds of national security, this should not jeopardize the rights of parties including the rights of defence. The defence and media shall have the right to greatest extent possible to know the grounds on which restriction is sought (subject, if necessary to a duty of confidentiality if the restriction is imposed) and shall have the right to contest this restriction.
- In civil proceedings, restrictions of Basic Principle may be imposed if authorized by law to the extent necessary in a democratic society to prevent serious harm to the legitimate interests of a private party.
- No restriction shall be imposed in an arbitrary or discriminatory manner.
- No restriction shall be imposed except strictly to the minimum extent and for minimum time necessary to achieve its purpose and no restriction shall be imposed if a more limited restriction would be likely to achieve that purpose. The burden of proof shall rest on the party requesting the restriction. Moreover, the order to restrict shall be subject to review by a Judge.

Thus, even at this meeting, a balance was strived to be achieved between rights of media and free trial. While on one hand, freedom of expression was stated to include freedom of media and constituting one of the essential foundations of a democracy, on the other hand scope of Basic Principles to deal with media rights during investigation in a crime were governed by laws of secrecy during investigation of crime. However, any person involved herein was free to communicate to the press any information regarding investigation.

It can be said that at an international level, all the major nations of the world have recognized the vitality of an individual's freedom of speech and expression. It must be a guaranteed right considering that in its absence, a person may not be able to communicate his thoughts, ideas and opinions to another or even to the world at large. Such failure will lead to choke up of the creative development of a man as well as hinder the free exchange of ideas. We live in a extremely fast and changing world and hence it is of utmost importance that person is aware of what is changing

and what is redundant and of what is right and what is wrong. Only a free press can help the man in his pursuit of keeping up with the changing world. In recognition of this very fact, freedom of press has been often considered to be a part of freedom of speech and expression. Needless to say that no freedom should be absolute lest it may be misutilized and the same also applies to freedom of press. Accordingly, reasonable restrictions have been applied to freedom of press also. Maintaining public order, decency and morality as well as preserving sovereignty and security of State while exercising the freedom of speech and expression is a pre-condition for media just as it is for individual citizens.

3.6 Position in United States

America pretty much leads the world in matters of protecting freedom of speech and expression of its citizens. It covers several aspects under the freedom of speech given to its citizens. In America, you can say practically anything without fear of being dragged away in the middle of the night, locked in a jail cell for offending the wrong person or holding a politically incorrect position.¹²⁸

3.6.1 Constitutional Provisions

That the citizens of the nation have a right to know is the foremost principle of American society. The framers of Constitution believed that the power of knowledge should not be in the hands of the few powerful rulers but rather everyone should have a right to it. In order to ensure a healthy and uninhibited flow of information, freedom of the press was included among the basic human rights protected in the Bill of Rights. In 1791, several amendments to the Constitution came into force as law and accordingly the First Amendment to Constitution guarantees and protects freedom of speech, of the press, of association, of assembly and petition. The First Amendment of the American Constitution specifically provides that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances. The said Amendment is the part of the American Bill of Rights. According to the

¹²⁸Available at <http://www.joshuakennon.com/freedom-of-speech-united-states/> (Visited on 20.4.2018)

Bill of Rights, United States Congress cannot make laws of nature infringing the freedom of speech, freedom of press and even limiting the right to assemble peacefully. The First Amendment was adopted into the Bill of Rights in 1791. The freedom of the press is guaranteed by the First Amendment.¹²⁹

The said expressions were provided under the Constitution in such a liberal manner that due to its effect the freedom of speech of press was considered absolute and free from any restrictions whatsoever. However, thereafter when courts were given wider powers of judicial review, US Supreme Court preferred to test each case on the touchstone of the rule of “clear and present danger”. Accordingly, freedom of speech and expression was available to citizens but subject to the condition of “clear and present danger.” However, application of this rule was unable to withstand the pace of development of law and hence, after passage of sometime, US Supreme Court applied the doctrine of “balancing of interests” in its later judicial pronouncements. Thus, freedom of speech is not absolute even in US. Supreme Court of United States has recognized several categories of speech that are excluded from the freedom and it has recognized that governments may enact reasonable time, place or manner restrictions on citizens’ freedom of speech.¹³⁰ All the clauses of First Amendment, when merged together greatly safeguard a US citizen’s freedom of speech. As such, as mentioned in the provision, the First Amendment only explicitly applies to Congress, but Supreme Court of America has interpreted it as applying to the executive and judicial branches as well. The Supreme Court has interpreted the First Amendment's guarantee of freedom of speech in a very broad manner.¹³¹ The following are examples of speech, both direct (words) and symbolic (actions) that the Court has decided are either entitled to First Amendment protections, or not¹³²:

Freedom of speech includes the right:

¹²⁹ Available at <https://usa.usembassy.de/media-freedom.htm> (Visited on 31.7.2018)

¹³⁰ Available at <http://en.m.wikipedia.org/wiki/> (Visited on 26.11.2016)

¹³¹ Dheerajendra Patanjali, Freedom of Speech and Expression India vs. America – A study (www.indialawjournal.org/archives/volume3/issue_4/article_by_dheerajendra.html) (Visited on 5.1.2016)

¹³² www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/ (Visited on 20.4.2018)

- Not to speak (specifically, the right not to salute the flag)¹³³
- Of students to wear black armbands to school to protest a war(Students do not shed their constitutional rights at the schoolhouse gate)¹³⁴
- To use certain offensive words and phrases to convey political messages.¹³⁵
- To contribute money (under certain circumstances) to political campaigns.¹³⁶
- To advertise commercial products and professional services (with some restrictions)¹³⁷
- To engage in symbolic speech (e.g. burning the flag in protest)¹³⁸

Some of the acts which are not covered under the protection offered by freedom of speech are as under:

- To incite actions that would harm others¹³⁹
- To make or distribute obscene materials.¹⁴⁰
- To burn draft cards as an anti-war protest.¹⁴¹
- To permit students to print articles in a school newspaper over the objections of school administration.¹⁴²
- Of students to make an obscene speech at a school sponsored event.¹⁴³

The State under its police powers has the right to punish utterance tending to corrupt public morals including indecent exposure, obscene language and obscene publications; to restrict the distribution of such literature, to prevent their publication, to deny them the use of mails or to seize and destroy them. In one case¹⁴⁴ it was held that there are certain well defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous and the insulting words – those by their very utterance inflict injury or tend

¹³³ West Virginia Board of Education v Barnette, 319 U.S. 624(1943)

¹³⁴ Tinker v. Des Moines, 393 U.S. 503 (1969)

¹³⁵ Cohen v. California 403 U.S. 15(1971)

¹³⁶ Buckley v. Valeo 424 U.S. 1 (1976)

¹³⁷ Bates v State Bar of Arizona 433 U.S. 350 (1977)

¹³⁸ Texas v. Johnson 491 U.S. 397 (1989)

¹³⁹ Schenck v. United States 249 U.S. 47 (1919)

¹⁴⁰ Roth v United States 354 US 476 (1957)

¹⁴¹ United States v O'Brien 391 U.S. 367 (1968)

¹⁴² Hazelwood School District v Kuhlmeier 484 U.S. 260 (1988)

¹⁴³ Bethel School District 43 v Fraser, 478 U.S. 675 (1986)

¹⁴⁴ Chaplinsky vs. New Hampshire 315 US 568

to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly out-weighed by the social interest in order and morality.¹⁴⁵

As to the test of obscenity, some of the earlier decisions adopted R v. Hicklin test of its effect on particularly susceptible persons. But since 1957, the Supreme Court rejected the test and defined obscene material as “material which deals with sex in a manner appealing to prurient interest.” Simultaneously, it also laid down a different test for declaring any material to be obscene, i.e. whether to the average person applying contemporary standards, the dominant theme of the material taken as a whole appeals to prurient interest.”¹⁴⁶ In the same case, the Hicklin Test was also rejected mainly on the ground that “judging obscenity by the effect of isolated passages upon the most susceptible person might well encompass material legitimately treating with sex, and so it must be rejected as unconstitutionally restrictive of the freedoms of speech and press. On the other hand, the substituted standard provides safeguards adequate to withstand the charge of constitutional infirmity.” Thus, what is offensive to refinement or good taste is not necessarily obscene unless it is concerned with sexual desire. In short, the test of an obscene publication is whether it is erotic. Merely vulgar language cannot be punished as obscene.¹⁴⁷

The test was further elaborated in the case¹⁴⁸ in following words:

“The proper test of whether a given book is obscene is its dominant effect. In applying this test, relevancy of objectionable parts to the theme, the established reputation of the work in the estimation of approved critics, if the book is modern, and the verdict of the past, if it is ancient, are persuasive pieces of evidence; for works of art are not likely to sustain a high position with no better warrant for their existence than their obscene content.”

¹⁴⁵ Available at <https://www.duo.uio.no/handle/10852/22867> (Visited on 13.8.2018)

¹⁴⁶U.S. vs. Ulysses (1934) 72 F. 2d. 705

¹⁴⁷Cohen vs. California (1970) 403 US 15

¹⁴⁸U.S. vs. Ulysses (1934) 72 F. 2d. 705

It is according to this test of dominant effect that Courts have upheld literature which is intended for sex education and gives an accurate exposition of the relevant facts of sex side of life in decent language even though it may have an incidental tendency to arouse sex impulses.¹⁴⁹ In later cases, Supreme Court held that a publication is not to be deemed obscene even though its predominant appeal be prurient if it has some redeeming social value.¹⁵⁰ Supreme Court has rewritten the law too frequently resulting in failure to set general propositions to represent correct position of the present day law. However, following tests have been set up in case of *Miller vs. California*¹⁵¹ to be satisfied before condemning any material as obscene:

- (i) The average person, applying contemporary community standards should find that the work taken as a whole, appeals to the prurient interest.
- (ii) The work must depict or describe in a patently offensive way, sexual conduct such as representation or description of ultimate sexual act or lewd exhibition of genitals, excretory functions, etc.
- (iii) The work, as a whole, must lack serious literary, artistic, political or scientific value.

As an outcome of the several tests, it can be concluded that it is only the public portrayal of hardcore sexual conduct or lewd exhibition of genitals for its own sake and for ensuing commercial gain which can be punished as obscene. Mere nudity is not enough. The publication must be read as a whole and in order to determine whether it would tend to stir the sex impulses or to arouse lustful thoughts, the Court has to form its opinion as to its effect on a person with average sex instincts, i.e. a normal person. While the text of publication itself is the primary basis for determining whether it is obscene, the setting in which the publication was presented may be presented as an aid to such determination.¹⁵²

Another ground of restriction of free speech is when anything is said which results in contempt of court. In U.S., while punishing contempt of Court, State has to secure a balance between two equally important principles, i.e. need for freedom of expression and that for independence and dignity of the judiciary and due

¹⁴⁹U.S. vs. Dennett (1930) 39 F (2d) 564

¹⁵⁰*Memoirs vs. Massachusetts* (1966) 383 US 413

¹⁵¹ (1973) 413 US 1

¹⁵²*Ginzburg vs. U.S.* (1966) 383 US 463

administration of justice.¹⁵³ The American Supreme Court has held that punishment for contempt of court is constitutionally permissible only where it constitutes-

- (a) An imminent danger to the administrations of justice according to the facts and circumstances involved in the particular case¹⁵⁴
- (b) An interference with the judicial proceedings in the immediate presence of the Court.¹⁵⁵
- (c) Comments on a pending proceeding which would tend to provoke public resistance to the order sought for in the proceeding or to influence the Judge and Jury before they have made up their minds.¹⁵⁶

On the other hand,

- (a) Mere criticism of a Judge is not punishable, however untrue, deliberate unfair or intemperate the criticism may be.

Even criticism of a pending proceeding has been allowed where the proceeding concerned a matter of public interest such as a labour dispute and no possibility of the criticism causing the unfair disposition of pending litigation was shown or where the criticism imputed a general attitude of courts towards persons charged with crime.

In the exercise of police power, State is competent to punish libels not only against individuals but also against groups of people with whose position and esteem in society, the affiliated individual maybe inextricably involved.¹⁵⁷ Right of privacy has been recognized as constitutional right in U.S. so that the question arises as to what weight should be given to it when confronted with the freedom of press to publish news or information relating to public affairs.¹⁵⁸ It has been also held that where the information published is from court records, the Press need not bother to further inquire whether the information was reportable or not.

Thus, in the United States freedom of speech receives a very high degree of constitutional protection. The constitutional protection afforded to freedom of

¹⁵³Cf Walker vs. Birmingham (1967) 388 US 307

¹⁵⁴Bridges vs. California (1941) 314 US 252

¹⁵⁵Nye vs. U.S. (1941) 313 US 33

¹⁵⁶Pennekamp vs. Florida (1946) 328 US 331

¹⁵⁷Beauharnis vs. Illinois (1952) 343 us 250

¹⁵⁸Griswold vs. Connecticut (1965) 381 US 479

speech is perhaps the strongest protection afforded to any individual right under the American Constitution. Simultaneously, as is evident from the above list, American judiciary, too, has played a pivotal role in broadening the scope of freedom of speech.

3.6.2 Legislative Provisions

In addition to protection of freedom of speech by the First Amendment to the American Constitution, several legislations have been enacted from time to time which cover various areas of society that are bound to indulge in overstepping their freedom of speech and expression. These Acts are as under:

3.6.2.1 Espionage Act 1917

The Espionage Act made it a crime to interfere with the war effort or with military recruitment or to attempt to aid a nation at war with the US wartime violence on part of local groups of citizens. In their view the country was witnessing instances of public disorder that represented the public's own attempt to punish unpopular speech in light of government's inability to do so. Amendments to enhance the government's authority under the Espionage Act would prevent mobs from doing what the government could not.

3.6.2.2 Sedition Act 1918

The Sedition Act extended the scope of Espionage Act 1917 to cover a broader range of offences related to speech and expression of opinion that cast the government or the war effort in a negative light. The Act prohibited speeches, remarks or comments of negative nature about government. The Act also made it an offence to use disloyal, profane, scurrilous or abusive language about the United States Government, its flag or its armed forces. Though the legislation enacted in 1918 is commonly known as Sedition Act, it was actually a set of amendments to the Espionage Act.

3.6.2.3 Smith Act 1940

The Smith Act makes it an offence to advocate the violent overthrow of the government, to distribute any material that teaches or advocates such, or to belong to a group with such an aim. In 1957, the US Supreme Court restricted the application of Smith Act to instances of active participation in, or verbal encouragement of specific insurrectionary activities.¹⁵⁹

3.6.2.4 The Freedom of Information Act 1967

The Freedom of Information Act generally provides that any person has the right to request access to federal agency records or information except to the extent the records are protected from disclosure by any of nine exemptions contained in the law or by one of three special law enforcement record exclusions.¹⁶⁰

3.6.2.5 The Privacy Act 1974

The Privacy Act establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies. A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifier assigned to the individual. The said Act prohibits the disclosure of a record about an individual from a system of records absent the written consent of the individual, unless the disclosure is pursuant to one of twelve statutory exceptions. The Act also provides individuals with a means by which to seek access to and amendment of their records, and sets forth various agency record-keeping requirements.¹⁶¹

3.6.2.6 Communications Decency Act 1996

Communications Decency Act also called Title V of the Telecommunications Act of 1996 was enacted by the U.S. Congress in 1996 primarily in response to concerns

¹⁵⁹ Changing Views of Free Speech in the U.S. – www.infoplease.com/timelines/freespeech.html (Visited on 29.12.2016)

¹⁶⁰ <https://foia.state.gov/Learn/FOIA.aspx> (Visited on 27.4.2018)

¹⁶¹ <https://www.justice.gov/opcl/privacy-act-1974> (Visited on 27.4.2018)

about minors' access to pornography via the internet. It was the first organized attempt to censor the internet since its formation in the early 1960s.¹⁶²

Section 230 of the Communications Decency Act gives immunity to the websites from legal liability for comments made by its users. It was recognized well in advance, almost at the time of enacting the said Section, that holding websites legally responsible for user-generated content would setback the rapidly developing online world. The Act was struck down as it violated the First Amendment's guarantee of freedom of speech.

3.6.2.7 Telecommunications Act 1996

The Telecommunications Act provided major changes in laws affecting cable tv, telecommunications and the internet. The main object of enacting this Act was to stimulate competition in telecommunication services.

3.6.2.8 Digital Millenium Copyright Act 1998

The Digital Millenium Copyright Act endeavors to balance the interests of internet service providers and copyright owners when copyright infringement occurs in digital environment. The Act protects internet service providers from liability for copyright infringement by their users if the internet service provider meets certain statutory requirements.¹⁶³The Act mainly provides for¹⁶⁴:

- (a) Imposing rules prohibiting the circumvention of technological protection measures;
- (b) Setting limitations on copyright infringement liability for online service providers;
- (c) Expanding an existing exemption for making copies of computer programs;
- (d) Significantly updating the rules and procedures regarding archival preservation;
- (e) Mandating a study of distance education activities in networked environments;
- (f) Mandating a study of the effects of anti-circumvention protection rules on the 'first sale' doctrine.

¹⁶² The Communications Decency Act 1996 – Raj Shah (21H931 Seminar in Historical Methods) May 15 1996

¹⁶³ Available at <http://Dmca.harvard.edu/pages/overview>

¹⁶⁴ Available at <http://www.ala.org> (Visited on 30.12.2016)

3.6.2.9 Broadcast Decency Enforcement Act 2005

The Act has been implemented with the object of increasing penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent and profane language.

3.6.2.10 Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act 2010

The SPEECH Act intended to protect American authors and publishers from the risk of enforcing the judgments provided by US mainly in nature of defamation which have been rendered in less media-friendly jurisdictions. The Act requires that American courts should not recognize or enforce any judgment pertaining to defamation which has been obtained outside the United States unless the law applied by the nation where it has been delivered provides at least as much protection for freedom of speech and press in that case as would be provided by the First Amendment to the Constitution of the US and by the law of the state where enforcement was being pursued.¹⁶⁵

3.6.3 Legislative attempts

Apart from above enactments, following Bills which affect the freedom of speech and expression were introduced but shelved:

3.6.3.1 Free Speech Protection Act 2009

The object of the Bill is to create a Federal cause of action to determine whether defamation exists under United States law in cases in which defamation actions have been brought in foreign courts against United States persons on the basis of publications or speech in the United States. In Section 2(3) of the Bill titled as Findings it has been stated that the free expression and publication by journalists, academics, commentators, experts and others of the information they uncover and develop through research and study is essential to the formation of sound public

¹⁶⁵Melkonian Harry, "The Speech Act, A View From Abroad" (August 11, 2012) (Available at www.acdemocracy.org/the-speech-act-a-view-from-abroad/) (Visited on 10.5.2018)

policy and thus to the security of Americans. According to Section 2(5), some persons are obstructing the free expression rights of Americans and the vital interest of the American people in receiving information on matters of public importance by first seeking out foreign jurisdictions that do not provide the full extent of free speech protection that is fundamental in the United States and then suing Americans in such jurisdictions in defamation actions based on speech uttered or published in the United States – speech that is fully protected under First Amendment jurisprudence in the United States and the laws of several States and the District of Columbia. Section 2(12) states that the United States respects the sovereign right of other countries to enact their own laws regarding speech and seeks only to protect the First Amendment rights of Americans in connection with speech that occurs in whole or in part, in the United States.¹⁶⁶ The Bill was introduced in House in 2008 and again in 2009 but neither was passed. Instead, the SPEECH Act referred to above on similar lines was enacted.

3.6.3.2 Free Flow of Information Act 2013

According to Preamble of the Bill, its object is to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with news media. The Act had it been implemented required that before ordering a journalist to reveal a source, a judge must weigh the public interest in disclosure against the public interest in “gathering and disseminating the information or news at issue and maintaining the free flow of information.” Disclosure could be compelled to prevent a death or kidnapping or an act of terrorism. Thus, the Bill was a shield law i.e. It provided statutory protection for the legal rules which protect journalists against the government requiring them to reveal confidential sources or other information. The Senate Committee has held a hearing on the bill and voted to issue a report to the full chamber recommending that the bill be considered further.¹⁶⁷

¹⁶⁶<https://www.congress.gov/bill/111th-congress/house-bill/1304/text> (Visited on 27.4.2018)

¹⁶⁷www.govtrack.us/congress/bills/113/s987 (Visited on 10.5.2018)

3.6.4 Regulatory bodies

Apart from legislative provisions as discussed above, media is also regulated by other bodies which have been solely constituted with the object of media regulation, maintenance and improvement of media channels, setting basic standards and norms for media adherence, receiving complaints and grievance resolution of media related problems from public, etc. These bodies are as under

3.6.4.1 Federal Communications Commission

The Federal Communications Commission regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. The Commission is an independent U.S. government agency under the control and supervision of Congress. It is the federal agency responsible for implementing and enforcing America's communications law and regulations. In 1972, Congress passed the Federal Advisory Committee Act to ensure that advice by advisory committees is objective and accessible to the public. The Advisory committees provide federal departments and agencies with access to expertise and advice on a broad range of issues affecting policies and programs. Some of the current advisory Committees established under the said Act are Broadband Deployment Advisory Committee, Communications Security, Reliability and Interoperability Council, Diversity and Digital Empowerment, World Radiocommunication Conference, Technological Advisory Council.¹⁶⁸ Each of these Committees aim at maintenance, improvement and growth of the area for which they have been developed. The major functions of FCC are¹⁶⁹:

- Developing and implementing regulatory programs;
- Processing applications for licenses and other filings;
- Encouraging the development of innovative services;
- Conducting investigations and analyzing complaints;
- Public safety and homeland security;
- Consumer information and education

¹⁶⁸ Available on www.fcc.gov/about/overview (Visited on 26.4.2018)

¹⁶⁹ Available on www.fcc.gov/about-fcc/what-we-do (Visited on 26.4.2018)

The FCC governs two major Bureaus namely The Media Bureau and the International Bureau. The Media Bureau develops, recommends and administers the policy and licensing programs relating to electronic media, including cable television, broadcast television and radio in the United States and its territories. It also administers licensing and policy matters for broadcast services and cable, and handles post-licensing matters for satellite services. Likewise, the International Bureau administers international telecommunications and satellite programs and policies including licensing and regulatory functions. The Bureau also promotes pro-competitive policies abroad, coordinates global spectrum activities and advocates U.S. interests in international communications and competition.¹⁷⁰

3.6.4.2 CTIA – The Wireless Association

CTIA represents the U.S. wireless communications industry and companies throughout the mobile ecosystem. Initially at its establishment in the year 1984, it was known as Cellular Telecommunications Industry Association but later in 2004, it changed to Cellular Telecommunications and Internet Association. The major functions of CTIA are¹⁷¹:

- To advocate for legislative and regulatory policies at federal, state and local levels that foster the continued innovation, investment and increasing economic impact of America's wireless industry. CTIA is active on a wide range of issues including spectrum policy, wireless infrastructure and Internet of Things.
- To convene the industry to tackle most difficult challenges and coordinate voluntary best practices and initiatives. CTIA works with members to develop test plans and certification processes for mobile devices, coordinates with members and other industry leaders to ensure the security of mobile networks and devices and leads industry initiatives to enhance accessibility, etc.
- To promote its members through numerous campaigns aimed at building awareness among policymakers and the general public as well as through industry-leading events on topics ranging from cybersecurity to 5G.

¹⁷⁰ www.fcc.gov/international (Visited on 26.4.22018)

¹⁷¹ Available at www.ctia.org/about-ctia/our-mission (Visited on 26.4.2018)

3.6.4.3 National Cable and Telecommunications Association (NCTA)

The major function of NCTA is to monitor, track, conduct research and analyze state regulatory, legislative and competition issues related to broadband, internet, telecommunications and video.¹⁷²

3.6.4.4 Fairness & Accuracy in Reporting (FAIR)

Independent, aggressive and critical media are essential to an informed democracy. But mainstream media are increasingly cozy with the economic and political powers they should be watchdogging. Mergers in the news industry have accelerated, further limiting the spectrum of viewpoints that have access to mass media. With U.S. media outlets overwhelmingly owned by profit conglomerates and supported by corporate advertisers, independent journalism is being compromised.

FAIR is the national progressive media watchdog group challenging corporate media bias and misinformation. It has been offering well-documented criticism of media bias and censorship since 1986. It functions to keep the First Amendment active by seeking greater diversity in the press and by scrutinizing media practices that marginalize public interest, minority and dissenting viewpoints. Being an anti-censorship organization, it also brings to light the neglected news stories and defends working journalists whenever they are muzzled. According to FAIR, structural reform is ultimately needed to break up the dominant media conglomerates, establish independent public broadcasting and promote strong non-profit sources of information. The organization works with both activists and journalists. It also remains connected with reporters at news outlets across the country for providing constructive critiques whenever required and supports exceptional journalism. It encourages general public to give its feedback to media alongwith any suggestions, complaints or queries connected to news programs. Thus, it encourages the audience to become media activists rather than being mere passive news views.¹⁷³

¹⁷² Available at www.ncta.com/careers (Visited on 26.4.2018)

¹⁷³ Available at www.fair.org/about-fair (Visited on 30.12.2016)

3.6.4.5 Newseum Institute

Exercising, defending and promoting freedom is crucial to protecting the life of citizens. The Newseum Institute headquartered at the Newseum in Washington DC promotes, explains and defends free expression and the five freedoms of the First Amendment namely religion, speech, press, assembly and petition. The Institute explores the challenges confronting freedom around the world with a variety of initiatives including its First Amendment Center which serves as a forum for the study and debate of free expression issues. The Newseum and the Newseum Institute regularly host compelling programs that seek to generate solutions to some of the most pressing national and international challenges of the day. By embracing its role as a neutral forum committed to fostering open discussions, the Newseum and the Newseum institute engage in the central debates like future of investigative journalism, tensions between national security and privacy, etc.¹⁷⁴ The Institute was renamed as Freedom Forum Institute from May 1st, 2018. However, the Institute's important mission remains the same, namely to champion the five freedoms of the First Amendment. The Freedom Forum is a nonpartisan foundation dedicated to free press, free speech and free spirit.¹⁷⁵

3.6.4.6 American Society of News Editors

The American Society of News Editors focuses on leadership development and journalism-related issues. It was established in 1922 as a nonprofit professional organization and was initially known as American Society of Newspaper Editors. It promotes fair, principled journalism, defends and protects First Amendment rights and fights for freedom of information and open government. ASNE's members include editors, producers, directors in charge of journalistic organizations or departments, opinion journalists, deans or faculty at university journalism schools, leaders and faculty of media related foundations and training organizations and other individuals at the discretion of board. The main objects of ASNE are:

- (a) To protect First Amendment rights and enhance the free flow of information;

¹⁷⁴ Available at www.newseum.org/about (Visited on 30.12.2016)

¹⁷⁵ Available at www.newseum.org/about/freedom-forum (Visited on 11.5.2018)

- (b) To drive the quest for diversity and inclusion in workplace and in news content across all platforms;
- (c) To promote the news media's role in providing information necessary to informed practice of citizenship;
- (d) To encourage innovation and celebrate creativity in news organizations.¹⁷⁶

3.6.4.7 National Association of Broadcasters

The National Association of Broadcasters overlooks the functioning of radio and television broadcasters in U.S. As the premier trade association for broadcasters, NAB advances the interests of its members in federal government, industry and public affairs; improves the quality and profitability of broadcasting; encourages content and technological innovation and spotlights the important and unique ways in which stations serve the communities. The main features of NAB's functioning are advocacy, education and innovation. Thus, NAB is the chief advocate of broadcasters in U.S and it ensures that policymakers have knowledge of the issues that can affect broadcasting industry. It also helps broadcasters in exploring new opportunities in the present digital age. Due to advances in technology, broadcasters get more opportunities to find better ways to deliver high-quality content and services as are expected by the people. Likewise, NAB also offers several programs to broadcasters which help them to promote diversity in workplace, strengthen their business and help in growing their careers. It provides free public service materials to assist in implementing locally focused community service initiatives and offers educational programs to support diversity and professional development.¹⁷⁷

3.6.4.8 National Coalition Against Censorship (NCAC)

NCAC's mission is to promote freedom of thought, inquiry and expression and oppose censorship in all its forms. The Coalition formed in response to the 1973 Supreme Court decision in *Miller v. California*, which narrowed First Amendment protections for sexual expression and opened the door to obscenity prosecutions.

¹⁷⁶ Available at <http://www.asne.org/content.asp> (Visited on 30.12.2016)

¹⁷⁷ Available at <http://www.nab.org/about-us> (Visited on 5.1.2017)

Over 40 years, as an alliance of more than 50 national non-profits, including literary, artistic, religious, educational, professional, labor, and civil liberties groups, NCAC has engaged in direct advocacy and education to support First Amendment principles. NCAC works with community members to resolve censorship controversies without the need for litigation.¹⁷⁸

3.6.4.9 Internet Free Expression Alliance

Today internet has evolved and become a powerful and positive forum for free expression. Internet users, online publishers, and other groups along with free speech and journalistic organizations share a common interest in opposing the adoption of techniques and standards that could limit the vibrance and openness of the internet as a communications medium. The Internet Free Expression Alliance serves to¹⁷⁹:

- (a) Ensure the continuation of internet as a forum for open, diverse and unimpeded expression;
- (b) To maintain vital role the internet plays in providing an efficient and democratic means of distributing information around the world;
- (c) Identifying new threats to free expression and First Amendment values on the internet whether legal or technological;
- (d) Protect the free speech and expression rights of both the speaker and the audience in interactive online environment;
- (e) Encourage approaches that highlight “recommended” internet content rather than those that restrict access to materials labelled as “harmful” or otherwise objectionable and emphasize that any rating that exists solely to allow specific content to be blocked from view may inhibit the flow of free expression;
- (f) Ensure that internet speakers are able to reach the broadest possible interested audience and that internet listeners are able to access all material of interest to them;
- (g) Oppose any governmental effort to promote, coerce or mandate the rating or filtering of online content;

¹⁷⁸ Available at <http://ncac.org/about-us> (Visited on 27.4.2018)

¹⁷⁹ Available at <http://www.ifea.net/mission.html> (Visited on 13.4.2018)

- (h) Promote openness and encourage informed public debate and discussion of proposals to rate and/or filter online content.¹⁸⁰

The broad constitutional protection provided by First Amendment and similar provisions in the constitutions of 50 states in U.S. does not leave scope for any other law that may provide for a more exhaustive freedom of press. The existing laws that are in force only provide additional protections for those categories which have not been covered under the First Amendment to the Constitution. Thus, while The Privacy Act 1974 regulates collection and dissemination of personal information contained in files of federal agencies, the Privacy Protection Act, 1980 establishes protection from police searches of newsrooms. Likewise The Broadcast Decency Enforcement Act 2005 keeps a guard on violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent and profane language while the Communications Decency Act 1996 regulates indecency and obscenity in cyberspace. Bodies such as the Federal Communications Commission working since 1934 is empowered with licensing and rulemaking powers in respect of media houses subject to public interest, convenience and necessity. The National Association of Broadcasters overlooks the functioning of radio and television broadcasters in U.S. Thus, the print and electronic media are amply safeguarded in United States.

3.7 Position in United Kingdom

India maintains a hybrid legal system with an array of several segments of law such as civil law, religious law as well as common law within its legal framework. The same have been largely inherited from the colonial era and various legislations which were formerly introduced by the British are still in effect in modified forms today. Since the drafting of Indian Constitution, Indian laws also adhere to the United Nations guidelines on human rights law as well as environmental law.¹⁸¹ Accordingly, the researcher has studied the position of freedom of speech and expression in United Kingdom. Although there is no equivalent to the first

¹⁸⁰ Available at <http://www.ifea.net/mission.html> (Visited on 30.12.2016)

¹⁸¹ Available at http://En.m.wikipedia.org/wiki/Law_of_India (Visited on 11.5.2018)

amendment in the United Kingdom, the British through a long history recognizing the importance of freedom of speech, enjoy some of the greatest freedom of any people in the world to write and speak their mind. Yet, in a number of areas, methods of controlling speech used in the United Kingdom would violate the first amendment in the United States.¹⁸²

3.7.1 Restrictions under Constitution

Freedom of speech and expression are extremely important rights in U.K. They have been recognized under the European Convention of Human Rights as a fundamental right. In Britain these rights can be found as early as 1215 in the Magna Carta. The European Convention was drafted by newly formed Council of Europe in Rome on 4.11.1950. In 1998, United Kingdom incorporated the European Convention and the guarantee of freedom of expression it provided under Article 10 into its domestic law under the Human Rights Act.¹⁸³ Prior to the Human Rights Act, the freedom of expression was permitted as long as the law did not prevent it. But now the Human Rights Act guarantees under the law, the rights to freedom of speech and expression.¹⁸⁴ The Convention for protection of human rights and fundamental freedoms aimed to achieve greater international unity in recognizing the equal rights of men and women and to incorporate the traditions of civil liberty. Article 10 of the Convention provides for freedom of expression. It states as under¹⁸⁵:

- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder

¹⁸² Shapiro Stephen J. "Comparing Free Speech: United States v United Kingdom", University of Baltimore Law Forum: Vol. 19 No. 2 Article 5 (Pg. 1)

¹⁸³ Available at http://En.m.wikipedia.org/wiki/Censorship_in_the_United_Kingdom (Visited on 11.5.2018)

¹⁸⁴ Available at <http://www.civilrightsmovement.co.uk/right-freedom-speech.html> (Visited on 11.5.2018)

¹⁸⁵ Available at <https://www.duo.uio.no/handle/10852/22867> (Visited on 13.8.2018)

or crime, for the protection of health or morals, for the protection of reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of judiciary.

Thus, under Article 10, the citizens of UK have a right to hold and express opinions, to receive and share information and ideas and to express opinions which others might find offensive or shocking. Article 10 however is a qualified right which means that a citizen's right to freedom of expression can be curbed if it is in the interests of public safety or for protection of rights and freedoms of others.¹⁸⁶ It means that if an individual in the process of exercising his freedom of speech and expression comes out with an intellectual work in the nature of publication of offensive nature, the same maybe restricted on the ground of falling under reasonable restrictions. The major grounds of restrictions are as under:

3.7.1.1 Security of the State

Preserving security of the State is of foremost importance in any nation. A citizen may exercise his freedom of speech and expression but if it is done at the cost of disturbing security of the state, the same needs to be restricted immediately because exercise of one's freedom should not be a cause for nation's distress. Hence, in the interests of "security of the State" in England, following restrictions have been imposed by various statutes on freedom of speech and expression:

(a) The Treason Act, 1795:

Under the said Act, it is a treason to express, utter or declare by publishing any printing or writing, an intention or to incite another, to commit any of the acts of treason.

(b) The Unlawful Oaths Act, 1797:

The Act makes it an offence for any person to administer or cause to be administered or to aid or consent to the administering or taking of an oath to bind the person taking the oath to engage in mutinous or seditious purpose or to disturb the public peace.

(c) The Incitement to Mutiny Act, 1797:

¹⁸⁶ Available at <http://www.rightsinfo.org/the-rights-in-the-european-convention/> (Visited on 13.11.2016)

The Act makes it an offence to endeavor to seduce the King's soldiers or sailors from their duty or to commit an act of mutiny or traitorous practice.

(d) The Incitement to Disaffection Act 1934:

Under the Act, it is an offence to attempt to seduce any member of the armed forces from duty, or to be in possession of any document for this purpose, with intent to commit, abet or counsel the commission of above offence.

(e) The Police Act, 1964:

The Act makes it an offence to attempt to cause disaffection amongst members of any police force or to attempt to induce any such member to withhold his services or to commit breaches of discipline.

(f) Further, during periods of war, additional restrictions are place by Defence Regulations, made under the Emergency Powers (Defence) Act. Thus, Defence Regulations 39B, 1939 make it an offence to make use of any false statement to influence public opinion in a manner likely to be prejudicial to the defence of the realm or the efficient prosecution of the war.

3.7.1.2 Friendly relations with foreign States

Peace can be maintained in the world only when friendly relations are made and maintained between all nations of the world. To this end treaties are signed and conferences are held between nations at regular intervals for maintaining a healthy business and cultural environment. It is difficult to return back the balance of harmony and existence of cooperation if it gets hindered by any individual. Therefore, it has been considered a reasonable restriction in the exercise of freedom of speech and expression so that nobody utilizes his freedom to the extent of creating disturbances with friendly foreign states. In England there are two-tier provisions for maintaining friendly relations with foreign States, i.e.-end, often peace treaties, world conventions and other forms of

(i) As per the common law, everyone is guilty of a misdemeanor who publishes any libel which has a tendency to degrade, revile or expose to hatred and contempt any foreign prince, ambassador or other foreign dignitary with intent to disturb peace between the United Kingdom and the country to which any such person belongs. However, it

is not an offence if the writing is a fair criticism on a matter of public interest or if it is calculated to disturb the government of a foreign country.

- (ii) The Foreign Enlistment Act 1870 prevents disturbance between States at peace with United Kingdom, by making any of the following acts by a British subject an offence if done without the King's licence-
- (a) Acceptance of a commission or engagement in the naval or military forces of a foreign State at war with a friendly State or leaving the country with intent to accept such engagement;
 - (b) Building, equipment or dispatch of a ship, knowing or having reasonable cause to believe that it will be employed by a foreign State at war with a friendly State.
 - (c) Preparation or fitting out of a naval or military expedition against the territory of a friendly State.

3.7.1.3 Public Order

The freedom of speech and expression is a fundamental right guaranteed to one and all. A healthy exercise of this freedom will ensure the overall development of a man while an excess of this exercise in such a way that it hinders another's similar right will only lead to disturbance. An individual should not overstep the freedom of speech and expression of another while using his own right. Acts like threatening or using abusive language whether orally or in writing or even through visible representations will only disturb the public order in the society. In England, following statutes impose restrictions in the interest of public order on the freedom of speech and expression:

- (a) The Public Order Act 1986 makes it an offence
- to use threatening, abusive or insulting words or behavior towards another person;
 - to distribute or display any writing, sign or visible representation which is threatening, abusive or insulting with intent to cause that other person to fear immediate unlawful violence, or to provoke such violence or whereby that other person is likely to believe will be used or whereby it is likely to be provoked.

- to use threatening, abusive or insulting words or behavior or displaying any writing, sign or other visible representation of similar nature within the hearing or sight of a person likely to cause harassment, alarm or distress thereby.
 - to incite racial hatred by using threatening, abusive or insulting words or behavior or writing with intent to stir up racial hatred.
- (b) The Wireless Telegraphy Acts 1949, the Broadcasting Act 1981 and the Telecommunications Act 1984 provide for regulating the communications made on radio and television.
- (c) Knowingly making a false complaint to the police is an offence under the Criminal Law Act 1967
- (d) Under the Incitement of Disaffection Act 1934, it is an offence maliciously to endeavor to seduce any member of the Armed Forces from his duty or allegiance.

3.7.1.4 Decency or morality

Obscenity is an offence against public morals and at common law, it is a misdemeanor committed either by making an indecent publication or by indecent conduct. Publishing indecent remarks or offensive pictures and other content that harms the feelings of any class of the society has been considered a reasonable restriction in the exercise of freedom of speech and expression. Even the media is restricted from publishing such content that directly affects the thoughts of any person going through their publication and makes them further share such offensive material or indulge in any acts which are punishable. In England, the test of an indecent publication or 'obscene libel' is laid down in the case of R. v. Hicklin stating that the test of obscenity is this, whether the tendency of matter charged is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.¹⁸⁷

The Hicklin Test was laid down by the Queen's Bench in landmark case of Regina vs. Hicklin or famously known as R. vs. Hicklin. In the said case, it was held that the test to determine obscenity would be to verify if tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such

¹⁸⁷ R vs. Hicklin (1868) 3 QB 360

immoral influences and into whose hands a publication of this sort may fall. Once the Hicklin test is applied, any publication can be judged for obscenity based on isolated passages of a work considered out of context. Thus, Hicklin Test laid down a very strict criteria to judge obscenity in any matter because on application of the same, any material could be declared as obscene merely on basis of few lines written in such a manner without considering the entire context in which they have been written.

It was also further held that “a medical treatise with illustration necessary for information of students or practitioners may not be treated as obscene if so published as to reach such persons, though it might be indictable if exhibited in a shop window for any passer-by to see. And to exhibit a picture of the nude in a public gallery is regarded as different from selling photograph of it in the street.” Thus it can be said that obscenity can be determined from the following conditions as laid down in *R vs. Hicklin*:

- (a) If the content in any publication is of such a nature that it spoils the minds of people who are already open to such immoral influences, it shall be considered as “obscene”.
- (b) If the content in any publication is published for a specific group of people for academic purpose or for public good, it shall not be considered as obscene. But if the same publication is exhibited on public streets or displayed in art gallery, the same may be treated as obscene. However, the Hicklin Test has been rejected on the ground that “judging obscenity by the effect of isolated passages upon the most susceptible person might well encompass material legitimately treating with sex, and so it must be rejected as unconstitutionally restrictive of the freedoms of speech and press. On the other hand, the substituted standard provides safeguards adequate to withstand the charge of constitutional infirmity.”¹⁸⁸

It was further held in case of *U.S. vs. Ulysses* that what is offensive to refinement or good taste is not necessarily obscene unless it is concerned with sexual desire. In short, the test of an obscene publication is whether it is erotic. The proper test of whether a given book is obscene is its dominant effect. In applying this test,

¹⁸⁸ U.S. vs. Ulysses (1934) 72 F. 2d. 705

relevancy of the objectionable parts to the theme, the established reputation of the work in the estimation of approved critics, if the book is modern, and the verdict of the past, if it is ancient, are persuasive pieces of evidence; for works of art are not likely to sustain a high position with no better warrant for their existence than their obscene content.”

Main features of the present English law namely Obscene Publications Act 1959 on this issue are as under:

- (a) Essence of the offence is not the motive of writer or the purpose of writing but its tendency to deprave and corrupt.¹⁸⁹ The Obscene Publications Act 1959 has also stated that a matter is deemed to be obscene if its effect or the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely having regard to all relevant circumstances to read, see or hear it.
- (b) Since Obscene Publications Act 1959 does not define the words “deprave and corrupt”, the common law interpretation will apply. These words, it has been held do not mean merely offensive, shocking or disgusting, but mean suggesting to the minds of the young of either sex or even persons of more advanced years, thoughts of a most impure and libidinous character.¹⁹⁰
- (c) Tendency of a publication is to be determined by a reading of the publication itself; the examination of other books or opinions of people relating to other books are irrelevant.¹⁹¹
- (d) The offending article must be read as a whole to determine its effect.
- (e) Purity of motive is not an excuse for publishing indecent matter but if the manner and extent of publication are within appropriate bounds, it is a good defense that the publication is for the public good as being necessary or advantageous to religion, science, art or literature.¹⁹²
- (f) Where there is innocent dissemination, the Obscene Publications Act 1959 makes it an exception to the restriction. Accordingly if booksellers and others have not read

¹⁸⁹ Ct. R. V Reiter (1954) 1 All ER 741

¹⁹⁰ R vs Hicklin (1868) 3 QB 360

¹⁹¹ Ct. R. vs. Reither (1954) 1 All ER 741

¹⁹² R. vs. Barraclough (1906) 1 KB 201

the publication in question or have no reason to suspect its contents, they shall not be guilty of the offence.

- (g) Publication is an essential ingredient of the offence. Showing of the obscene matter to any other person constitutes publication.¹⁹³

Apart from the Obscene Publications Act, some of the other statutes in England which deal with obscenity and indecency are as under:

- (a) Vagrancy Act 1838

The Act penalizes exhibition of obscene pictures, posters, etc in any street, public place, shop window or the exposure of his person by a male to insult a female.¹⁹⁴

- (b) Customs Act 1876

The Act prohibits importation of obscene or indecent matter and also empowers the custom authorities for their destruction.

- (c) Indecent Advertisements Act 1889

The Act penalizes certain advertisements relating to venereal disease or sexual ailments if such advertisements have been displayed in any public place like building, street, public urinals, etc.

- (d) Post Office Acts 1908-1953

Under this Act, it is an offence for any person to use mails for sending indecent or obscene matters. The Post Office in such cases is empowered to detain and open postal packets and even destroy the obscene articles.

- (e) Judicial Proceedings (Regulation of Reports) Act, 1926

The Act prohibits publication of indecent matters relating to judicial proceedings or particulars of matrimonial cases.

- (f) Children and Young Persons (Harmful Publications) Act 1955

The Act penalizes import and sale of harmful publications like stories, etc. which portray the commission of crimes, acts of violence or cruelty and incidents of repulsive horrible nature in such a way that the work as a whole would tend to corrupt a child or young person in whose hands it might fall. The Act mainly aims at restricting and penalizing horror comics.

¹⁹³ De Montalk's Case (1932) 23 Cr App Rep 182

¹⁹⁴ Ford vs. Falcome (1971) 2 All ER 1138

(g) Sexual Offences Act 1967

The Act punishes indecent acts by or between males in public even though such acts between consenting males would be no offence if done in private.

(h) Theatres Act 1968

The Act abolishes censorship of the theatre and penalizes presentation or directing of an obscene play.

(i) Unsolicited Goods and Services Act, 1971

The Act makes it an offence to send to another person any publication or advertising material which is unsolicited and which describes or illustrates human sexual technique.

(j) Protection of Children Act 1978

The Act makes it an offence to take, distribute or exhibit indecent photographs of children.

(k) Local Government (Misc. Provisions) Act 1982

The Act empowers local authorities to refuse licence to shops dealing in sale of sex articles.

Thus, England has ample provisions for restricting the freedom of speech and expression of citizens in case it is found that the freedom is being misused for spread of indecent and obscene activities.

3.7.1.5 Contempt of Court

Subjecting a court to contempt in either form - civil or criminal, has been considered a restriction to the freedom of speech and expression. Using abusive language in pleadings or while addressing the court or outraging the court with insulting remarks will merely shake the faith of a common man in the justice system of the country. Therefore, no litigant, howsoever dejected or disappointed with the justice system of his country can make an excessive use of his freedom of speech and expression so as to humiliate the court. It is a reasonable restriction to his freedom of speech and expression and rightly so. The basic foundation of the English Law of contempt is based on the decision given in *Rex vs. Almon*¹⁹⁵ wherein it was observed that “It is

¹⁹⁵ (1765) Wilmot Notes 243

not the own cause of Judges, but the cause of public which they are vindicating at the instance of the public..and so if the seat of Justice abuses that confidence and an impression is created in the public mind that the Judge is excitable indecorum and insulting to party or counsel, then the confidence of the public is shaken in the administration of justice.. and whenever man's allegiance to the law is fundamentally shaken, it is the most fatal and dangerous obstruction of justice and calls out for a more rapid and immediate redress than any obstruction whatsoever not for the sake of the judges as private individuals but because they are the channels by which the King's justice is conveyed to the people.”

Further in the landmark case of *R. v. Grey*¹⁹⁶, three kinds of contempts of Court have been observed namely:

- (1) Scandalising the Court itself;
- (2) Abusing parties involved in cases before the Court;
- (3) Prejudicing mankind against persons before Court hears the cause.

In case of *R. vs Editor of Statesman*¹⁹⁷, it was held that there are two primary considerations which should weigh with the Court in such cases, namely:

- (a) Whether the reflection on conduct or character of the Judge is within the limits of fair and reasonable criticism, and
- (b) Whether it is a mere libel or defamation of the Judge or amounts to a contempt of the Court.

3.7.1.6 Defamation

No person can defame someone in the garb of exercising his right of freedom of speech and expression. Using spoken or written words, signs or visible representations, making or publishing imputations so as to harm a person's reputation amount to defaming him. Citizen is free to fully utilize his right to speech and expression but it should not go to the extent of harming a person's reputation before the society or the world at large. A man's reputation and image in a society are a result of years and years of hard work. No Constitution should be empowered to

¹⁹⁶ (1900) 2 QB 36

¹⁹⁷ (1928) 44 TLR 301

give such rights to its citizens which can injure such reputation. In this respect, defamation has been considered a reasonable restriction while utilizing the freedom of speech and expression.

In U.K., libel is an actionable wrong and indictable offence when there is a danger to public peace. Even if libel is committed in the course of a dramatic performance, it is punishable under the Theatres Act 1968. However, since there is no constitutional right to the right of privacy, newspapers can freely obtain and publish details of private lives of people without any public interest justification.¹⁹⁸The Defamation Act 2013 has reformed the English defamation law on issues of the right to freedom of expression.

3.7.1.7 Incitement to an offence

Provoking someone to commit a crime has also been considered a reasonable restriction while exercising freedom of speech and expression. Often it is found that a person may not commit crime himself but incite someone else with similar intentions to actually commit the criminal act. Freedom of speech and expression cannot be exercised in a negative manner or to incite someone to commit offences.

In U.K., if a person incites somebody to commit felony, it is indictable at common law even if the incitement has no effect. In case of *R vs. Higgins*¹⁹⁹, it was held that if the addressee does not even read the letter containing incitement, it is still punishable. Even an attempt to incite the commission of such offence is indictable. Provoking somebody to commit acts of violence by mischievous libels including even libels reflecting on the memory of dead, burning effigies, etc are offences on the same ground.

Thus, to conclude, Article 10 of the European Convention of Human Rights provides right to freedom of expression, freedom to hold opinions and also to receive and impart information and ideas without interference by public authority and regardless of frontiers. The only restrictions are those as mentioned above for protecting the peace in state and for exercise of the said freedom by one and all without stepping on the similar rights of fellow being.

¹⁹⁸ Robertson, Freedom, the Individual and the Law (1989)

¹⁹⁹ (1801) 2 East 5

3.7.2 Legislative Provisions

In addition to the constitutional provisions and reasonable restrictions as discussed above, some of the important legislations which deal with the subject of research are as under:

3.7.2.1 Defamation Act 1952

Section 7 of the said Act provides for Qualified privilege of newspapers which states that subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in the Schedule namely “Statements privileged without Explanation or Contradiction” shall be privileged unless the publication is proved to be made with malice. It further states that in an action for libel in respect of the publication of any such report or matter as is mentioned in Part 11 namely “Statements Privileged subject to explanation or Contradiction”, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.²⁰⁰

3.7.2.2 Obscene Publications Act 1959

Obscene Publications Act was enacted against spread of obscene publications in forms of printed material. It was originally adopted in 1857 and in much revised form in 1959. The earlier act, also called Lord Campbell’s Act was very stringent and not only outlawed obscene publications but empowered police to search premises on which obscene publications were kept for sale or distribution. Prior to enactment of the Act in 1959, cases of obscenity were dealt with by the ruling observed in case of R v Hicklin which did not make any exceptions for cases involving artistic merit or public good. The 1857 law was often criticized as it was widely felt that it often compelled authors to falsify social realities. The application

²⁰⁰Available at http://www.legislation.gov.uk/ukpga/1952/66/pdfs/ukpga_19520066_en.pdf

of the law in specific cases was also attacked, for judges frequently permitted prosecutions on the basis of isolated passages. Judges also refused to permit evidence of the author's intent or purpose or of his literary reputation, or to hear the testimony of recognized literary critics. The law was also criticized because the prosecutions were often directed against booksellers, who were indifferent to the fate of the book in question.²⁰¹ The Act of 1959 was enacted with object to amend the law relating to the publication of obscene matter and also to provide for protection of literature as well as to strengthen the law concerning pornography. The new law highlighted on test to determine if something is obscene (Sec. 1), prohibition of publishing 'obscene material' (Sec. 2), powers of search and seizure (Sec. 3), defense of public good applicable to prosecutions for publication of obscene materials and to the forfeiture proceedings described in Section 3.

The law after its enactment first came notably into picture in case of *R v Penguin Books Ltd.*²⁰² for publishing a book titled "Lady Chatterley's Lover" by D.H. Lawrence. The book was banned in U.K., U.S., Canada, Australia, India and Japan for its explicit descriptions of sex and usage of several offensive words. At the trial, views of several academic critics and subject experts were taken to consider if the book was actually obscene or not. After the trial ended with a not guilty verdict, the book was allowed to be openly published and sold in England as well as other parts of the world.²⁰³

3.7.2.3 Telecommunications Act 1984

The Telecommunications Act 1984, an Act of Parliament, gives potentially wide-reaching power to the Secretary of State in relation to communications networks. Sec. 94 of the Act empowers the Secretary of State. It states that the Secretary of State may, after consultation with a person to whom this section applies, give to that person such directions of a general character as appear to the Secretary of State to be necessary in the interests of national security or relations with the government of a

²⁰¹ Available at <https://www.britannica.com/event/Obscene-Publications-Act> (Visited on 30.4.2018)

²⁰² (1961) Crim LR 176

²⁰³ Available at https://en.m.wikipedia.org/wiki/Obscene_publications_Act_1959 (Visited on 16.8.2018)

country or territory outside the United Kingdom. The present section applies to OFCOM and to providers of public electronic communications networks.

3.7.2.4 Malicious Communications Act 1988

The Malicious Communications Act 1988 makes it an offense in England and Wales to send or deliver letters or other articles for the purpose of causing distress or anxiety. In other words, any type of communication or message which is indecent, grossly offensive, threatening or false is an offence under the present Act. Earlier its applicability was restricted only to printed material but eventually, the section has been amended to include electronic communications also.

3.7.2.5 Broadcasting Act 1990

The Broadcasting Act 1990 has been enacted with following objects:

- (i) For making new provisions with respect to provision and regulation of independent television and sound programme services and of other services provided on television or radio frequencies.
- (ii) The Act also is empowered to amend the law relating to broadcasting and provision of television and sound programme services
- (iii) to make provisions with respect to the supply and use of information about programmes.
- (iv) to make new provisions relating to Broadcasting Complaints Commission
- (v) To provide for the establishment and functions of a Broadcasting Standards Council

3.7.2.6 The Human Rights Act 1998

Citizens of UK are entitled to some fundamental rights and freedoms and the Human Rights Act 1988 provides for them. The applicability of said Act is threefold namely:

- (i) It incorporates the rights set out in European Convention on Human Rights into domestic British law.
- (ii) It requires all public bodies carrying out public functions to respect and protect human rights of every individual.

- (iii) Parliament in UK seeks to ensure that new laws are compatible with rights set out in European Convention on Human Rights.

Article 10 of the Act provides that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.²⁰⁴

3.7.2.7 Communications Act 2003

The Communications Act 2003 has been enacted with following objects:

- (i) To confer functions on the Office of Communications;
- (ii) To make provisions about regulating of provision of electronic communications networks and services and of the use of electro-magnetic spectrum;
- (iii) To make provision about regulation of broadcasting and of provision of television and radio services;
- (iv) To make provision about mergers involving newspaper and other media enterprises

Sec. 127(1) of the Act makes it an offence to make improper use of a public electronic communications network. Thus, sending a message or other matter that is grossly offensive or of an indecent, obscene or menacing character is an offence under the Act. Likewise, Sec. 127(2) makes it an offence to send messages for the purpose of causing annoyance, inconvenience or needless anxiety to another. If convicted, the punishment may extend upto 6 months imprisonment and a fine of upto 5000 pounds.²⁰⁵

²⁰⁴ Available at <https://www.duo.uio.no/handle/10852/22867> (Visited on 16.8.2018)

²⁰⁵ Available at <https://www.iomcc.im/media/1021/telecommunications-act-1984.pdf> (Visited on 16.8.2018)

3.7.2.8 Digital Economy Act 2010

The Digital Economy Act 2010 makes provisions for functioning of the Office of Communications and online infringement of copyright and penalties for the same. It also makes provisions for regulation of television and radio services and regulation of the use of electromagnetic spectrum as well as for internet domain registries, etc. U/s. 37 of the Act, Secretary of State may by order provide for any condition included by virtue of this Act in a regulatory regime to be excluded or any condition excluded from a regulatory regime by an order to be included in the regime again.

Currently the Digital Economy Bill 2016-17 is being considered for implementation. It is substantially different and shorter than the Digital Economy Act 2010 whose several provisions largely ended up not being passed into law.²⁰⁶ The major highlights of the Bill are:

- Allowing Ofcom, the communications sector's regulator to financially penalize communications providers for failing to comply with licence commitments;
- Creating an age-verification regulator to publish guidelines about how pornographic sites should ensure their users are aged 18 or above.

3.7.2.9 Independent Television Commission (ITC) Programme Code

Broadcasting sector in UK is governed by following major content codes:

- Radio Authority (RA)'s Programme Code and News and Current Affairs Code;
- ITC's Programme Code;
- BBC's Producer's Guidelines;
- BSC's Code on Fairness and Privacy
- Code on Standards

The said Code provides for various facts like good taste, decency and extent of showing violence on television, privacy and information gathering²⁰⁷ and impartiality²⁰⁸ amongst other matters. U/s. 2 of the Code, the Code aims at providing an appropriate balance between personal privacy, unnecessary intrusion and creating sensationalism on one hand and public's right to receive true, correct and fair picture

²⁰⁶ Available at <http://En.m.wikipedia.org/digitaleconomybill2016-17> (Visited on 28.12.2016)

²⁰⁷ Section 2 of ITC Programme Code

²⁰⁸ Section 3 of ITC Programme Code

and entertainment even though somewhat offensive or intrusive of privacy of some individuals. U/s. 3 of the Code, detailed requirements have been specified regarding impartiality in broadcasting mainly in programming and broadcasting of news and current affairs. Accordingly, impartiality rules must be followed when any broadcaster is dealing with matters of political or industrial controversy, public policy, politics or affairs of government.²⁰⁹ The Code aims at ensuring that broadcasters present the news stories accurately without using unreasonable power to influence public opinion or favoring any one viewpoint over the other when screening programs of such nature. The broadcasters must take care to make accurate, factual and neutral reporting as far as possible. Broadcasters should report the facts as they are without molding them as per their own ideas and thoughts. A line must be maintained between broadcast of factual reporting or documentary programmes and programmes involving presentation of personal opinions.

3.7.2.10 Ofcom Broadcasting Code

The Office of Communications (Ofcom) is required to draw up a code for TV and radio broadcast under the Communications Act 2003 and the Broadcasting Act 1996. The Code should cover standards of broadcast in programmes, sponsorship, fairness and privacy. The Code is divided in 9 Sections which deal with protecting the Under-Eighteens (Sec. 1), regulating harmful or offensive material (Sec. 2), prohibiting broadcast of content involving crime, disorder, hatred and abuse (Sec. 3), broadcasting responsibly the programs of religious nature (Sec. 4), presenting news with impartiality and due accuracy (Sec. 5), duties to be performed during broadcast of election news (Sec. 6), avoiding unfair treatment of any individual/organization (Sec. 7), avoiding unwarranted infringement of privacy in programmes (Sec. 8), distinguishing between editorial content and advertising (Sec. 9), commercial communications on radio (Sec. 10).

When applying the Code to content, broadcasters should be aware that the context in which the material appears is key. In setting this Code, Ofcom has taken

²⁰⁹ Available at <https://www.article19.org/data/files/pdfs/publications/uk-media-regulation.pdf> (Visited on 16.8.2018)

into account as required by section 319(4) of the Communications Act 2003, the following²¹⁰:

- (a) the degree of harm and offence likely to be caused by the inclusion of any particular sort of material in programs generally or in programs of a particular description;
- (b) the likely size and comparison of potential audience for programs included in television and radio services generally or in television and radio services of a particular description;
- (c) the likely expectation of the audience as to nature of a program's content and extent to which the nature of a program's content can be brought to the attention of potential members of audience;
- (d) the likelihood of persons who are unaware of nature of a program's content being unintentionally exposed, by their own actions, to that content;
- (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and in particular a change that is relevant to the application of standards set under this section;
- (f) the desirability of maintaining the independence of editorial control over program content.

3.7.3 Regulatory provisions

Media content regulation in the UK revolves primarily around codes of practice, drawn up by a variety of bodies which are either entirely or largely independent, following wide public consultation. In some cases, these codes of practice have been developed by bodies with statutory powers over the media while in others the responsible bodies have been established by the media or journalists themselves.²¹¹

²¹⁰ Pg. 6, The Ofcom Broadcasting Code, April 2017

²¹¹ Available at <https://www.article19.org/data/files/pdfs/publications/uk-media-regulation.pdf> (Visited on 27.4.2018)

3.7.3.1 Press Standards Board of Finance (PRESSBOF)

The Press Standards Board of Finance is the only self-regulatory body governing UK written press. It funds the Press Complaints Commission and also has the following bodies under its regulatory umbrella:

- Newspaper Publishers Association;
- Newspaper Society;
- Periodical Publishers Association;
- Scottish Newspapers Association;
- Scottish Daily Newspaper Society

Functions of the Press Standards Body of Finance are as under:

- (a) Raising a levy on the newspaper and periodical industries in order to finance the Press Complaints Commission. This arrangement ensures secure financial support for the Press Complaints Commission while the Commission's complete independence is at the same time guaranteed by a majority of lay members, and is a further sign of industry's commitment to effective self-regulation²¹²;
- (b) Co-ordinate and promote the system of self-regulation within the industry;
- (c) Enable the bodies under its system of self-regulation to liaise appropriately with the Press Complaints Commission.

3.7.3.2 Press Complaints Commission

Prior to the currently prevailing Independent Press Standards Organisation (IPSO), complaints related to print media were handled by the Press Complaints Commission which was the-then active self-regulatory body for print journalism industry. It was established, managed and funded by newspapers and magazines themselves. The main function of PCC was to determine adjudications in the event of complaints about content in newspapers and magazines. The main members of PCC were the Chairman, the Public or the Lay Members and the Press or the Industry members and were appointed by independent Appointments Commission.²¹³ The Press

²¹² Available at <https://www.pcc.org.uk/about/whoswho/pressbof.html> (Visited on 2.8.2018)

²¹³ Available at <https://www.inbrief.co.uk/media-law> (Visited on 26.12.2016)

Complaints Commission dealt with complaints regarding written press by taking following actions:

- (a) All complaints will be judged against the Code of Practice²¹⁴;
- (b) If the Code has not been breached on the face of it then the Commission will take the matter no further;
- (c) The Commission deals only with complaints made within one month of publication;
- (d) If letter is written to the editor of publication concerning the matter then Commission will deal with complaints within one month of editors reply;
- (e) If there is litigation currently running concerned with piece or about to commence then the Commission will not get involved. Once the litigation has concluded the Commission may deem it necessary to get involved.

PCC was fatally wounded by its response to the phone-hacking scandal wherein employees of UK newspaper namely News of the World and other British newspapers were accused of engaging in acts like phone hacking of celebrities, politicians, victims of London bombings, etc. It was declared that PCC will be formally closed and replaced with a transitional body which will take charge of press regulation until a new system is set up in the wake of Leveson inquiry.²¹⁵

3.7.3.3 International Press Standards Organisation (IPSO)

IPSO is the largest independent regulator of the newspaper and magazine industry. Its main function is to promote and uphold the highest professional standards of journalism in UK and to support members of the public in seeking redressal where they believe that the Editors' Code of Practice has been breached. The main object of IPSO is to provide a trusted, thriving, free and responsible press reinforced by independent, effective regulation. Its functions are²¹⁶:

- (i) to support those who feel wronged by the press;

²¹⁴ All member of the press have a duty to maintain the highest professional and ethical standards meaning that they should consistently operate within the confines of the Code of Practice. Editors are responsible for the actions of journalists which are employed by their publication meaning that it is necessary for them to ensure that the Code of Practice is followed. The code deals with areas like accuracy of material, giving fair opportunity of hearing, preventing harassment by journalists and dealing with caution wherever necessary, etc.

²¹⁵ Available at <http://www.theguardian.com/media/2012/mar/08/press-complaints-commission-close-phone-hacking> (Visited on 6.8.2018)

²¹⁶ www.ipso.co.uk (Visited on 24.11.2016)

- (ii) to uphold the highest professional standards in UK press
- (iii) to determine whether standards have been breached and provide redress if so.

IPSO handles complaints related to print media and conducts investigations on its own in maintenance of editorial standards and compliance thereof. It also monitors the numerous print media houses by requiring publications to submit annual compliance reports.

3.7.3.4 Leveson Regulation Reforms

In 2011, it was discovered that thousands of people were being victimized due to phone hacking by “News of the world” detectives and that the existing Press Complaints Commission which was the main industry regulator of press in UK since 1990 was not fit for the purpose of regulation anymore. The newspaper was closed with immediate effect and a public, judge-led investigation was set namely the Leveson Inquiry in order to examine the culture, behavior and ethics of press. After taking the evidentiary statements from several witnesses, Lord Leveson recommended that newspapers should continue to be self-regulated as they had been regulated by Press Complaints Commission but there should also be a new press standards body created by the press industry which is backed by a legislation and has a new code of conduct. It was also suggested that the body should be backed by legislation which would create a means to ensure the regulation was independent and effective. According to Lord Leveson, such arrangement would provide the public with confidence that their complaints would be seriously dealt with and ensure that the press are protected from interference. However, according to critics, PCC was weak in its powers compared to powerful publishers. Also its activities were restricted in scope and several issues like privacy and libel, etc. were left for decision by the courts and people preferred to get justice from courts rather than seeking help from PCC. Eventually, PCC was wound up due to its frequent lack of action. The major recommendations of the report are²¹⁷:

²¹⁷Leveson Report: Key Points – Lisa O’Carroll – www.theguardian.com/media/2012/nov/29/leveson-report-key-points (Visited on 7.1.2017)

3.7.3.4.1 The new regulatory mechanism should be independent of government and newspapers

It was suggested that an independent self-regulatory body underpinned by statute should be established. It should be free of any influence from industry or government. It should be governed by an independent board and there should be full transparency in appointment of its members.

3.7.3.4.2 Government's duty to protect free press

It was suggested that the new legislation should provide for an independent regulator to be organized by the industry but it should also place an explicit duty on government to uphold and protect freedom of the press.

3.7.3.4.3 Powers of new watchdog

It was suggested that the new regulatory mechanism should be enabled to impose severe fines in extreme cases, i.e. fine of 1% of turnover with a maximum of a million pounds was suggested. The watchdog should have sufficient powers to carry out investigations in every form of breach of the code whether suspected or serious.

3.7.3.4.4 Membership

Membership of the new regulatory mechanism need not be legally mandatory but if any body does not join the independent regulator, they should be overlooked by the Ofcom.

3.7.3.4.5 Speedy disposal of trials

It was suggested that the new watchdog should be capable enough to make the process fair, quick and inexpensive. It should try to strike out any kind of frivolous or vexatious claims at an early stage itself.

3.7.3.4.6 Reckless pursuit of sensationalizing stories

It was observed that there was a recklessness in prioritizing sensational stories without thinking of the kind of harm that may be inflicted by such stories or the people who may be affected.

3.7.3.4.7 Casual approach towards complainants

It was observed that there was a cultural tendency within parts of the press to vigorously resist or dismiss the complaints as a matter of course. Some papers were

found to be operating in defensive mode and even after agreeing to apologize, resorted to personal attacks on those who challenged them.

3.7.3.4.8 Establishment of arbitrary system

It was suggested that an arbitration system should be set up for victims of the press so that speedy redressal can be availed without entering endless procedures of courts.

3.7.3.4.9 Criticism of role of police

It was observed that though no evidence was found of any form of corruption during police investigation, the decision-making of police during original phone hacking inquiry itself was faulty. Former Met Asst. Commissioner John Yates should have declined to review phone hacking investigation because of his personal friendship with News of the World deputy editor Neil Wallis. Hence, it was suggested that all ranking officers should record all of their contact with the media and publish a summary of what was discussed.

However, seven years after the Leveson Inquiry, MPs in UK are yet again preparing to vote on a cross party proposal to establish another inquiry into the media's actions. The proposal which is in form of an amendment to the data protection bills aims at inquiring in allegations of data protection breaches committed by or on behalf of national news publishers. Another amendment to the same legislation aims at imposing punitive legal costs on media organisations which refuse to be recognized by IMPRESS which is the officially sanctioned press regulator. If passed, the two proposed amendments would undermine the government's recent decisions by legislating for a fresh inquiry similar to Leveson and introducing punitive measures for newspapers that refuse to join IMPRESS.²¹⁸

3.7.3.5 Royal Charter 2013

In 2013, David Cameron, P.M. and Nick Clegg established Royal Charter which was to function as a new press watchdog. The said Charter had power to impose heavy fines on UK publishers and also demand prominent corrections and apologies, wherever necessary, from UK news publishers. If any news agency refused to join

²¹⁸ Available at <http://www.theguardian.com/media/2018/may/08/why-is-uk-press-regulation-back-in-the-headlines>
(Visited on 7.8.2018)

the new regulatory regime, it would be liable to pay heavy damages in case a claim came up against them. In response to it, heads of newspapers like Daily Mail and News Corp launched a vicious assault on Leveson's proposals arguing that any form of statutory regulation constituted the end of 300 years of press freedom. This is despite the fact that press are already subject to multiple forms of statute and in receipt of public money via their exemption from sales taxes. Simultaneously, press also formed a self-regulatory mechanism namely the Independent Press Organisation which had wider powers than any previous bodies ever had.²¹⁹The Royal Charter was approved by the Queen in October 2013 but the publishers and newspapers in large numbers have remained confined to their own regulator, i.e. Independent Press Standards Organisation rather than signing up for Royal Charter.

3.7.3.6 Editors' Code of Practice

The Editors' Code of Practice is a set of rules to be followed by the publishers of newspapers and magazines. It sets the standards that newspapers and magazines can be held to account by IPSO and is part of the contract between IPSO and the newspapers and magazines regulated by it. The Code is administered by the Editors' Code of Practice Committee constituted of ten editors and five lay members including the Chairman and Chief Executive of IPSO.²²⁰ The Editors' Code aims at addressing the potentially competing rights of freedom of expression and other rights of individuals like right of privacy. Newspapers and magazines have editorial freedom to publish what they consider to be appropriate provided that the rights of individuals are not compromised and that the Code is not otherwise breached. The Code currently addresses issues like reporting of suicide (Clause 5), intrusion into grief or shock (Clause 4), protecting identity of minors involved in sex offences (Clause 7), protecting identity of victims of sexual assault (Clause 11), prohibiting publication of distorted, misleading material (Clause 1) and protecting vulnerable class of persons namely children (Clause 6) and hospitals (Clause 8). The Editors' Code also allows newspapers and magazines to be partisan generally including in

²¹⁹ Available at <http://www.mediareform.org.uk/blog/> (Visited on 24.11.2016)

²²⁰ Available at <http://www.ipso.co.uk/faqs> (Visited on 28.12.2016)

their coverage of election related material. The selection and presentation of material for publication is a matter for individual editors provided that the Editors' Code of Practice has not otherwise been breached.

3.7.3.7 Press Recognition Panel

The Press Recognition Panel is the independent body set up by Royal Charter to ensure that regulators of the press in UK are independent, well-funded and also able to protect the public while recognizing the important role carried out by press.²²¹ It was created as a result of the Leveson Inquiry into press standards, which followed widespread concern about unlawful activities like phone hacking which were carried out in some sections of media. The main function of Press Recognition Panel is to recognize press regulators who fulfil all the major conditions in the Royal Charter for press regulation. If the regulator fulfils all the conditions, it is known as an approved regulator. The Panel ensures that approved regulators are independent of the publishers they regulate, are funded properly to do their job, are open to all publishers and provide the public with proper opportunities to raise concerns about the conduct of regulator's members.²²² The Panel also carries out reviews at regular intervals to ensure that approved regulators continue to meet the criteria as laid down in Charter. If at any point of time even after being recognized as approved regulator, any of the conditions remains to be fulfilled, Press Recognition Panel is empowered to withdraw the recognition.

3.7.3.8 Independent Monitor for the Press (IMPRESS)

The Independent Monitor for the Press (IMPRESS) is a Leveson-compliant regulator and is currently the only organization that has applied for recognition by the Press Recognition Panel. It is independent of Government or press industry and does not depend on any publisher. Nobody with a political background is allowed to be a part of its Board. Complaints can be made to IMPRESS about content in a news article or the behavior of any journalist or publisher provided the relevant news publication

²²¹ Available at <http://www.Pressrecognitionpanel.org.uk> (Visited on 28.12.2016)

²²² Available at <http://www.pressrecognitionpanel.org.uk/faq> (Visited on 28.12.2016)

is regulated by IMPRESS. Also the publication or behavior should be a potential breach of one or more provisions of the Editors' Code of Practice. Currently IMPRESS is in process of drafting a new Standards Code for the press.

3.7.3.9 Office of Communications (Ofcom)

The Office of Communications (Ofcom) controls the statutory regulation of commercial television and radio stations in UK. It is the regulating body dealing with ownership of organisations, program content and transmission of various programs. The main function of Ofcom is to further the interests of citizens and of consumers, where needed by promoting competition.²²³Ofcom operates under several Acts of Parliament including the Communications Act 2003, Wireless Telegraphy Act 2006, Broadcasting Act 1990 and 1996, Digital Economy Act 2010 and the Postal Services Act 2011. It is thus accountable to Parliament and enforces regulatory rules for sectors like television, radio, postal services, etc. The main duties of Ofcom are to ensure:

- (i) that UK has a wide range of electronic communications services
- (ii) a wide range of high quality television and radio programmes are provided appealing to a range of tastes and interests;
- (iii) television and radio services are provided by a range of different organisations;
- (iv) people who watch television and listen to radio are protected from harmful or offensive material;
- (v) people are protected from being treated unfairly in television and radio programmes and from having their privacy invaded.
- (vi) Viewers of video on demand service are protected from harmful content.
- (vii) Universal postal service is provided in UK
- (viii) Radio spectrum (airwaves used by everyone) is used in most effective way.

3.7.3.10 The British Broadcasting Corporation

The British Broadcasting Corporation is the public service broadcaster in the UK and was established by Royal Charter in 1926. It provides television and radio services

²²³ Available at <http://www.ofcom.org.uk> (Visited on 27.12.2016)

to the United Kingdom. It is primarily funded through licence fee which has to be paid by every person owning a television in UK. Also, it is involved in commercial activities for getting its funds. Even though the Corporation has been established by an executive order and its governors are appointed by government, practically it functions relatively independently of government. Its independence in relation to broadcasting content is formally guaranteed in a detailed agreement between the corporation and the government.²²⁴

Both the Royal Charter and the agreement with the executive require the Corporation to ensure that its broadcasts are accurate and impartial, do not offend good taste or decency or include anything which is likely to incite or encourage crime, lead to disorder or be offensive to public feeling. The Corporation is required to draw up a code regulating these matters in details and all producers must follow the codes subject to internal procedures. The BBC has developed a detailed code namely the Producers' Guidelines for dealing with various matters including impartiality, fairness, privacy, surreptitious recording, taste and decency, terrorism and national security, politics, election broadcasts, violence, conflicts of interest, suffering and distress, crime and the police, etc. BBC has also established a Programme Complaints Unit for domestic licence-fee funded broadcasting and online services. This unit investigates complaints against the standards set out in the Producers' Guidelines and suggests appropriate measures and sanctions wherever required. If complainant is dissatisfied with decision of the unit, appeal can be made to the Governors' Programme Complaints Appeals Committee.²²⁵

3.7.3.11 Broadcasting Standards Commission

The Broadcasting Standards Commission has been established by the Broadcasting Act 1996. It looks over all broadcasters including the BBC as well as private broadcasters. The major functions of Commission include²²⁶:

- (i) producing codes of conduct relating to fairness, privacy and standards;

²²⁴ Clause 2.1 of Agreement (www.bbc.co.uk/info/bbccharter) (Visited on 28.12.2016)

²²⁵ <https://www.article19.org/data/files/pdfs/publications/uk-media-regulation.pdf> (Visited on 14.8.2018)

²²⁶ <https://www.article19.org/data/files/pdfs/publications/uk-media-regulation.pdf> (Visited on 14.8.2018)

- (ii) monitoring, conducting research and compiling reports on standards and fairness in UK broadcasting; and
- (iii) receiving and adjudicating upon complaints received from general public.

3.7.3.12 Body of European Regulators for Electronic Communications (BEREC)

The Body of European Regulators for Electronic Communications was established by the European Parliament as part of Telecom Reform package. It replaced the European Regulators Group for electronic communications networks and services which was established as an advisory group to the Commission in 2002. BEREC commenced its activities in January 2010. It is committed to independent, consistent, high quality regulation of electronic communications markets for the benefit of Europe and its citizens. It contributes to the development and better functioning of the internal market for electronic communications networks and services. As the European body which brings together all national regulatory authorities (NRA), BEREC is informed by the ‘on the ground’ knowledge, experience and technical expertise of its constituent regulatory authorities. According to European law establishing BEREC, it should provide advice to both the European institutions and NRAs in field of electronic communications for the European institutions and for NRAs. In line with this, Article 5(3) of the Regulation EU 2015/2120 explicitly obliges BEREC to issue guidelines on net neutrality in order to provide guidance to NRAs on their implementation of the rules.²²⁷

Media has a duty to play in the society. It should report freely, fairly, with transparency and without any bias. It is powerful enough to create an image that can last for ages or spoil an image that has been made after years of hard work. The people from within the media should not for their narrow and personal goals indulge in reporting negativities and falsehoods of politics, sports, society or any other field. Article 10 of European Convention of Human Rights hence provides not only the freedom to hold opinions and receive and impart information and ideas, but also subjects its usage to reasonable restrictions so as to maintain peace and order in society and the nation. Several regulatory bodies have been established in U.K. to

²²⁷ Available at <http://Berec.europa.eu/eng/netneutrality/> (Visited on 2.1.2017)

meet these ends which will enforce a fair exchange of ideas, healthy exercise of freedom to hold opinions and maintenance of standards of morality, decency and good taste in print, broadcast and social media. Absence of such regulation or restrictions will merely give a free hand to media for indulging in vices and careless reporting of its own accord.

To conclude, regulation of media in UK is mainly supervised by several codes of practice as discussed above which have been drawn by several bodies mainly working independently. The print media sector in UK is self-regulatory in nature. No specific statutory rules are regulating it. While some of the codes of practice have been drafted and developed by bodies having statutory powers over media, in some other cases the responsible bodies have been established by media itself. While all forms of media are subject to laws related to defamation, obscenity, etc., the broadcast or electronic media is also additionally subject to small number of specific content rules like the Ofcom. The various codes of conduct have mostly provided guidelines for media professionals rather than declaring clear prohibitions on specific types of content. Unlike US, where free speech of media is not limited by any restrictions, UK has tried to balance its right of free speech against several restrictions.

3.8 Position in India

India being one of the most populated countries of the world has several enactments as well as one of the lengthiest Constitutions. Considering the various sects, religious groups, castes of people living in the country, it becomes inevitable that the freedom of speech and expression are taken care of for one and all. Likewise, exercise of freedom of speech and expression by one should not hamper or hinder the similar right of another. For this reason, Article 19(1)(a) of the Constitution provides for freedom of speech and expression while Article 19(2) lists the reasonable restrictions on the said freedom. The same are discussed at length below:

3.8.1 Constitutional Provisions

The Constitution of India is the longest written constitution of any sovereign country in the world. It was adopted by the Constituent Assembly on 26.11.1943 and came

into effect on 26.1.1950. With its adoption, the Union of India became the modern and contemporary Republic of India replacing the Government of India Act 1935 as the country's fundamental governing document. The Constitution of India declares India as a sovereign, socialist, secular, democratic republic assuring its citizens of justice, equality and liberty and endeavors to promote fraternity among them. The following Articles of the Constitution of India deal with freedom of speech and expression, reasonable restrictions, emergency, etc.

3.8.1.1 Protection of certain rights regarding freedom of speech, etc (Art. 19)

(1) All citizens shall have the right-

- (a) to freedom of speech and expression;
- (b) to assemble peacefully and without arms;
- (c) to form associations or unions or cooperative societies;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) to practice any profession, or to carry on any occupation, trade or business

Sub-clause (2) of Article 19 provides that nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of right conferred by the said sub-clause in the interests of sovereignty and integrity of India, the security of State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

3.8.1.2 Supreme Court to be a court of record (Art. 129)

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt itself.

3.8.1.3 High Courts to be courts of record (Art. 215)

Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

3.8.1.4 Proclamation of Emergency (Art. 352)

If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of territory thereof as may be specified in the Proclamation.

3.8.1.5 Suspension of provisions of Article 19 during emergencies (Art. 358)

- (1) While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of incompetency, cease to have effect as soon as the Proclamation ceases to operate except as respects things done or omitted to be done before the law so ceases to have effect.

3.8.1.6 Protection of publication of proceedings of Parliament and State Legislatures (Art. 361A)

- (1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or as the case maybe, either House of the Legislature, of a State, unless the publication is proved to have been made with malice.

Nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case maybe, either House of the Legislature of a State.

- (2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

3.8.2 Article 19 and restrictions thereon

Article 19 of the Constitution of India guarantees six fundamental rights that maybe referred to as “freedoms” available to every citizen of India. These freedoms are:

- (i) Freedom of speech and expression;
- (ii) Freedom of assembly;
- (iii) Freedom of association;
- (iv) Freedom of movement;
- (v) Freedom of residence & settlement;
- (vi) Freedom of profession, occupation, trade or business

Article 19 not only defines the freedoms but also sets the limitations against each freedom. Through their various judgments from time to time, Courts have summarized general principles to be kept in mind for considering the constitutionality of a statutory provision which has been deemed unreasonable due to restrictions imposed by it. These principles are as under²²⁸:

- (1) Restriction sought to be imposed on fundamental rights guaranteed under Article 19 of the Constitution must not be arbitrary or of excessive nature, so as to go beyond the requirement of the felt need of society and object sought to be achieved.
- (2) There must be a direct and proximate nexus or a reasonable connection between restriction imposed and the object sought to be achieved.
- (3) No abstract or fixed principle can be laid down which may have universal application in all cases. Such consideration on the question of reasonableness is hence expected to vary from case to case.
- (4) While interpreting constitutional provisions, Courts should be clear about present requirements of society and complex issues facing the people which legislature intends to solve through effective legislation.
- (5) When tackling such problems and understanding present needs of society, the judicial approach must necessarily be dynamic, pragmatic and elastic.
- (6) While considering reasonableness of restriction imposed by a statute, Court should examine whether the social control as envisaged in Article 19 is being effectuated by the restriction imposed on Fundamental Rights.

²²⁸PapanasamLabour Union vs. Madura Coats Ltd. (1995) 1 SCC 501

- (7) Although Article 19 guarantees all 6 freedoms to citizens, such guarantee does not confer any absolute unconditional rights but is subject to reasonable restriction which the legislature may impose in public interest. Hence, it is necessary to examine whether such restriction meant to project social welfare satisfying the need of prevailing social values.
- (8) Reasonableness must be tested both from procedural and substantive aspects. It should not be bound by processional perniciousness or jurisprudence of remedies.
- (9) Restriction imposed on the Fundamental Rights guaranteed under Article 19 of the Constitution must not be arbitrary, unbridled, uncanalised and excessive and also not unreasonably discriminating. Thus, a restriction to be reasonable must also be consistent with Article 14 of the Constitution.
- (10) In judging the reasonableness of restriction imposed by Article 19(6), Court must bear in mind the Directive Principles of State Policy.
- (11) Ordinarily any restriction so imposed having the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest. Freedom of speech and expression is a human right guaranteed under both international and national laws. Its importance has been recognized by almost all nations of the world by way of various codes, conventions, legislations, etc. However, the said freedom of speech and expression is not absolute, i.e. the freedom can be exercised by an individual subject to certain reasonable restrictions. These restrictions have been placed on freedom of speech and expression so that while exercising the said freedom, similar rights of another individual are not harmed.

Article 19(2) recognizes right of the State to make laws putting reasonable restrictions for the reasons set on that clause. Freedom of expression guaranteed under Article 19(1)(a) is subject to various limitations imposed for public good. The restrictions must be reasonable restrictions. Also, the fundamental rights guaranteed by Article 19 are available against the State only. In this context, the “State” includes not only legislative authorities of the Union and the States but also other local or statutory authorities, i.e. municipalities, local bodies, etc. within territory of India or under the control of Government of India.

The term “reasonable restrictions” refers to limitations against any available right of an individual. Thus, a person may exercise his right in all manners without going to the extent of crossing its limitations, i.e. the reasonable restrictions. In order to judge the meaning of reasonable restriction, following factors must be considered:

- (a) The restrictions must have a reasonable relation to the object which the legislation seeks to achieve and must not go in excess of that object.
- (b) Reasonableness of a restriction has to be determined in an objective manner.
- (c) It is the effect of a law which constitutes the test of its reasonableness, its object, whether good or bad is immaterial for this purpose.
- (d) In adjudging the validity of restriction, courts have necessarily to approach it from the point of view of furthering the social interest.
- (e) A restriction to be valid must have a rational or proximate relation with the grounds which legislature is entitled to impose.

In another case²²⁹, it was held that in order to be valid, the limitations under Clauses (2) to (6) of Article 19 must comply with the following conditions:

3.8.2.1 The restriction must be imposed by law

A restriction in order to be valid, must have been imposed by a ‘law’ which is made by the ‘State’ which is made by the ‘State’ as defined in Article 12. The words “the State making any law” in each of the limitation Clauses (2) to (6) clearly signify this purpose.

“Law” includes valid subordinate legislation as stated in Article 13(3)(a) but without legislative authority, Executive cannot impose any restriction upon any of the fundamental rights guaranteed by Art. 19(1).²³⁰

Any law which may be made under Article 19(2) to (6) to regulate the exercise of the right to the freedoms guaranteed under Article 19 must be ‘law’ having statutory force and not a mere executive or departmental instruction.²³¹ Thus, the control or restriction must be imposed only by a ‘legislative act’ and not by any

²²⁹Joseph vs. RBI AIR 1962 SC 1371

²³⁰Ganapati vs. State of Ajmer (1955) 1 SCR 1065

²³¹Bijoe Emmanuel vs. State of Kerala (1986) 3 SCC 615

executive instruction. The State undisputably can issue direction which should meet the criteria of ‘law’ within the meaning of Article 13 of the Constitution.²³² Simultaneously, the Legislature is not required to make a law solely for the purpose of imposing the restriction. A restriction may be imposed by a general law, if other conditions are satisfied.²³³

3.8.2.2 Law must be made by the ‘State’

Restrictions referred to in Article 19(2) to (6) may be imposed by any of the authorities that come within the comprehensive definition of “the State” in Art. 12 who are competent to make a ‘law’ as defined in Art. 13(3)(a).²³⁴ Authority to impose limitations on the freedoms is thus wider in Indian Constitution than in the United States where the “Police Power” is regarded as an attribute of sovereignty of the States. Even the Federal Government does not have this power since it is supposed that the States did not delegate this power to the Union at the time of federal compact.²³⁵ In India, power of imposing limitations has been conferred not only on the States and the Union, but also on local and other authorities who have the power to make ‘laws’ including within that term all forms of subordinate legislation such as ‘bye-laws.’²³⁶

3.8.2.3 Such law must be otherwise valid

In order to justify a restriction under Clause (2) to (6), the law which imposes restriction must be otherwise valid. A restriction which is not authorized by a valid law cannot be saved by any of these clauses. Hence, in the case of subordinate legislation, it must be intra vires and accordingly the procedure required by statute must be complete before it can be defended under Clause (2) to (6). Also, law must be within the legislative competence of relevant Legislature and must not contravene

²³²Modern School vs. Union of India (2004) 5 SCC 583

²³³Babulal vs. State of Maharashtra AIR 1961 SC 884

²³⁴Vrajlal vs. State of M.P. AIR 1970 SC 129

²³⁵Thornhill vs. Alabama (1940) 310 US 88

²³⁶Rashid Ahmed vs. Municipal Board (1950) SCR 566

the other fundamental right or any other mandatory provision of the Constitution which constitutes limitations upon the legislature.²³⁷

3.8.2.4 Restriction must be related to one of the grounds specified in the limitation clauses

Once it is held that Article 19 is applicable and a fundamental right enumerated therein has been infringed, the only thing which can save the law from constitutional invalidity is if it comes within any of the exceptions enumerated in Article 19(Clauses 2 to 6). Citizens of India are entitled to enjoy each and every freedom as enshrined in Article 19 without having to choose one freedom over another. The state cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom. If any restriction is made under Art. 19(b) which is reasonable and if the same affects freedom of speech and expression, the restriction would be invalid.

3.8.2.5 Relationship with permissible ground must be 'proximate'

Relationship between the impugned legislation and any of the relevant specified grounds must be rational or proximate²³⁸. A restriction to be valid must have a material relation with the grounds for which the legislature is entitled to impose restriction. If the connection between a restriction and the constitutionally authorized ground for restriction is very remote, it will render the law invalid.²³⁹

A law which affects fundamental right of any individual is not valid due to its vague and uncertain nature. In *K.A. Abbas vs. Union of India*²⁴⁰ it was held that if persons applying a specific law are uncertain about its very nature and even that law itself prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution. It is the substance of legislation and not merely its appearance or form which is to be taken into consideration while assessing its validity. Thus, there must be a direct and proximate nexus or reasonable connection between the

²³⁷Cooper vs. Union of India AIR 1970 SC 564

²³⁸HamdardDawakhana vs. Union of India AIR 1960 SC 554

²³⁹Superintendent District Jail vs. Lohia AIR 1960 SC 633

²⁴⁰(1970) 2 SCC 780

restriction imposed and the object sought to be achieved. If this is a direct nexus between restriction and object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise.²⁴¹

3.8.3 Scope of grounds for reasonable restrictions on Freedom of Speech and Expression

If maintenance of democracy is the foundation for free speech, society is also equally entitled to regulate freedom of speech and expression by democratic action. Freedom of speech and expression brings within its ambit the corresponding duty and responsibility and puts limitation on the exercise of liberty. The State has legitimate interest to regulate the said freedom by restraining its limits. While each citizen has been granted this freedom, there is a correlative duty on all not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate other's right to person or reputation. Therefore, freedom of speech or expression is tolerated so long as it is not malicious or libelous.²⁴²

Preservation of the right of freedom of speech and expression to all the citizens is of utmost necessity in any democracy. Likewise, as no freedom can be absolute, it also becomes necessary to impose some specific restrictions on this freedom in order to maintain social order. Accordingly, under Article 19(2) of the Constitution of India, the State may make a law imposing "reasonable restrictions" on the exercise of the right to freedom of speech and expression "in the interest of" the public on the following grounds:

- (i) Sovereignty and integrity of India;
- (ii) Security of the State;
- (iii) Friendly relations with foreign States;
- (iv) Public order;
- (v) Decency or morality;
- (vi) In relation to contempt of court;

²⁴¹MRF Ltd. Vs. Inspector Kerala Govt. (1998) 8 SCC 227

²⁴²D.C. Saxena vs. Hon'ble Chief Justice of India (1996) 5 SCC 216

- (vii) Defamation;
- (viii) Incitement to an offence;

Position of the said grounds, their validity and extent have been discussed in detail as follows:

3.8.3.1 Sovereignty and integrity of India

To maintain sovereignty and integrity of a state is prime duty of government. Taking into it into account, freedom of speech and expression can be restricted so as not to permit any one to challenge sovereignty or to permit any one to preach something which will result in threat to integrity of the country.

Restriction on freedom of speech and expression on the ground of maintaining sovereignty and integrity of India was added by Sixteenth Amendment of Constitution w.e.f. 6.10.1963. Object of the amendment was to confer on Parliament specific power to legislate on this topic so that the constitutionality of an Act such as the Criminal Law Amendment Act 1961 could not be challenged on the ground of being inconsistent with Article 19(1)(a). By this Act, any expression by words, writing or visible representation which is prejudicial to the “safety or security” of India has been made punishable.

Thus, insulting the National Flag in any form is a punishable offence under the Prevention of Insults to National Honour Act 1971. But where any political party is named on the basis of a language recognized under Arts. 344(1) and 351 cannot render the party illegal as being violative of the integrity of India.²⁴³

3.8.3.2 Security of State

However precious the freedom of speech may be in a democratic society, means can never override the end itself. Since object of freedom of speech is to “maintain the opportunity for free political discussion, to the end that government may be responsive to the will of people and that changes, if desired may be obtained by peaceful means, that opportunity can hardly be maintained without the existence of an organized government having power to ensure the exercise of that right and to

²⁴³Rama Rao vs. TeleguDesam AIR 1984 AP 353

prevent interferences with that right which belongs to every citizen.²⁴⁴ No State can therefore tolerate utterances which threaten the overthrow of organized government by unlawful or unconstitutional means. The reason is that security of the State organized government is the very foundation of freedom of speech.²⁴⁵ Security of state is vitally essential and a government must have sufficient powers to impose restrictions on any kind of activity that may create disturbance or hamper it in any manner. Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of State.

The term "security of state" refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. Thus speeches or expression on the part of an individual, which incite to or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of State. In India, following legislations by Parliament have been enacted in order to maintain security of the State as a restriction to freedom of speech and expression:

- (i) The Press (Objectionable Matter) Act 1951 which remained in force until 1956 contained restrictions upon expressions and publications which "incite or encourage any person to resort to violence or sabotage for the purpose of overthrowing or undermining the Government established by law in India or in any State thereof or its authority in any area. Subsequent to the expiry of this Act in 1956, Parliament enacted Criminal Law Amendment Act 1961 imposing restrictions upon the freedom of expression and of press as well as the freedoms of assembly and of movement on grounds of "security of the State" and public order.
- (ii) The Customs Act, 1962 prohibits export or import inter alia of documents which are prejudicial to the security of India.
- (iii) In Indian Penal Code, offences u/s. 121-121A (abetment or conspiracy to wage war against the Government of India), to instigate people to resort to violence to remove the government by some writing would be covered under the present head.

²⁴⁴De Jonge vs. Oregon (1937) 299 US 353

²⁴⁵Stromberg vs. California (1931) 283 US 359

- (iv) Section 3 of the Police (Incitement to Disaffection) Act 2933 makes it an offence to do any act which causes or is likely to cause disaffection towards the Government established by law in India amongst the members of a police force or induces or attempts to induce any member of a police force to withhold his services or to commit a breach of discipline.²⁴⁶
- (v) The Civil Defence Act 1968 empowers Central Government to take steps for prohibiting acts prejudicial to the civil defence of India, which includes measures not amounting to actual combat which are necessary for protection of any person, property, police or thing in India against any hostile attack and such measures may be taken before, during at or after the time of such attack. For prohibiting any matter which is to be published in the Press but is prejudicial to civil defense, Central Government is empowered to make rules that prohibit the printing or publication of such matter. It can even demand security from any press used for the purpose of printing or publishing such matter and forfeit copies of any publication containing such matter.
- (vi) The National Security Act, 1980 provides for preventive detention of any person with a view to preventing him from acting in any manner prejudicial to the defense of India, the relations of India with foreign powers and of the security of India.

The degree and extent of the reach of objectionable activity upon the society are extremely relevant in deciding whether a man has committed only a breach of “law and order” or has acted in a manner likely to cause disturbance to public order. It is the potentiality of any act to disturb the normal life of community which makes it prejudicial to the maintenance of public order.²⁴⁷

3.8.3.3 Friendly relations with foreign states

In the present global world, a country has to maintain good and friendly relationship with other countries. Something which has potential to affect such relation ship should be checked by government. Keeping this thing in mind, this ground was added by the constitution (First Amendment) Act, 1951. The object behind the

²⁴⁶Dalbir Singh vs. State of Punjab AIR 1963 SC 1106

²⁴⁷Durga Das Basu, Commentary on the Constitution of India (Vol.2) 2445 – (Wadhwa Publications, Nagpur, 8thedn., 2007)

provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardize the maintenance of good relations between India, and that state.

The expression “friendly relations with foreign States” being very wide includes not only libel of foreign dignitaries, inducement of foreign enlistment but also propaganda in favor of rival claimants to authority in a foreign State after India has already recognized a particular person to be authority in that State, propaganda in favor of war with a State at peace with India, etc.²⁴⁸ “Friendly relations with foreign States” means and includes international relations. Article 19(1)(a) permits restrictions to be imposed in the interest of friendly relation with foreign States” which include international relations. No similar provision is present in any other Constitution of the world. In India, the Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against foreign dignitaries but it has been repealed in 1951 and no legislation in this regard exists currently. Interest of friendly relations with foreign States, would not justify the suppression of fair criticism of foreign policy of the Government. However it is interesting to note that member of the commonwealth including Pakistan is not a "foreign state" for the purposes of this Constitution. The result is that freedom of speech and expression cannot be restricted on the ground that the matter is adverse to Pakistan.²⁴⁹

3.8.3.4 Public Order

This ground was added by the Constitution (First Amendment) Act. None of the freedoms as guaranteed by Constitution can be utilized properly in a state of disorder. Hence, order is a major requirement in any organized society. 'Public order' is an expression of wide connotation and signifies "that state of tranquility which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established."²⁵⁰ It is something more than ordinary maintenance of law and order. 'Public order' refers to

²⁴⁸R. vs. Antonelli 70 JP 4.

²⁴⁹DheerajendraPatanjali, Freedom of Speech and Expression – India vs. America – A Study (www.indialawjournal.org/archives/volume3/issue_4/article_by_dheerajendra.html) (Visited on 5.1.2016)

²⁵⁰ Justice R FazalKasim - Judicial Review of Public Action Vol. 1 631

public peace in general, safety and tranquility in society. Anything that disturbs public tranquility or public peace disturbs public order. Thus communal disturbances and strikes promoted with the sole object of accusing unrest among workmen are offences against public order.

Public order thus implies not just absence of violence but also an orderly state of affairs in which citizens can peacefully pursue their normal vocation of life. Public order also includes public safety. Thus creating internal disorder or rebellion would affect public order and public safety. But mere criticism of government does not necessarily disturb public order. In India, in RomeshThappar's case, after elaborately analyzing the concept of "public order", Supreme Court observed that public order is an expression of wide connotation and signifies that state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by government which they have established.²⁵¹

The words 'in the interest of public order' includes not only such utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. Following are some of the laws which impose restriction upon the freedom of speech and expression in the interest of public order:

3.8.3.4.1 Indian Penal Code

It is an offence to promote enmity between different classes of citizens by words, either spoken or written or by representation or otherwise (Sec. 153A); to utter words, make visible representations with deliberate intent to wound the religious feelings or belief of another person or of any class of citizens (Ss. 295A, 298)

3.8.3.4.2 Indian Telegraph Act, 1885

Prohibition of private broadcasting except under a licence granted by Government of India is a reasonable restriction under Article 19(2).²⁵² For the purpose of ensuring the free speech rights of citizens, it is not necessary to have private broadcasting stations. If private broadcasting is allowed, it will also lead to powerful economic

²⁵¹RomeshThappar vs. State of Madras (1950) SCR 594

²⁵²Lakhanpal vs. Union of India AIR 1982 Delhi 167

commercial and political interests to participate in it which may not prove beneficial to free speech right of the citizens and more so, if strict program controls and regulatory steps are not provided.

3.8.3.4.3 The Cinematograph Act 1952

The Act empowers Government to suspend the exhibition of any film likely to cause breach of peace.

3.8.3.4.4 Representation of People Act 1951

Section 130 prohibits canvassing or exhibiting any notice or sign in or near polling stations on the date of pollings.

3.8.3.4.5 Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954

The Act prohibits objectionable advertisements relating to magic cure and self medication in the interests of public health.

3.8.3.4.6 Customs Act, 1962

Section 11 empowers Central Government to prohibit import and export of goods if it is satisfied that it is necessary so to do in the interests of maintenance of security of India and maintaining public order and standards of decency or morality.

3.8.3.4.7 Criminal Procedure Code, 1973

Section 95 punishes any person who publishes a map of India not in conformity with Map as published by Survey of India with imprisonment or fine or both.

3.8.3.4.8 Civil Defence Act, 1968

The Act enables the Government to prohibit publication of any newspaper, etc. containing matters prejudicial to civil defence; demanding security from any press in that context.

3.8.3.5 Decency and morality

While expressing the opinions and views, a citizen should stay decent in his words and language. It should not affect the morality of society adversely. The Constitution has taken care of this view and inserted decency and morality as a ground of restriction to freedom of speech and expression.

In *Miller vs. California*, obscenity was confined to “works which depict or describe sexual conduct.” In Webster’s New International Dictionary, the term has been defined as “offensive to taste, foul, loathsome, disgusting.” Advanced Law Lexicon defines obscene to mean something offensive to chastity, decency or delicacy expressing and presenting to the mind or view something that delicacy and purity forbid be exposed. Indecency is an act against good behavior and a just delicacy. Obscenity is such indecency as is calculated to promote violation of the law and general corruption of morals.²⁵³ The freedom of speech and expression is subject to reasonable restriction which may be thought necessary in interest of general public and one such is the interest of public decency and morality. Sections 292 to 294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places.

In case of *Director General of Doordarshan vs. Anand Patwardhan*²⁵⁴ the guidelines for testing obscenity were laid down as under:

- (i) Whether the average person applying the contemporary, community standards would find that work, if taken as a whole appeals to the prurient interests;
- (ii) Whether the work depicts or describes in a patently offensive way sexual conduct specifically defined by the applicable State law and
- (iii) Whether the work taken as a whole, lacks serious literary, artistic, political or scientific value. While judging decency of a film, it must be viewed from an average, healthy and common sense point of view. Also, it was held that the correct approach to be taken while watching a film is to look at it as a whole and not in bits,

²⁵³RamanathaIyer, Advanced Law Lexicon Part 3, 3279, 3rd Ed. 2005

²⁵⁴ (2006) 8 SCC 433

as any message that is purported to be conveyed by way of a film cannot be conveyed just by watching certain bits of the film.

In above case, the court held that the test of obscenity which was laid down in R v. Hicklin is the only test in India to determine obscenity.

Some other observations in leading cases on this restriction are as under:

- (i) Obscene means offensive to modesty or decency; lewd, filthy, repulsive. But even an immodest representation may not be reasonably restricted in the interests of decency or morality if it conduces to the propagation of ideas or information of public interest, i.e. in the books of medical science, there are figures showing male and female private parts but these figures are meant for the purpose of learning and understanding and hence reasonable restriction will not apply to the same. In general, ideas having social importance will prima facie be protected unless the obscenity is so gross and decided that the interest of public dictates the other way. The test of obscenity is thus a question of degree and varies with the moral standard of community in question.²⁵⁵
- (ii) It is not the intention of an author but the effect of his published writing on the readers which constitutes the test of obscenity. i.e. whether the tendency of matter in question is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.²⁵⁶
- (iii) While determining the effect of offending publication, Court is to have regard to the moral standard of contemporary society which is rapidly changing in India and both, the young and adolescent class have access to a large mass of literature which have a mixed content of sex and romance. Considering this changing scenario, Court must determine whether the offending publication, read as a whole, has the tendency of rousing sexual desire in adolescent youth to whom it is made available.²⁵⁷
- (iv) The Exception to S. 292 IPC gives absolute immunity to publications kept or used bonafide for religious purposes.²⁵⁸ Apart from this, the said section does not admit any exception on the plea of 'public good'.

²⁵⁵Ranjit vs. State of Maharashtra (1965) 1 SCR 65

²⁵⁶State vs. Kunji AIR 1970 All 614

²⁵⁷Chandrakant vs. State of Maharashtra AIR 1970 SC 1390

²⁵⁸Hari Singh (1905) 28 All 100

Both the terms, i.e. “morality” and “decency” also have been attempted to be elaborated in order to clarify what constitutes a reasonable restriction on freedom of speech and expression. In case of *Benazir Bhutto vs. Federation of Pakistan*²⁵⁹ it was held that in common parlance, the word ‘morality’ is far more vague than the word ‘decency’. The difficulty of determining what would offend against morality is enhanced by the fact that not only does the concept of immorality differ between man and man, but the collective notion of society also differs amazingly in different ages. All that can be said is that the autonym of the word ‘morality’ according to the existing notion depends upon acts which are regarded as acts of immorality by the consensus of general opinion. However, it may be pointed out that owing to ethnic, cultural and even psychological differences, it is not possible to formulate a universal standard of morality. Thus, notions of morality vary from country to country and from age to age and the international community has not yet been able to settle any common code of morality.”

Some of the major legislations in India imposing a reasonable restriction on the ground of morality and decency are as under:

- (1) The Cinematograph Act 1952 provides for sanctioning of cinematograph films for exhibition;
- (2) The Young Persons (Harmful Publications) Act 1956 has been enacted to restrict production and distribution of pictorial and other publications having subjects like glorification of crime, violence etc. known as “horror comics” which are likely to encourage antisocial tendencies among children and also have a harmful influence on young persons.
- (3) The Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954 restricts objectionable advertisements with reference to curing sexual ailments with the help of magic.
- (4) Ss. 20-23 of Post Office Act 1898 prohibit transmission of obscene material by post.
- (5) S. 3 of Dramatic Performances Act 1876 provides for prohibition of any dramatic performance which is likely to deprave and corrupt people who are watching the performance.

²⁵⁹ PLD 1988 SC 416

No fix standard is laid down till now as to what is moral and indecent. The standard of morality varies from time to time and from place to place.

3.8.3.6 Contempt of Court

Judiciary plays a vital role in any democratic country by imparting justice, laying down guidelines and often indulging in judicial activism. In this situation it becomes essential to respect such institution and its order. Thus, restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. In England, three sorts kinds of contempts of Court have been observed in the leading case of R. v. Grey²⁶⁰ namely:

- (a) Scandalising the Court itself;
- (b) Abusing parties involved in cases before the Court;
- (c) Prejudicing mankind against persons before Court hears the cause.

All the above kinds of contempt lead to “criminal contempt” only and not civil contempt. Since the general principles of English common law are followed by Indian Courts in determining what constitutes contempt of court, these principles can be elaborated further as below:

3.8.3.6.1 Scandalising the Court

“Scandalising” refers to scurrilous attack on the majesty of justice which is calculated to undermine the authority of Courts and public confidence in the administration of justice. The malicious or slanderous publication inculcates in the mind of people a general disaffection and dissatisfaction on the judicial determination and indisposes their allegiance to obey them. If the peoples’ allegiance to the law is so fundamentally shaken, it is the most vital and most dangerous obstruction of justice calling for urgent action.²⁶¹

Any act which is done or writing that is published with an object of bringing a Court or a Judge of the Court into contempt, or lower his authority is a contempt of Court. Thus, imputing corruption, misconduct or incapacity in the discharge of his

²⁶⁰ (1900) 2 QB 36

²⁶¹ D.C. Saxena vs. Hon’ble Chief Justice of India (1996) 5 SCC 216

public duties on the judge are some of the examples of scandalizing the Court. Any criticism which tends to bring into ridicule and contempt the administration of justice is contempt.²⁶² As freedom of press has not been separately provided under the Constitution of India, any expression of opinion is not immune from the liability for exceeding the limits either under the law of defamation or contempt of Court or other constitutional limitations under Art. 19(2). If a citizen tries to scandalize the Court or undermines its dignity while exercising his right of free expression under Art. 19(1), the Court is empowered to exercise power under Art. 129 or Art. 215.

However, a fair criticism of the conduct of any Judge or even the institution of Judiciary and its functioning may not amount to contempt if it is made in good faith and public interest. In order to ascertain that good faith and public interest existed while making any remark, the Courts deciding the matter must also go through the surrounding circumstances as well as the persons responsible for such remarks comments, their knowledge in the field regarding which comments are made and also the intended purpose sought to be achieved through such comments. Each and every single citizen of the nation cannot be permitted to freely comment upon conduct of the institution.

The said contempt of scandalizing the court is subject to following important qualifications:

- (1) Power to punish for scandalizing the Court is a weapon to be used sparingly and always with regard to administration of justice and not for vindicating personal insult to a judge not affecting administration of justice.²⁶³

In case of *R. vs Editor of Statesman*²⁶⁴, it was held that there are two primary considerations which should weigh with the Court in such cases, namely:

- (a) Whether the reflection on conduct or character of the Judge is within the limits of fair and reasonable criticism, and
- (b) Whether it is a mere libel or defamation of the Judge or amounts to a contempt of the Court.

²⁶²R v Editor of Statesman (1928) 44 TLR 301

²⁶³Debi Prasad vs. King Emperor (1943) 48 CWN 44 (PC)

²⁶⁴ (1928) 44 TLR 301

Scandalising of Court is a species of contempt and it may take several forms. A common form is the vilification of the Judge. When proceedings in contempt are taken for such vilification, Courts have to inquire whether the vilification is of the judge “as a judge” or it is the vilification of the Judge as an individual.²⁶⁵

- (2) Object of the punishment is not protection of Judges personally from imputations to which they may be exposed as individuals but protection of the public themselves from the mischief they will incur if the authority of tribunal is impaired.²⁶⁶
- (3) A fair and reasonable criticism of a judicial act in the interest of public good does not amount to contempt. However, the liberty of free expression cannot be equated or confused with a licence to make unfounded and irresponsible allegations against the judiciary.²⁶⁷

Courts are not unduly sensitive to fair comment or even outspoken comments being made regarding their judgments and orders made objectively, fairly and without any malice but no one can be permitted to distort orders of the Court and deliberately give a slant to its proceedings which have a tendency to scandalize the court or bring it to ridicule in the larger interest of protecting administration of justice.²⁶⁸

3.8.3.6.2 Obstruction of or interference with due course of justice

A speech or conduct of a party which tends to influence the result of a pending trial, civil or criminal or otherwise tends to interfere with proper course of justice amounts to contempt of court and hence considered as a reasonable restriction on the freedom of speech and expression.²⁶⁹ Anything which prejudices the Court against any party before hearing of the actual cause takes place amounts to contempt even though the Court may not have been influenced by such act or statement.

Likewise, any threat to a party to a pending litigation which would force him to withdraw his action or to abandon it amounts to contempt. Also it would be contempt on part of a subordinate Court where it intentionally and wilfully disobeys

²⁶⁵B. Mishra vs. Registrar of Orissa High Court (1974) 1 SCC 374

²⁶⁶R. vs. Almon (1765) Wilmot’s Notes 243

²⁶⁷Radha Mohan Lal vs. Rajasthan High Court AIR 2003 SC 1647

²⁶⁸Narmada BachaoAndolan vs. Union of India (1999) 8 SCC 308

²⁶⁹R. v Catro (1873) 9 QB 219

the order of a superior Court. There cannot be an intentional disobedience unless the subordinate Court had knowledge of orders of the superior Court.²⁷⁰

3.8.3.6.3 Contempt in the face of the Court

Where any kind of words are uttered or an action is made by a party in face of the Court or in course of proceedings, it may amount to contempt provided such conduct interferes with the course of justice. Thus, an attempt or threat of using violence on opposite party or using abusive language which may likely result in physical provocation will amount to contempt in the face of Court.

In case of Advocate General, St. of Bihar vs. M.P. Khair Ind., it was held that abuse of process calculated to hamper the due course of judicial proceedings or orderly administration of justice amounts to contempt.²⁷¹ Thus, maintaining dignity of the Courts is one of the cardinal principles of the rule of law. If anyone criticizes a judicial institution in a manner which at first instance may seem mere criticism but ultimately leads in undermining the dignity of Courts, the same cannot be permitted. Undermining the dignity of Supreme Court or High Court would attract Art. 129 of 215 of the Constitution and also the provisions of Contempt of Courts Act 1971.

3.8.3.7 Defamation

Freedom of one person should be exercised properly and not in a manner which affects the reputation of some other person. Defamation is causing an injury to a man's reputation. The freedom of speech and expression does not give a right to a person to injure, lower the esteem, expose to hatred, ridicule or contempt of some other person by publishing a false statement regarding that other person without having any lawful justification. Defamation may be either in form of "libel" (remarks in oral form) or "slander" (remarks in written form which are published in some manner). In India, the criminal law relating to defamation is a part of Sec. 499 of Indian Penal Code while the civil law though uncodified follows the English common law.

²⁷⁰Kar vs. Chief Justice of Orissa AIR 1961 SC 1367

²⁷¹ AIR 1980 SC 946

To surmise, one's freedom, be it of any type, must not affect the reputation or status of another person. A person is known by his reputation more than his wealth or any thing else and Constitution considers it as ground to put restriction on freedom of speech.

3.8.3.8 Incitement to an offence

The ground of incitement to an offence as a restriction on freedom of speech and expression was added by the Constitution (First Amendment) Act, 1951. An individual has a freedom of speech and expression but it does not confer on him a right to incite people to commit offence. Offence refers to any act or omission made punishable by law for the time being in force. The term "incitement" means an act or instance of provoking, urging on, or stirring up. The act of persuading another person to commit a crime is incitement.²⁷²

In India, the term "offence" has been given a wide scope. Under S. 3(38) of the General Clauses Act, it means any act or omission made punishable by any law for the time being in force. Thus, legislature is competent to enact that incitement to commit any offence punishable under any Central or State-made law is an offence in itself. The ground of incitement may be invoked on freedom of speech and expression subject to following conditions:

- (a) The impugned law imposing restriction upon advocacy or incitement must relate to a pre-existing offence. Thus, in order to be punishable, the incitement must be of an act which at the time of commission of offence, was already an offence under any law for the time being in force. In other words, an incitement cannot be restricted under the present ground if the act or omission which is incited does not constitute an offence.
- (b) The legislation must be levelled against a 'definite offence'. It is not a valid restriction of the freedom if it is vague in nature. In case of *State of Bombay vs. Balsara*²⁷³, it was held that prohibition of incitement or encouraging any member of the public to commit any act 'which frustrates or defeats the provisions of this Act or

²⁷²Black – 7th Ed. 1999

²⁷³ (1951) SCR 628

any rule, regulation or order made thereunder' is too wide and vague, to be justified by Art. 19(2).

The present clause of incitement to an offence as a restriction to the freedom of speech and expression shall not affect mere approval or admiration of an act of murder or of violence in some literary or historical work unless such work itself has a tendency to incite or encourage the commission of such offence.²⁷⁴ It cannot be held as a general proposition that in all cases of admiration or approval of an offence or offender, there must be a tendency to encourage violent offences. Court must look into the circumstances of each case in judging such a tendency i.e. purpose of the work, period during which it was published, class of society to which it is aimed for referring, its effect on the minds of readers, context in which objected words appear and the interval of time between incidents narrated and the publication of work.²⁷⁵

From above analysis, it is evident that Grounds contained in Article 19(2) show that they are all concerned with the national interest or in the interest of the society. The first set of grounds i.e. the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order are all grounds referable to national interest, whereas, the second set of grounds i.e. decency, morality, contempt of court, defamation and incitement to an offence are all concerned with the interest of the society. Freedom of speech and expression is a basic right for all the citizens in order to express themselves and live their life in the best possible manner by enjoying the said right. Removing the said right might suffocate the man in the sense that he shall not be able to express his thoughts, communicate to his fellow citizens or opine with anyone his views about any topic. Needless to say, free speech is a vital organ of a free society as the political, national, personal agendas cannot be progressed or seen with a different view if there is a total restriction on the same.

²⁷⁴State of Bihar vs. Shailabala Devi (1952) SCR 654

²⁷⁵ Justice Fazal Karim , Judicial Review of Public Action Vol.1 –2006

3.8.4 Penal Provisions

Penal provisions relate to, constitute or prescribe punishment for a specific offence. The following enactments include penal provisions for violation of any act in respect of freedom of speech and expression.

3.8.4.1 Indian Penal Code

Indian Penal Code is the major crime-punishing legislation of our country. It is a comprehensive code and defines and punishes all sorts of offences. It is sub-divided in 23 chapters and 511 sections. Various major offences pertaining to murder, rape, theft, breach of trust, cruelty, etc. are covered under the Code. The major sections pertaining to print media under Indian Penal Code are as under:

3.8.4.1.1 Sedition: (Section 124A)

Sedition refers to words or actions that make people rebel against the authority of the State. According to Coleridge, the word 'sedition' in its ordinary natural significance denotes a tumult, an insurrection, popular commotion or an uproar; it implies violence or lawlessness in some form. Lord Fitzgerald explained meaning of the word stating that it is a crime against society, nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term and it embraces all those practices whether by word, deed or writing which are calculated to disturb tranquility of the State and lead ignorant persons to endeavor to subvert the Government and laws of the country. Objects of sedition generally are to induce discontent and insurrection and to stir up opposition to the Government and bring administration of justice into contempt, and the very tendency of sedition is to incite people into insurrection and rebellion.²⁷⁶

Sedition has been described as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign of the Government, the laws or the Constitution of the realm and generally all endeavours to promote disorder. Section 124A of Indian

²⁷⁶ Dr. S. R. Myneni, Media Law 216 Asia Law House 2013

Penal Code which deals with the offence of “sedition” provides that whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years to which fine may be added, or with fine. The Section also mentions explanations namely:

- (a) The expression “disaffection” includes disloyalty and all feelings of enmity;
- (b) Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section;
- (c) Comments expressing disapprobation of the administrative or other action of Government without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.

In case of *KedarNath Singh vs. State of Bihar*²⁷⁷, it was held that comments however strongly worded expressing disapprobation of action of Government without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of government or its agencies so as to ameliorate the condition of people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity or disloyalty which imply excitement to public disorder or the use of violence. Again, in case of *Balwant Singh vs. State of Punjab*²⁷⁸ it was held that raising of some lonesome slogans a couple of times by two individuals without anything more did not constitute any threat to the Government of India as by law established nor could the same give rise to feelings of enmity or hatred among different communities or religion or other groups. Thus, the major criteria in order to apply this section to any

²⁷⁷ AIR 1962 SC 955

²⁷⁸ AIR 1995 SC 1785

act is that there should be an attempt to bring disaffection, hatred or contempt towards the Government either in written or verbal form or by signs or visible representations. Any form of comment which merely expresses disapproval on moral grounds of the steps taken by Government or its administrative actions but does not invoke hatred, contempt or disaffection towards the same shall not be considered as sedition.

3.8.4.1.2 Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony (Section 153A)

Section 153A of Indian Penal Code deals with words, spoken or written, or representations that promote disharmony and feelings of enmity, hatred or ill-will on grounds of religion, race, language, caste or community or any other ground. Likewise, any act prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities which disturbs public tranquility or organizes any movement whereunder participants are trained to use criminal force or violence against any religious group shall also be punishable under this Section. The penalty is 3 years in jail and/or fine.

3.8.4.1.3 Sale, etc. of obscene books, etc. (Sec. 292)

The term “obscene” has not been defined in Indian Penal Code. The general meaning of the word as available in Oxford New English Dictionary is “offensive to modesty or decency, expressing or suggesting unchaste and lustful ideas; impure, indecent and lewd.” Likewise, Black’s Law Dictionary defines the term as “lewd, impure, indecent, calculated to shock the moral sense of man by a disregard of chastity or modesty”. U/s.292(2) a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or where it comprises two or more distinct items, the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

As per sub-section (2), whoever:

- (a) Sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
- (b) Imports, exports or conveys and obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation or
- (c) Takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
- (d) Advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this Section, or that any such obscene object can be procured from or through any person, or
- (e) Offers or attempts to do any act which is an offence under this Section.

Shall be punished on first conviction with imprisonment of either description for a term which may extend to two years and with fine which may extend to Rs. 2000/- and in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to 5 years and also with fine which may extend to Rs. 5000/-.

However, the above Section shall not apply to any book, pamphlet, paper, writing, drawing, painting, representation or figure the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or which is kept or used bona fide for religious purposes. The Section shall also not be applicable to any representation sculptured, engraved, painted or otherwise represented on or in any ancient monument within the meaning of Ancient Monuments and Archaeological Sites and Remains Act 1958 or to any temple, or on any car used for conveyance of idols, or kept or used for any religious purpose.

Thus, u/s. 292, following two things need to be proved in order to apply the Section, i.e.:

- (a) That the thing in question was obscene, and
- (b) That the accused used it in any of the ways enumerated, i.e. sold, distributed, imported, printed or exhibited it, or attempted or offered to do so.

3.8.4.1.4 Sale, etc. of obscene objects to young persons (Sec. 293)

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in Sec. 292, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to 3 years, and with fine uptoRs. 2000/- and in the event of subsequent conviction, with imprisonment of either description for a term which may extend to 7 years, and also with fine uptoRs. 5000/-

3.8.4.1.5 Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion (Section 295A)

Whoever with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India by words, either spoken or written or by signs or by visible representations or otherwise insults or attempts to insult the religion or the religious beliefs of that class shall be punished with imprisonment for a term extending to three years or with fine, or with both.

3.8.4.1.6 Defamation (Sec. 499)

Whoever by words, either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said to defame that person.

Any of the following acts may amount to defamation:

- (i) It may amount to defamation to impute anything to a deceased person, if he imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near relatives.

- (ii) It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.
- (iii) An imputation in form of an alternative or expressed ironically, may amount to defamation.
- (iv) No imputation is said to harm a person's reputation, unless that imputation directly or indirectly in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling or lowers the credit of that person or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful. However, following acts though in the same nature, would not amount to defamation:
 - (i) Imputation of truth which public good requires to be made or published:
 - (ii) Public conduct of public servants:
 - (iii) Conduct of any person touching any public question:
 - (iv) Publication of reports of proceedings of Courts:
 - (v) Merits of a case decided in Court or conduct of witnesses and others concerned:
 - (vi) Merits of public performance:
 - (vii) Censure passed in good faith by person having lawful authority over another:
 - (viii) Accusation preferred in good faith to authorized person:
 - (ix) Imputation made in good faith by person for protection of his or other's interests:
 - (x) Caution intended for good of person to whom conveyed or for public good:

Sec. 500 provides for punishment for defamation and states that "Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

3.8.4.1.7 Printing or engraving matter known to be defamatory (Sec. 501)

"Whoever prints or engraves any matter knowing or having good reasons to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

3.8.4.1.8 Sale of printed or engraved substance containing defamatory matter (Sec. 502)

“Whoever sells or offers for sale any printed or engraved substance containing defamatory matter knowing that it contains such matter shall be punished with simple imprisonment for a term which may extend to two years or with fine, or with both.”

3.8.4.1.9 Statements conducing to public mischief (Sec. 505)

Whoever makes, publishes or circulates any statement, rumour or report, -

- (a) With intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or
- (b) With intent to cause, or which is likely to cause fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or
- (c) With intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

Shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Likewise, Sec. 505(2) states that whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities shall be punished with imprisonment which may extend to three years, or with fine, or with both.

3.8.4.1.10 Section 298:

Section 298 penalises the “utterance of words” that might hurt the religious feelings of any person; the penalty is 1 year and/or fine.

3.8.4.2 Newspaper (Incitement to Offences) Act, 1908

The said Act was enacted in British India and aimed against Extremist nationalist activity. It empowered the magistrates to confiscate press property which publishes objectionable material likely to cause incitement to murder or acts of violence.

3.8.4.3 The Prevention of Seditious Meetings Act, 1911

The said Act was enacted to consolidate and amend the law relating to the prevention of public meetings which are likely to promote sedition or disturb public tranquility. Sec. 4 of the said Act makes it mandatory to seek permission in writing or give written notice of a public meeting of such nature from District Magistrate or the Commissioner of Police. A person failing to take such permission or give a written notice shall be punished with imprisonment for a term extending to six months or with fine or with both. Further, Sec. 7 also provides that any person delivering lecture or speech that is likely to cause disturbance or public excitement amidst present people may be arrested without warrant and punished with imprisonment for a term which may extend to six months or with fine or with both.

3.8.4.4 The Official Secrets Act, 1923

The said Act has been enacted for maintaining the secrecy of official documents, information, communications, etc. pertaining to government. The same are of national importance and Section 3 of the present Act states that any person who acts against the interest of State and its safety by entering any prohibited place as defined u/s. 2(8) of the Act or by making any sketch, plan, model or note which maybe directly or indirectly useful to the enemy or obtains, publishes or communicates any secret official code or password to any other person or similarly passes any official information to any other person which is likely to affect the sovereignty and integrity of India, security of the State or friendly relations with foreign States shall be punished with imprisonment ranging from three years to fourteen years. Likewise, u/s. 5 if a person who is already having under his control any information, sketches, or documents which are of national importance passes it any third person not authorized to receive such information or fails to take reasonable care of the same

thus endangering interest of the State shall also be guilty of offence under this Act and subject to imprisonment upto three years.

3.8.4.5 The Representation of the People Act 1951

Section 127A of the said Act restricts the printing and publishing of pamphlets or posters without the names and addresses of the printer and publisher thereof. The same maybe printed after declaring the identity of publisher alongwith his signature and attesting witnesses and copy thereof is sent to the district magistrate or Chief Electoral Officer. Any person acting in contravention of the same shall be punished with imprisonment extending to six months or with fine of uptoRs. 2000/- or both.

3.8.4.6 The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954

The said Act was passed to control the advertisement of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith. The term “advertisement” has been defined to include any notice, circular, label, wrapper or other document and any announcement made orally or by any means of producing or transmitting light, sound or smoke. Thus, law makers have taken care to prohibit misleading advertisements by way of either print media or electronic media. Section 3, 4 and 5 of the Act prohibit publication of advertisement of drugs of any kind for treatment of some diseases and disorders, misleading advertisements and advertisements of magic remedies for treatment of certain diseases and disorders. U/s. 3, persons are prohibited to be a part of publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for:

- (a) Procurement of miscarriage in women or prevention of conception in women; or
- (b) Maintenance or improvement of capacity of human beings for sexual pleasure;
- (c) Correction of menstrual disorder in women; or
- (d) Diagnosis, cure, mitigation treatment or prevention of any disease, disorder or condition specified in the Schedule or any other disease, disorder or condition which may be specified in the rules under this Act.

Simultaneously, giving false impression, making false claims in respect of true character of a drug has been prohibited u/s. 4 and import or export of such misleading advertisements into and out of India also has been prohibited u/s.6. Section 7 of the Act penalizes any contravention of above sections and states that whoever contravenes any of the provisions of this Act or the rules made thereunder shall on conviction be punishable:

- (a) In case of first conviction, with imprisonment which may extend to 6 months or with fine or with both;
- (b) In case of subsequent conviction with imprisonment which may extend to 1 year, or with fine, or with both.

3.8.4.7 The Prize Competitions Act, 1955

Section 15 of the Act states that where any newspaper or other publication contains any prize competition promoted or conducted in contravention of the provisions of this Act or except in accordance with the provisions of a licence under this Act or any advertisement in relation thereto, the State Government may by notification in the Official Gazette declare every copy of the newspaper and every copy of the publication containing the prize competition or the advertisement to be forfeited to Government.

3.8.4.8 The Young Persons (Harmful Publications) Act, 1956

Pictorial and other publications containing stories of glorification of crime, violence and vice known as “horror comics” have found easy circulation and a large number of readers in India. The spread of such stories is likely to encourage anti-social tendencies amongst children and they also exert a harmful influence on the tender minds of young persons. Hence, in order to prevent dissemination of certain publications that are harmful to young persons, the said Act has been implemented. A harmful publication has been defined u/s. 2(a) to mean any book, magazine, pamphlet, leaflet, newspaper or other similar publication which consists of stories told with/without the aid of pictures or wholly in pictures being stories portraying wholly or mainly-

- (i) The commission of offences; or
- (ii) Acts of violence or cruelty; or
- (iii) Incidents of a repulsive or horrible nature

in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner. Section 3 of the Act penalizes sale, hire, distribution, exhibition, advertisement, etc. of such harmful publication with imprisonment of 6 months or with fine or both. Courts are also empowered to order the destruction of such publications.

3.8.4.9 The Prevention of Insults to National Honour Act, 1971

Section 2 of the Act states that whoever burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or insults the Indian National Flag or the Constitution of India by written or spoken words in any place shall be punished with imprisonment extending upto 3 years or with fine or with both. Likewise, Sec. 3 punishes any person intentionally preventing the singing of Indian National Anthem or causing disturbance to any assembly engaged in such singing with imprisonment extending upto three years.

3.8.4.10 The Contempt of Courts Act, 1971

The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizen namely, the right to personal liberty and the right to freedom of expression.²⁷⁹ The Contempt of Courts Act, 1971 has been enacted with the object of defining and limiting the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto. The said Act defines “civil contempt” u/s. 2(b) as wilful disobedience to any judgment, decree, direction order, writ or other process of a court or wilful breach of an undertaking given to a court. Sec. 2(c) defines “criminal contempt” as the publication (whether by words, spoken or written or by signs, or by visible representation or otherwise) of any matter or the doing of any other act whatsoever which –

²⁷⁹ Available at <http://www.legalserviceindia.com/article/I255-Contempt-of-Court.html> (Visited on 14.8.2018)

- (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Apart from the acts mentioned above, no other act shall be considered contempt namely;

- (i) innocent publication and distribution of matter by any person which interferes or obstructs the course of justice of any pending civil or criminal proceedings if at that time he had no reasonable grounds for believing that the proceeding was pending. (Sec. 3);
- (ii) Fair and accurate report of judicial proceeding (Sec. 4)
- (iii) Statement made by a person in good faith concerning the presiding officer of any subordinate court to any other subordinate court or High Court to which it is subordinate. (Sec. 6)
- (iv) Publication of information relating to proceeding in chambers or in camera except in certain cases.(Sec. 7)

3.8.4.11 The Code of Criminal Procedure, 1973

The Code of Criminal Procedure lays down exhaustive procedures for several circumstances wherein freedom of print media is restrained for the protection of larger interest of public. Some of these cases are as under:

3.8.4.11.1 Power to declare certain publications forfeited and to issue search warrants for the same: (Sec. 95)

Sec. 95(1) of the CrPC states that where any newspaper, book or any document appears to the State Government to contain any matter the publication of which is punishable u/s. 124A, 153A, 153B, 292, 293 or 295A of IPC, the State Government may by notification stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter and every copy of such book or other

document to be forfeited to Government and thereupon any police officer may seize the same wherever found in India and any Magistrate by warrant may authorize any police officer to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

3.8.4.11.2 Application to High Court to set aside declaration of forfeiture: (Sec. 96)

Sec. 96(1) provides that any person having any interest in any newspaper, book or other document in respect of which a declaration of forfeiture has been made u/s. 95, may within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of newspaper or the book or other document in respect of which the declaration was made did not contain any such matter as referred to in Sec. 95(1). Sec. 96(2) provides that the copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper in respect of which declaration of forfeiture was made. U/s. 96(4), if the High Court is not satisfied that the issue of newspaper, book or other document contained any matter of mischievous nature, it can set aside the declaration of forfeiture.

3.8.4.12 The Parliamentary Proceedings (Protection of Publication) Act, 1977

Opinion of the nation's citizens is the basis of any democratic government. Without knowing their opinion and free will, if a government takes arbitrary decisions of its own, the same shall lead to chaos and anarchy in the nation. Hence, it is vital that proceedings of Parliament are communicated to the public. For this purpose, newspapers should be provided the privilege of publishing substantially true reports of proceedings in Parliament without being exposed to any civil or criminal action.

Thus, u/s. 3 of the Act, a person is not liable to any civil or criminal proceedings in any court in respect of publication in a newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice.

3.8.4.13 Indecent Representation of Women (Prohibition) Act 1986

The Indecent Representation of Women (Prohibition) Act 1986 was enacted to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner. Sec. 2(c) of the said Act defines “indecent representation” as depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals. Sec. 3 of the Act prohibits advertisements containing indecent representation of women while Section 4 prohibits publication or sending of books, pamphlets, etc. containing such indecent representation by post. Section 6 provides that any person who contravenes the provisions of Sec. 3 or 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to Rs. 2000/- and in the event of a second or subsequent conviction with imprisonment for term of not less than six months but which may extend to 5 years and also with a fine not less than Rs. 10000/- but which may extend to Rs. 1 lac. An exception is made for any book, pamphlet, film, writing, etc. publication of which is proved to be justified as being for public good on the ground that such book, pamphlet, etc. are in the interest of science, literature, art or learning or other objects of general concern or if they are used bona fide for religious purpose.

3.8.4.14 Information Technology Act, 2000

The Information Technology Act came into force in the year 2000. After the popularity and usage of internet increased in the world everyday, it also saw rise in the complaints of obscenity, hacking, phishing, etc. The Act was enacted to bring the emerging technology of internet under the scope of law so that the crimes committed through the medium of internet could be made punishable offences.²⁸⁰ Section 66A provides that any person who sends by means of a computer source or a communication device, any information that is grossly offensive or has menacing

²⁸⁰Siddharth Narrain, A Broad Overview of Broadcasting Legislation in India, Alternative Law Forum, Bangalore (2008)

character, any information which he knows to be false but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device, and any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about origin of such messages shall be punishable with an imprisonment of upto 3 years and fine of uptoRs. 5 lacs or both. The said section was repealed in the year 2015. Section 67 of the said Act deals with publishing of information which is obscene in electronic form. It states that whoever publishes or transmits or causes to be published in electronic form any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it shall be punished for a first time offence with imprisonment of up to 5 years and fine of uptoRs. 1 lac and for second or subsequent conviction, with imprisonment of upto 10 years and fine of uptoRs 2 lacs.

3.8.5 Regulatory Provisions

Regulation has become one of the most highly used tools across the world to restrict media freedom. The recent spread of broadcast sector in several countries and regions has been a major cause behind the need of regulation. However, in order to strike the right balance between public's right to freedom of expression and the state's obligation to protect its citizens from violence continues to be a major challenge amidst growth of digital and satellite media.²⁸¹

Regulations are enforced usually by a regulatory agency formed or mandated to carry out the purpose or provisions of a legislation. For example, The Press Council of India is an organization that was established for the purpose of preserving freedom of press and of maintaining and improving the standards of newspaper and news agencies in India. Thus, it is an authorized body to develop and enforce

²⁸¹ Available at <http://www.freedomhouse.org/report/special-reports> (Visited on 26.11.2016)

regulations for newspaper industry in India. The major enactments with regulatory provisions are:

3.8.5.1 Print Media

The print media or the earliest form of media across the world which was mainly in forms of books, newspapers, magazines, etc. was regulated through several legislations which are as under:

3.8.5.1.1 The Press and Registration of Books Act 1867

Several new books related to diversified subjects were written in India during the British regime. At the same time, as printing presses also started getting established, the number of publishers, books as well as copies of books kept on rising. Even education was given vital importance due to which books in nature of educational material also started getting published. All this led to opining that an authority should be created for keeping a record of the books and other publications which were being printed in huge numbers through various printing presses across India. For this purpose, a Bill was introduced in Legislature for regulation of printing presses and newspaper for preservation of copies of books and periodicals containing news printed in the whole of India and for the registration of such books and periodicals.²⁸² Hence, for the regulation of printing presses and newspapers as well as for the preservation of copies of books printed in India as also for registration of such books and newspapers, the Press and Registration of Books Act 1867 was enacted. The Act under its various sections required the printers and publishers of books and newspapers to provide specific declarations regarding setting up such printing press as well as details as to the material being published. Also, the books had to be compulsorily registered in the Catalogue of Books to be maintained u/s. 18 of the Act giving exact details of the book, i.e. number of pages, edition, author's details, etc. Sec. 19B provided for a similar Register of Newspapers whereunder details pertaining to the newspaper being published had to be given.

²⁸²Barua, Vidisha, Press & Media Law Manual, Universal Law Publishing Co., 2002 (Pg. 74)

3.8.5.1.2 The Copyright Act, 1957

The statutory meaning of copyright is the exclusive right to do or authorize others to do certain acts in relation to literary, dramatic or musical works; artistic works; cinematograph films and sound recording. Trespassing the above right is considered as infringement of the right of author and is punishable. The Copyright Act, 1957 currently prevails in India for regulation of original works created by authors, musicians, etc. U/s 14 of the Act, copyright means the exclusive right to do or authorize the doing of any of the following acts in respect of a work:

- (a) In the case of a literary, dramatic or musical work, not being a computer programme:
 - (i) To reproduce the work in any material form including storing of it in any medium by electronic means;
 - (ii) To issue copies of the work to the public not being copies already in circulation;
 - (iii) To perform the work in public or communicate it to the public;
 - (iv) To make any cinematograph film or sound recording in respect of the work;
 - (v) To make any translation of the work;
 - (vi) To make any adaptation of the work;
 - (vii) To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

Simultaneously, copyright is also available in cases where new computer programmes, artistic works, cinematograph films and sound recordings are created.

3.8.5.1.3 Registrar of Newspapers for India

The Office of the Registrar of Newspapers for India came into existence on 1st July 1956. It found its origin after the First Press Commission made a recommendation in 1953 followed by amendment of the Press and Registration of Books Act 1867. The Registrar office is entrusted with following statutory functions²⁸³:

- Compiling and maintaining Register of Newspapers which shall include particular details of all the newspapers published in India.
- Issuing Certificate of Registration to newspapers published under valid declaration.

²⁸³ Available at https://www.rni.nic.in/all_page/History.aspx (Visited on 20.9.2018)

- Scrutinizing and analyzing annual statements as to circulation and ownership sent by newspaper publishers u/s. 19D of Press and Registration of Books Act.
- Informing District Magistrates as to availability of titles to intending publishers for filing declaration.
- Ensuring that newspapers are published in accordance with provisions of the Press and Registration of Books Act and Rules 1867.
- Verification of circulation claims furnished by the publishers in their Annual Statements
- Preparation and submission of report containing available information and statistics about the press in India focusing on emerging trends in circulation and in direction of common ownership units etc.

The Registrar also has some non-statutory functions to be performed namely formulation of Newsprint Allocation Policy Guidelines and issuing Eligibility Certificate to newspapers to enable them to import newsprint and to procure indigenous newsprint and to assess and certify the essential need and requirement of newspaper establishments to import printing and composing machinery and allied materials.

3.8.5.1.4 Defence of India Act, 1962

The Defence of India Act 1962 was enacted to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences. The Act came into effect during proclamation of emergency in 1962 and empowered the Central Government to make rules regarding prohibition of publications or communications prejudicial to the civil defense or military operations, prevention of prejudicial reports and prohibition of printing or publishing any prejudicial matter in any newspaper. U/s. 3(6) of the Act, Central Government could make rules requiring publication of news and information. U/s. 7, printing or publishing of any newspaper, news sheet, book or other document containing matters prejudicial to defense of India and civil defense, public safety, maintenance of public order was prohibited. The Central Government could also demand security from any press used for purpose of printing or publishing and

forfeiting the copies of any newspaper, etc. or even forfeit such security in specified circumstances and order for closure of such press or premises.

3.8.5.1.5 The Press Council Act, 1978

The Press Council of India was established under the PCI Act, 1978 for the purpose of preserving freedom of press and of maintaining and improving the standards of newspaper and news agencies in India. Section 13 of the Act mentions objects and functions of the Council which are as follows:

- (a) To preserve the freedom of Press and to maintain and improve the standards of newspapers and news agencies in India;
- (b) To help newspapers and news agencies to maintain their independence;
- (c) To build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards;
- (d) To ensure maintenance of high standards of public taste on part of newspapers, news agencies and journalists and foster a due sense of rights and responsibilities of citizenship;
- (e) To encourage the growth of a sense of responsibility and public service among all those engaged in profession of journalism;
- (f) To keep under review any development likely to restrict the supply and dissemination of news of public interest and importance;
- (g) To keep under review cases of assistance received by any newspaper or news agency in India from any foreign source including such cases as are referred to it by the Central Government or are brought to its notice by any individual, association of persons or any other organization;
- (h) To undertake studies of foreign newspapers including those brought out by any embassy or other representative in India of a foreign State, their circulation and impact;
- (i) To promote a proper functional relationship among all classes of persons engaged in production or publication of newspapers or in news agencies;

- (j) To concern itself with developments such as concentration of or other aspects of ownership of newspapers and news agencies which may affect the independence of press;
- (k) To undertake such studies as may be entrusted to the Council and to express its opinion in regard to any matter referred to it by Central Government;
- (l) To do such other studies as may be incidental or conducive to the discharge of above functions.

PCI also has the power to receive complaints of violation of journalistic ethics, or professional misconduct by an editor or journalist. It is responsible for enquiring into complaints received and may summon witnesses and take evidence under oath, demand copies of public records to be submitted, issue warnings and admonish the newspaper, news agency, editor or journalist. It can even require any newspaper to publish details of the inquiry. Decisions of the PCI are final and cannot be appealed before court of law.

Powers of PCI are restricted due to following reasons:

- (a) PCI has limited powers of enforcing the guidelines issued. It cannot penalize newspapers, news agencies editors and journalists for violation of guidelines;
- (b) PCI only overviews functioning of media press. It can enforce standards upon newspapers, journals, magazines and other forms of print media only but not upon sources of electronic media like radio, television and internet media.

As announced by Rajyavardhan Rathore – Minister of the State for Information and Broadcasting, Press Council of India is also in the process of making amendments to the Press Council Act so that electronic media can be brought under its jurisdiction. When questioned as to whether government proposes to set up a common statutory regulator, Rathore said the PCI is in the process of considering its earlier proposal for amendments to the Press Council Act 1978 to bring electronic media under jurisdiction of PCI which maybe considered after receiving the view of Chairman, PCI. He further added that the Parliamentary Standing Committee on Information Technology had in its 47th report recommended that there should be statutory body, viz. Media Council having eminent persons as its members to look into all media contents both from print and electronic media. He also said that TRAI

had in its report on cross media ownership recommended that government should not regulate the media and there should be a single regulatory authority for print and electronic media.²⁸⁴

3.8.5.1.6 The Right to Information Act, 2005

The Government of India resolved that in order to ensure greater and more effective access to information to all citizens of the nation, it is required that the Freedom of Information Act of 2002 must be made more progressive, participatory and meaningful. On this issue, National Advisory Council suggested certain important changes to be incorporated in the said Act to ensure smoother and greater access to information. After examining the suggestions of National Advisory Council, Government decided to make several changes in the said law. In view of the significant changes proposed by the National Advisory Council, it was decided to repeal the Freedom of Information Act 2002 and enact another law for providing an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India. The Right to Information Act provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto.

With the advent of internet and digital age, several original works have now been made available online and can be easily accessed by everyone. However, due to easy accessibility, the original literary works, musical compositions, etc. can be copied and claimed by anyone throughout the world without giving due credits to the original author. At international level, attempt has been made to establish a framework which can be used to ensure that the right to freedom of expression and ability to share knowledge and culture are protected from increasing and excessive copyright interests in the digital age. The Right to Share Principles which have been

²⁸⁴ Available at www.indianexpress.com/article/india/india-others/electronicmediamaysooncomunderpresscouncilact (Published on March 13, 2015 by Press Trust of India, New Delhi) (Visited on 23.11.2016)

developed in cooperation with high level experts from around the world also seek to promote positive measures that foster the free flow of information and ideas and allow greater access to information, knowledge and culture on internet and beyond.²⁸⁵

The tension between the right to freedom of expression and copyright is not new. However, over the last ten years, we have seen an alarming expansion of copyright claims at the expense of human rights protection. The Right to Share Principles show that freedom of speech and free flow of information and ideas should not and cannot be marginalized by claims to property. As a part of a series of recommendations, lawmakers should consider scrapping criminal sanctions for non-commercial copyright infringement. It is entirely disproportionate that millions of internet users worldwide face the threat of criminal punishment for personal use of copyrighted material where they seek no commercial gain. Copyright law must keep pace with technological and social change and not stifle creativity in the name of protecting it.²⁸⁶

3.8.5.2 Electronic Media

Electronic media being faster than its previous counterpart, the print media needs stronger regulations considering its speedy broadcast of news and other programs. It is regulated by the following legislations in India:

3.8.5.2.1 Indian Telegraph Act, 1885

Until satellite televisions were setup in the period of 1990s, government enjoyed the monopoly of broadcast sector and the same was also supported by Indian Telegraph Act 1885. The term “telegraph” has been exhaustively defined through various amendments as and when new forms of communication were sent to public domain. Thus, the term “telegraph” includes most modern communication devices irrespective of their underlying technology. The Act defines the term as “any appliance, instrument, material or apparatus used or capable of use for transmission

²⁸⁵ Available at <http://www.article19.org/resources.php/3715/en/article-19-launches-right-to-share> (Visited on 13.11.2016)

²⁸⁶ Agnes Callamard, Executive Director of ARTICLE 19

or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro magnetic emissions, radio waves or Hertzian waves, galvanic or magnetic waves.” Courts have through several judgments held that the term ‘telegraph’ includes telephone, television, radio, wireless, mobile and video equipment. The Act empowers Central Government to have exclusive privilege of establishing, maintaining and working telegraphs within India. It can also take temporary possession of a telegraph in cases involving public emergencies or public safety. Section 5(2) enables government to legally intercept telegraph messages on grounds involving India’s sovereignty and integrity, state security, friendly relations with foreign states, public order and preventing the commission of an offence. U/s. 8, government may also revoke a telegraph license for breach of any terms and conditions or for a default in making license fee payments.

3.8.5.2.2 The Cinematograph Act, 1952

The Cinematograph Act 1952 is a Central legislation which provides for establishment of competent authorities for the purpose of censorship of movies and preventing screening of films having inappropriate content or content against the cultures prevailing in our society. The term ‘cinematograph’ has been defined u/s. 2(c) of the Act as including any apparatus for the representation of moving pictures or series of pictures. In one case²⁸⁷, it was held that the expression ‘cinematograph’ includes VCR, TV projector as the said equipments serve the same purpose as traditional media, i.e. exhibition of moving pictures. It must be so interpreted to take into account new and subsequent scientific developments in the field as it cannot be confined to traditional interpretation of such apparatus. Under Sec. 3 of the Act, Board of Film Censors is to be constituted which shall sanction the public exhibition of films. The Central Government shall constitute the Board by notification in the official gazette and same shall be known as Board of Film Certification. The Board shall consist of a Chairman and other members which shall be not less than twelve and not more than twenty five. Under Sec. 5B, some principles have been laid down for guidance in certification of films by the Board. Accordingly,

²⁸⁷Samrat Video Parlour vs. State of Haryana AIR 1993 SC 2328

- (a) A film shall not be certified for public exhibition if in the opinion of authority competent to grant certificate, the film or any part of it is against the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or involves defamation or contempt of court or is likely to incite commission of any offence.
- (b) The Central Government may issue necessary directions for implementing principles which may guide the competent authority before grant of certificates sanctioning films for public exhibition.

3.8.5.2.3 The PrasarBharati (Broadcasting Corporation of India) Act, 1990

The PrasarBharati Act provides for establishment of PrasarBharati. It is the Public Service broadcaster of the country. The objectives of public service broadcasting are achieved in terms of PrasarBharati Act through All India Radio and Doordarshan. All India Radio is India's national broadcaster and has been functioning to inform, educate and entertain the masses since very beginning. It broadcasts on radio programs on various subjects like farming, women's problems, children, musical programs, plays, etc. Similarly Doordarshan also is Indian public service broadcaster and is one of the largest broadcasting organisations in the world in terms of studios and transmitters. It has a three tier programme service, i.e. National, Regional and Local. The National programmes emphasize on events and issues of national interest like news, current affairs, documentaries on environment, social issues, TV serials, feature films, drama, etc. The Regional programs are telecast at specific time and also on Regional Language satellite channels which cater programs for interests of a particular state in the language of that region. The local programs are area specific and cover local issues featuring local people.²⁸⁸ Some of the major objectives of PrasarBharati Corporation as stated u/s. 12 of the Act are as under:

- (a) To uphold the unity and integrity of country and the values enshrined in Constitution of India;
- (b) To promote national integration;

²⁸⁸ Available at <http://www.ddindia.gov.in> (visited on 22.11.2016)

- (c) To safeguard citizens' rights to be informed on all matters of public interest by presenting a fair and balanced flow of information;
- (d) To pay special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare, science and technology;
- (e) To create awareness about women's issues and take special steps to protect interests of children, aged and other vulnerable sections of the society;
- (f) To provide adequate coverage to diverse cultures, sports and games and youth affairs;
- (g) To promote social justice, safeguarding the rights of working classes, minorities and tribal communities;
- (h) To promote research and expand broadcasting faculties and development in broadcast technology.

The Ministry of Information and Broadcasting may suitably amend provisions of PrasarBharati Act but ensure that functional autonomy of the public broadcaster as envisaged in the Act was not diluted and much desired autonomy was secured.²⁸⁹

3.8.5.2.4 The Cable Television Networks (Regulation) Act and Rules 1995

The Cable Television Networks (Regulation) Act 1995 was enacted with the object regulating the ever-increasing cable television networks across the nation which were often showing programs and advertisements inappropriate to the culture of our country. The growing number of satellites had resulted in availability of signals of foreign television networks due to which western programs often adult-oriented and against our tradition were being shown on TV channels in India to people of all age groups without any form of censorship. Also, it was felt that neither the subscribers of such cable television networks nor the cable operators themselves were aware of their rights, responsibilities and obligations regarding quality of service, whether technical or content-wise, use of material protected by copyright, exhibition of uncertified films, etc. Hence, in order to regulate the operation of cable television networks in the entire country so as to bring uniformity in their operation, the said Act was enacted. Accordingly, Section 3 provides for compulsory registration of any

²⁸⁹ Available at <http://Articles.economicstimes.indiatimes.com> (Visited on 22.11.2016)

person who wants to operate a cable television network with the registering authority.

Section 6 of the said Rules which are in consonance to the Cable Television Networks (Regulation) Act 1995 provides for Programme Code under which any program before being telecast to the viewers through any TV channel should fulfil certain conditions. The conditions have been laid down considering the cultural environment of our country and also the fact that certain decency should be maintained in all the programs and neither the dignity of women should be offended nor should the minds of children be negatively affected through whatever they view on their TV sets. Simultaneously, programs affecting national integrity and peace should also be banned. The said section provides that no programme should be carried in the cable service which-

- (a) Offends against good taste or decency;
- (b) Contains criticism of friendly countries;
- (c) Contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes;
- (d) Contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths;
- (e) Is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes;
- (f) Contains anything amounting to contempt of court;
- (g) Contains aspersions against integrity of the President and Judiciary;
- (h) Contains anything affecting the integrity of Nation;
- (i) Criticizes, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country;
- (j) Encourages superstition or blind belief;
- (k) Denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals;
- (l) Denigrates children;

- (m) Contains visual or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups;
- (n) Contravenes the provisions of Cinematograph Act;
- (o) Is not suitable for unrestricted public exhibition.

In addition to restrictions of programs in abovementioned nature, an additional point namely Sec. 6(1)(p) has been added by amendment to Cable Television Network Rules last year which came in force in March 2015. Rule 6(1)(p) prohibits live coverage of anti-terrorism activities stating that “no programme should be carried... which contains live coverage of any anti-terrorist operation by security forces wherein media coverage shall be restricted to periodic briefing by an officer designated by the appropriate Government, till such operation concludes.”²⁹⁰ The said section was applied when NDTV channel covered the Pathankot terror attack on 2.1.2016 and government claimed that the coverage gave out sensitive information to the handlers of terrorists. The Ministry of Information and Broadcasting ordered NDTV to go off air for a day in breach of the programme code governing content in news channels. In response to a show cause notice, NDTV stated that its coverage was sober and did not carry any information that had not been covered by the rest of media and was already in public domain. In response to the situation, the Editors Guild of India stated that the decision to take the channel off the air for a day is a direct violation of the freedom of media and amounts to harsh censorship imposed by the government reminiscent of the Emergency. Imposing a ban without resorting to judicial intervention or oversight violates the fundamental principles of freedom and justice.²⁹¹

Also, any film, film song, trailer or music video whether produced in India or abroad can be telecast through cable service only after being certified by the Central Board of Film Certification (CBFC) as suitable for unrestricted public exhibition in India. Likewise, Sec. 7 provides for Advertising Code and states that advertising carried in the cable service shall be so designed as to conform to laws of the country

²⁹⁰Programme and Code: How govt rules TV channels, 8.11.2016 – KrishnKaushik (www.indianexpress.com/article/explained) (Visited on 26.11.2016)

²⁹¹ Editors Guild condemns one-day ban on NDTV India (www.thehindu.com/news/national/) (Visited on 27.11.2016)

and should not offend morality, decency and religious susceptibilities of subscribers or exploit social evils like dowry, child marriage, etc.

Some of the other legislations in respect of electronic media are:

- (i) The Dramatic Performances Act, 1876
- (ii) The Cinematograph (Certification) Rules, 1983
- (iii) Guidelines for Certification of films for Public exhibition
- (iv) The Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act and Rules
- (v) The Cine Workers Welfare Cess Act (1981) and Rules (1984)
- (vi) The Cine Workers Welfare Fund Act (1981) and Rules (1984)
- (vii) The PrasarBharati (Broadcasting Corporation of India) Investment of Money Rules, 2007
- (viii) The Sports Broadcasting Signals (Mandatory Sharing with PrasarBharati) Act and Rules 2007
- (ix) PrasarBharati (Broadcasting Corporation of India) Authorities for Disciplinary Proceedings Regulations 2012
- (x) The Standards of Quality of Service (Broadcasting and Cable Services) (Cable Television-CAS Areas) Regulation 2006

3.8.5.3 Regulatory bodies

Tremendous growth in electronic media as well as availability of almost one television set in every home in the nation and widespread taste of programs through a variety of channels during past two decades has given need for establishing regulatory bodies that could regulate the broadcasting of several programs, news, advertisements and other content on television. Some of the major regulatory bodies are as under:

3.8.5.3.1 Indian Broadcasting Foundation (IBF)

With the growth of television broadcast industry, the commerce between broadcasters, agencies and advertisers had become ever-expanding but still remained complex procedure. Rapid increase in the number of 24 hour entertainment channels

in the past two decades has led to addition of non-news content on Indian television. The television broadcasters needed a credit management mechanism that followed a due process between advertisers, media buying agencies and themselves. The Indian Broadcasting Foundation was established in 1999 to primarily fulfill this object. Being the apex body of broadcasters, the IBF performs the task of framing a set of self-regulating content Guidelines and establishing an independent complaint redressal mechanism for General Entertainment Channels (GECs). The objective was to provide certain guiding principles to entertainment channels for programme content, redressal mechanism for viewer complaints and ensuring that programming creativity flourishes in a free-speech environment without adhoc interventions.²⁹²

The main features of IBF are:

- (a) It identifies and pursues growth opportunities for its members and ensures they present a strong collective voice regionally, nationally and globally.
- (b) It enjoys a unique position as the accredited spokesperson of broadcast industry;
- (c) It plays a significant role in protecting and promoting interests of its members and freedom of electronic media in world's largest democracy;
- (d) It is actively involved in setting up Broadcast Audience Research Council (BARC), a new apex body to provide official measurement of television audiences in India.
- (e) It takes up issues affecting broadcasting industry with authorities and government departments.

3.8.5.3.2 Broadcasting Content Complaints Council (BCCC)

IBF has accomplished the goal of formulating and implementing self-regulatory Guidelines and the complaint redressal system with establishment of Broadcasting Content Complaints Council (BCCC) in June 2011. BCCC is an independent self-regulatory body which examines content-related complaints against GECs. It is a major milestone in the history of Indian television and the initiative signifies the maturity of broadcasters to uphold freedom of speech and expression enshrined as fundamental right in the Indian Constitution. The overwhelming support of IBF

²⁹² Available at <http://www.ibfindia.com/history-vision> (Visited on 23.11.2016)

member channels to the BCCC mechanism has led to constant evaluation of content in line with changing viewer preferences.

In a short time, BCCC has become India's most credible self-regulatory mechanism for non-news television. The Council also articulates its views on various aspects of self-regulation and contributes to the policy-making process. The major guiding principles of BCCC are – (i) Independence, (ii) Neutrality, (iii) Transparency, (iv) Autonomy. BCCC has a democratic structure and functions independently due to which self-regulation is getting established as the best form of regulation for television. All three pillars of Indian democracy – Legislature, Executive and Judiciary, have praised BCCC's work and the Council has also been praised by Civil Society and the Press. The BCCC examines complaints about TV programs from viewers and other sources including the Ministry of Information and Broadcasting, NGOs and residents' welfare associations. Any person who is aggrieved with broadcast of content of following nature may make a complaint to BCCC:

- Content of national interest;
- Racial and religious harmony;
- Children and generally accessible programs;
- Social values;
- Sex and nudity;
- Violence and crime;
- Horror and occult;
- Drugs, smoking, tobacco, solvents, alcohol;
- Libel, slander and defamation;
- Harm and offence

Thus, it is clear that complaints can be made on many of the same grounds for which Article 19(1) provides reasonable restrictions, i.e. maintaining national interest, defamation, etc.

In a recent news report²⁹³ the Council gave details as to its functioning and disposal of complaints. Contrary to general perception, complaints against sex and

²⁹³ Oct 17, 2015 TNN

nudity on TV have declined (only 8%) whereas the highest number of complaints (28% out of 4545 complaints) were related to stereotyping of women, ill treatment of animals, child marriage, etc. 11% of the 4545 specific complaints were related to horror programs while those pertaining to depiction of smoking scenes, consumption of alcohol and drugs were found to be less than 1%. Among complaints related to crime and violence, nearly 11% of specific complaints were not only against crime-based shows but also against violence shown in daily soaps as well as reality shows. This was followed by complaints related to religion and community where viewers had taken exception to representation of mythological figures. The Council received representations from Dalit organizations against a serial on Lord Buddha, complaints against Jodha Akbar with organisations disputing the existence of Jodha and even on the representation of scenes in Mahabharata.

3.8.5.3.3 Broadcast Audience Research Council (BARC)

Broadcast Audience Research Council is a body to design, commission, supervise and own an accurate, reliable and timely television audience measurement system for India. BARC India brings together the three key stakeholders in television audience measurement – broadcasters, advertisers and advertising and media agencies via their apex bodies. BARC India seeks to establish a robust, transparent and accountable governance framework for providing data points required to plan media spends more effectively.²⁹⁴ The major stages of BARC India's research process are as under:

- (1) Establishment Survey;
- (2) Panel locations & identification;
- (3) Panel selection and training;
- (4) Panel Management;
- (5) Measurement and viewing data capture;
- (6) Processing, audience estimation and reporting;
- (7) Analysing and reporting audience data in relevant segments

²⁹⁴ Available at <http://www.barcindia.co.in/about-us.aspx> (Visited on 23.11.2016)

3.8.5.3.4 News Broadcasting Standards Authority (NBSA)

News Broadcasting Standards Authority is an independent body set up by the News Broadcasters Association – an association representing private television news and current affairs broadcasters in India. The main task of this Authority is to consider and adjudicate upon complaints about broadcasts. The objects of Authority are to lay down and foster high standards, ethics and practice in news broadcasting including entertaining and deciding complaints against or in respect of broadcasters in so far as they relate to the content of any broadcast. The other objects of this Authority are:

- (i) Maintaining and improving standards of broadcast and maintaining the independence of broadcasters, television journalists and/or news agencies;
- (ii) Ensuring compliance by broadcasters, television journalists and news agencies with the Code of Conduct and adherence by the said persons to high professional standards;
- (iii) Ensuring maintenance of high standards of public taste and fostering a due sense of both the rights and responsibilities of citizens;
- (iv) Fostering and encouraging the growth of a sense of responsibility and public service among all those engaged in and associated with the profession of television journalism and business of broadcasting;
- (v) Keeping under review and scrutiny any developments likely to or having the tendency to restrict the gathering, supply and dissemination of news of public interest and importance;
- (vi) Such other aspects as are identical, consequential, related and/or otherwise materially concerned with above objects.

3.8.5.3.5 News Broadcasters Association

News broadcasting has changed by leaps and bounds in the past two decades. With several 24x7 news channels running throughout the day with national and international news, political and economic scenario as well as current affairs at international level, science and technology, sports and films, a body had to be formed which would control the broadcast of news at such a vast level. For this

purpose, the News Broadcasters Association (NBA) regulates the private news channels as also the current affairs broadcasting. It is an organization funded entirely by its members. The Association runs with the mission to serve as the eyes and ears of private news and current affairs broadcasters, to lobby on its behalf and to act as a central point of joint action on matters of interest. The main objects of NBA are²⁹⁵:

- (1) To promote, aid, help, encourage, develop, protect and secure the interests of the News Broadcasters in the Indian television industry and other related entities.
- (2) To promote awareness about latest developments in the television industry relating to news broadcasting and to disseminate knowledge amongst its members and general public regarding such developments.
- (3) To provide for members a place of meeting so as to enable them to work in consensus to achieve common goals for the overall betterment of their industry and to have a common platform/forum at which they may air their grievances and arrive at solutions.
- (4) To promote the growth of friendly relations amongst the members and amongst persons engaged in production and broadcasting of television software and especially too encourage cooperation among the members so as to maximize mutual benefits.
- (5) To protect all its members from persons or entities who carry on unfair and/or unethical practices or who discredit the television industry.
- (6) No objects of the company will be carried out without obtaining prior approval from concerned authority wherever required.
- (7) None of the main objects to be carried out on commercial basis.

In May 2017, News Broadcasters Association found Republic TV using allegedly unethical tactics for increasing its viewership. The Association also lodged a complaint with Telecom Regulatory Authority of India (TRAI) claiming that the channel was running multiple feeds on various multi-system operator platforms by listing itself at multiple locations across various genres in electronic program guide of various multi-system operators which is a violation of TRAI rules.²⁹⁶

²⁹⁵ Available at www.nbanewdelhi.com/objectives (Visited on 11.9.2018)

²⁹⁶ Available at <https://www.indiatoday.in/amp/india/story/arnab-goswami-republic-tv-using-multiple-feeds-to-claim-viewership-pulled-up-by-regulator-977226-2017-05-15/> (Visited on 11.9.2018)

3.8.5.3.6 Ministry of Communications and Information Technology

The principal institution in India for information technology is the Ministry of Communications and Information Technology. It has two departments under it namely the Department of Electronics and Information Technology and the Department of Telecommunications. The Department of Electronics and Information Technology formulates policies relating to information technology, electronics and internet. The Department of Telecommunications manages the overall development of telecommunications sector, licenses, internet and mobile service providers and manages spectrum allocation.²⁹⁷

3.8.5.3.7 Telecom Regulatory Authority of India (TRAI)

The Telecom Regulatory Authority of India an independent regulator was created in 1997 to regulate the telecom, broadcasting and cable TV sectors. It mandates transparency in the exercise of its operators, which include monitoring licensing terms, compliance and service quality. Its opinions are generally perceived as independent. TRAI's mission is to create and nurture conditions for growth of telecommunications in the country in a manner and at a pace which will enable India to play a leading role in emerging global information society. One of the main objectives of TRAI is to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.²⁹⁸

3.8.5.4 Unsanctioned Bills

Some major Bills and guidelines related to media regulation of print, electronic and recently even social media were either shelved, withdrawn or are pending till date. Implementation of these Bills may have create new effects on media regulation. However, as of now, they do not carry any effects on the present scenario of media regulation. These Bills and Guidelines are as below:

²⁹⁷ Available at <http://www.dot.gov.in/aboout/us/profile>

²⁹⁸ Available at <http://www.trai.gov.in/aboutus/history> (Visited on 30.11.2016)

3.8.5.4.1 Print and Electronic Media Standards and Regulation Bill, 2012

In April 2012, a Private Member's Bill called the "Print and Electronic Media Standards and Regulation Bill, 2012" was circulated in the Parliament. It was drafted by Congress MP Meenakshi Natarajan but as she was absent the day the Bill was to be introduced in the Parliament, it was not placed before the House and has remained pending till date.

The salient features of this Bill are:

- (a) It seeks to lay down standards to be followed by the media and to establish credible and expedient mechanism for investigating suo motu or into complaints by individuals against print and electronic media.
- (b) Suspension of media organisation's operations for upto 11 months as well as cancellation of its license.
- (c) Establishment of a media regulatory authority which has the power to ban or suspend the coverage of an event or incident that may pose a threat to national security from foreign or internal sources.
- (d) The Regulatory body would comprise of seven members consisting of Supreme Court judge, Minister for Information and Broadcasting and three members appointed by central government. They would have powers equivalent to that of a civil court.
- (e) Proposal of fine upto Rs. 50 lacs on media houses that commit offences specified under the Bill.
- (f) No scope of appeal as no civil court had jurisdiction in any matters which the Authority is empowered to determine.

The Bill was criticized by media and even Parliament for several reasons, some of which are as under²⁹⁹:

- (a) It purported to impose a gag on media and control it from every angle possible.
- (b) The provisions of the Bill were considered draconian and in nature of restriction on media freedom.

²⁹⁹ Available at <http://www.indiatoday.in/magazine/nation/story/20120514-print-and-electronic-media-standards-and-regulation-bill-rahul-gandhi-meenakshi-natarajan-758299-2012-05-04> (Visited on 28.6.2018)

- (c) The language of the draft bill seemed professionally legal even though MeenakshiNatrajan was not an constitutional expert.
- (d) The initiative did not seem to be her own as she was a private member but rather a command performance.

Balveer Arora³⁰⁰ said that timing of the proposed law was significant. According to him, “the Bill has to be viewed as a trial balloon as it comes in the midst of intense debate over guidelines for media and while even the judicial experts are talking about it. It is very clear that unless self-regulatory measures are not adopted by the media, government may try to bring in such a regulation.” Considering these facts, Bill may be most likely shelved and will not see light of the day anymore.

3.8.5.4.2 Self-Regulation Guidelines for Broadcasting Sector (2008)

The Indian Broadcasting Foundation (IBF) has adopted the Ministry of Information & Broadcasting Self Regulation Guidelines for Broadcasting Sector draft version of 2008 which has been formulated after a comprehensive consultative process by over 40 stakeholders from various fields like Government, NGOs, industry, etc. As per the said Guidelines³⁰¹:

- (a) only those cases wherein the Broadcast Regulatory Authority of India (BRAI) takes suomoto action or after receiving a complaint would be considered as violations of the Certification Rules that have repercussions on the security or integrity of the country or contravene restrictions under the Theme 6 (Regulation & Community) or Theme 9 (General Restrictions) of the Certification Rules.
- (b) The BCCCs would have wide-ranging powers including directions to channels not to telecast programmes or advertisement “pending discussion”
- (c) The BCCCs would also be empowered to edit the advertisement or programme, and order any punitive action in accordance with constitution of BCCC of the relevant segments of the industry.

These Guidelines provide the principles, guidelines and ethical practices which shall guide the Broadcasting Service Provider in offering their programming services in

³⁰⁰ Political analyst, former head of Political Science Dept. at JNU

³⁰¹ Available at <http://www.indiantelevision.com/headlines/y2k8/mar/mar256.php> (Visited on 28.6.2018)

India so as to conform to the Programme Code and Certification Rules prescribed under the Cable Television Networks (Regulation) Act 1995 irrespective of medium used for broadcasting of programme. Thus, categories with increasing level were allotted to broadcast of sensitive subjects like crime and violence, sex, obscenity and nudity, horror and occult, defamation, drugs, tobacco and alcohol. Likewise, subject matter treatment as well as manner of audio visual treatment for each sensitive subject was to be followed as per the guidelines.

3.8.5.4.3 Broadcasting Services Regulation Bill, 2007

The Broadcasting Services Regulation Bill 2007 was an attempt to manage and operate the following:

- Teleport/hub/Earth Station;
- Direct-to-Home (DTH) Broadcasting Network
- Multi-system Cable Television Network
- Local Cable Television Network
- Satellite Radio Broadcasting Network
- Such other networks as maybe prescribed by Central Government.

Thus the Bill intended to regulate almost all forms of broadcast. Amongst its many provisions, the major ones included obtaining compulsory license for broadcasting services, registration of channels and compliance with the Content Code and special powers of Central Government in a situation of external threat or war involving India.

The main objects of the Bill were:

- (a) To promote facilitate and develop in an orderly manner the carriage and content of broadcasting;
- (b) To provide for regulation of broadcasting services in India for offering a wide variety of entertainment, news, views and information in a fair, objective and competitive manner and to provide for regulation of content for public viewing and connected matters;

- (c) To provide for establishment of an independent authority to be known as Broadcast Regulatory Authority of India for the purpose of regulating and facilitating development of broadcasting services in India;
- (d) To encourage broadcasting services to be responsive to the educational, developmental, cultural, social and other needs and aspirations of people and include in their programming public service messaging and content.

The Bill was drafted considering that airwaves are public property³⁰² and there could be no monopoly on them and it was necessary to regulate the use of such airwaves in national and public interest particularly with a view to ensuring proper dissemination of content and in the widest possible manner.

Draft of the bill was also put on website of Ministry of Information and Broadcasting inviting comments from stakeholders like industry and media groups, NGOs, Civil Society Organisations and public.

However, the media industry at large felt that the Government intended to infringe on their rights as a free media through this regulation and that such a draconian law will be applied especially against news channel under the ambit of the Bill if it is allowed to go through.³⁰³

Even the Editors Guild of India rejected the Bill stating that it would give the government enormous control and clout over news and current affairs channels. According to them, the proposed Broadcasting Regulatory Authority of India was nothing but a government body as the media had no say in the selection of its members. The Government could misuse provisions of the Bill if it was implemented. The International Federation of Journalists (IFJ) called for broader consultation on the proposed Bill. According to it, if Government was disturbed with injustice inflicted from news and current affairs content on television, their remedy lied not in constraining the right to free speech but in allowing it greater latitude particularly in a country where there were several avenues for redress and judicial remedy.³⁰⁴

³⁰² As per judgment given in Ministry of Information & Broadcasting vs Cricket Association of Bengal 1995

³⁰³ Available at <http://archive.indianexpress.com/news> – Sep. 22, 2007 (Visited on 27.11.2016)

³⁰⁴ www.thehindu.com/todays-paper/ (Editor's Guild Rejects Broadcasting Regulation Bill dtd. 7.9.2007)

The tug of war between the government and the media industry thus resulted in a stalemate and Government kept the said Bill in abeyance.³⁰⁵

3.8.5.4.4 Communications Convergence Bill, 2001

The speedy growth and advancements in field of information technology were bringing new forms of communication in the hands of a common man. The traditional media and communication laws were not sufficient to deal with such advancements and hence it was felt to have a single regulating authority that would have the authority over all forms of communication, whether old or new.

Accordingly, the Communications Convergence Bill, 2000 was drafted which aimed at creating a single regulatory authority namely Communications Commission of India. Once this Act came into force, it would repeal the earlier Acts in this regard namely the Indian Telegraph Act 1885, Indian Wireless Telegraphy Act 1933, Telegraph Wire Unlawful Possession Act 1950 and even the Telecom Regulatory Authority of India Act 1997. The said Bill would take up in its ambit the network infrastructure facilities, network services, application services and content application services. Thus, it would regulate mobile services, satellite broadcasting and even radio communications. Some of the important objectives of the regulation of convergence according to the Act include:

- (a) Establishing modern and effective communication infrastructure taking into account the convergence of information technology, media, telecom and consumer electronics.
- (b) Ensuring development of communication sector in competitive environment and suitable regulation of market dominance.
- (c) Ensuring affordable availability of communication services to remote and rural areas;
- (d) Protecting security interests of the country;
- (e) Ensuring transparency of licensing criteria and providing for open licensing policy

³⁰⁵ Pg. 38 A Broad Overview of Broadcasting Legislation in India – SiddharthNarain, Alternative Law Forum, Bangalore (2008)

- (f) Facilitating introduction of new technologies, investment in services and infrastructure and maximization of communication facilities and services.³⁰⁶

The Bill also proposed creating a single body to monitor both the carriage and content of communication namely the Communications Commission of India. The Commission was empowered to specify program codes and standards:

- (a) To ensure that nothing is contained in any programme which is prejudicial to interests of sovereignty and integrity of India, security of State, friendly relations with foreign states, public order or which may constitute contempt of court, defamation or incitement to an offence;
- (b) To ensure fairness and impartiality in presentation of news and other programs;
- (c) To ensure emphasis on promotion of Indian culture, values of national integration, religious and communal harmony and scientific temper;
- (d) To ensure in all programs, decency in portrayal of women and restrain in portrayal of violence and sexual conduct;
- (e) To enhance general standards of good taste, decency and morality.

The said Bill is still pending and an internal committee at Dept. of Telecommunications has recommended provision of providing telecom, cable and broadcasting services by a single company and paying for the services through a common bill. However, these kinds of provisions will need a new set of regulations that can be introduced only through the new convergence bill.³⁰⁷

3.8.5.4.5 Guidelines on Fake News 2018

The Guidelines on Fake News 2018 were issued by Ministry of Information and Broadcasting sometime during April 2018 through a circular by Minister Smriti Irani. However, the said circular was withdrawn within 24 hours by the Prime Minister Narendra Modi himself who stated that this matter should be addressed only in Press Council of India. The said circular was bad in law and had extremely stringent provisions that attacked the very careers of a journalist under the guise of aiming to

³⁰⁶ Whose Convergence is it anyway? A Critical Introduction to the Convergence Bill 2000 – Lawrence Liang Available at http://www.nwmindia.org/Law/Commentary/Convergence_bill.htm

³⁰⁷ NDA rehashes old convergence bill, plans super regulator for telecom, TV and internet Available at <http://M.firstpost.com/business/corporate-business/> (Published on 8.9.2014)

curb at fake news. As per the circular, once a complaint of fake news was received by regulators, the accreditation of journalist in question would be suspended till such time the determination regarding fake news was made by the Press Council of India for print media and News Broadcasters Association for electronic media. In case the charges were confirmed against such journalist, he would lose accreditation for six months for the violation, one year in case of a second complaint and permanently in case of third complaint. The major flaws of the circular were as under³⁰⁸:

- (a) The meaning, definition or constitution of “fake news” is nowhere available in any law of India. Due to this, the parameters to be used by regulatory agencies for determining the violation itself would be vague and changing as per their own requirements thus leading to arbitrariness and subjective analysis of news items in nature of fake news.
- (b) The cardinal principle of law that a person stands innocent until he is proved to be guilty was nowhere adhered. There was no provision in guidelines whereunder an initial check could be made on the authenticity of charges against the journalist against whom a complaint in regard of fake news was made and he was directly liable for charges mentioned in the circular.
- (c) The circular thus undermined freedom of press that has been since ages come to be considered as intrinsic to freedom of speech and expression guaranteed under Article 19(1)(a) of Constitution.
- (d) Whether the Press Council of India and News Broadcasters Association were consulted in respect of provisions of the said circular was uncertain as the press release for circular nowhere mentioned anything about the same but only that the said bodies would be handling the respective complaints of print and electronic media.
- (e) The provisions of the said circular could be used for making frivolous complaints to harass journalists and organisations for settling personal scores or vague matters.³⁰⁹

³⁰⁸ Available at <http://scroll.in/article/874272/opinion-it-isnt-suprising-that-guidelines-to-tackle-fake-news-were-scrapped-they-were-bad-in-law> (Visited on 29.6.2018)

³⁰⁹ Available at <http://m.economictimes.com/news/politics-and-nation/fake-news-guidelines-would-have-opened-door-for-frivolous-complaints-editors-guild/articleshow/63600680.cms> (Visited on 29.6.2018)

To conclude, as the laws of India have been greatly borrowed from English laws, the freedom of speech and expression has been safeguarded by several reasonable restrictions as in United Kingdom. It is in the interest of each and every citizen of India that freedom of speech and expression may be exercised subject to reasonable restrictions so that no single person can excessively indulge in it nor anyone is refrained from exercise of the same. Likewise, even for media, the freedom of speech and expression has been recognized by implementation of Acts as well as amendments from time to time. Media, which can be said to be the lifeline of imparting information across the nation is responsible for informing the readers and viewers about everything happening in nation and throughout the world. Print media as well as electronic and recently developed social media have been safeguarded by Acts and regulatory bodies which regulate, check and lay down guidelines for newspapers, TV channels, radio channels, social platforms, etc. News channels as also the newspapers are responsible for qualitatively informing the public about current affairs as well as happenings from all the fields without indulging in acts of personal interest. Vices like media trials, paid news and to an extent sting operations must be strictly regulated in order that news channels and newspapers are able to function in a healthy manner. Increasing TRPs and churning out breaking news every hour for attracting audience at the cost of genuine healthy journalism and accurate news seem to be the new-age sole objects of almost all media houses. Since past several decades, Supreme Court as well as High Courts have also been presented with cases which deal with questions related to rights of media, free speech, etc. and the same have been responded to actively by laying down guidelines for media or even by repeal of certain provisions which attempt to hamper the right of free speech of any person. The judicial position is discussed in the next chapter.

3.8.5.4.6 Law Commission Report on Trial by Media: Free Speech and Fair Trial under Criminal Procedure Code 1973

If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who had indeed committed the crime, it amounts to undue interference with the “administration of

justice” calling for proceedings for contempt of court against the media. In Nov, 2006, former Chief Justice of India Y K Sabharwal expressed concern over the recent trend of media conduct ‘trial’ of cases before courts pronounce judgments and cautioned that “if this continues, there can’t be any conviction. Judges are confused because the media has already given a verdict.” In Chapter 3 of the Report, it has been observed that publications which are prejudicial to a suspect or accused may affect Judges also subconsciously and it can be at the stage of granting or refusing bail or at the trial. In Chapter 9 of the Report, categories of publications in media which are generally recognized as prejudicial to a suspect or accused were enumerated as under³¹⁰:

- Publications concerning the character of accused or previous convictions.
- Publications of confessions by accused as to committing the crime in question
- Publications which comment or reflect upon merits of the case.
- Photographs of accused where identity is likely to be an issue
- Police activities
- Imputation of innocence
- Creating an atmosphere of prejudice
- Criticism of witnesses
- Premature publication of evidence
- Publication of interviews with witnesses

Thus, several laws have been enacted in USA, UK as well as in India which provide for free speech in print as well as in electronic and social media. Likewise, other than USA, UK and India have the similar reasonable restrictions on the right of free speech. Most of the laws and restrictions thereupon have been relating to print media as it was the earliest form of media wherein cases of obscene books, stories and articles were coming up. The same was followed by laws related to electronic media and social media in cases for obscene films, advertisements and songs. The news channels which had only later started mushrooming in 24x7 formats also eventually came to be a subject of freedom of press as they were often found

³¹⁰ Chapter IX, Pg 195 Law Commission of India: 200th Report on Trial by Media Free Speech and Fair Trial under CrPC 1973, August 2006

indulging in media trials, fake news, paid news and sting operations. In other words, electronic media and mostly news channels were found to be misusing the freedom of press by treating every news story or event without respecting the reasonable restrictions to which they were subjected. Judiciary has given several landmark judgments in this regard, originally for print media and eventually for electronic and social media, which have been discussed in next chapter.

CHAPTER 4

JUDICIAL APPROACH

Ever since the beginning of print media, controversies have kept rising as to what extent media houses should exercise their freedom of press. The Constitution of India has nowhere specifically mentioned freedom of press and hence, press has no specific express right under the Constitution. However, it is read under freedom of speech and expression. Time and again, the judicial approach of Courts has been such as to provide relief to the media and let them have a firm base to stand upon. The Courts have exercised their independence of judiciary to a great extent as the legislature is silent upon freedom of press. Several issues pertaining to what should be the freedom of press and what should be the reasonable restrictions while exercising the said freedom have been decided by Hon'ble Supreme Court of India and several other Hon'ble High Courts. Not only that, when electronic media and more recently the social media came into the picture, the challenges before Hon'ble Courts have increased considering the powerful communication levels and widespread usage of electronic and social media as compared to the print media.

In case of *Ram Lila Maidan*³¹¹, major observations in respect of freedom of speech and expression as also the restrictions therein were made in following words:

1. It is significant to note that the freedom of speech is the bulwark of democratic Government. This freedom is essential for proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succor/relief and protection to all other liberties. It has been truly said that it is the mother of all other liberties. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. It has been described as a "basic human right", "a natural right" and the like. With the development of law in India, the right to freedom of speech and expression has taken within its ambit the right to receive information as well as the right of press.

³¹¹ AIR 2012 SC(Supp) 266

2. The State has a duty to protect itself against certain unlawful actions and, therefore, may enact laws which would ensure such protection. The right that springs from Article 19(1)(a) is not absolute and unchecked. There cannot be any liberty absolute in nature and uncontrolled in operation so as to confer a right wholly free from any restraint. Had there been no restraint, the rights and freedoms may become synonymous with anarchy and disorder.³¹²
3. No person can be divested of his fundamental rights. They are incapable of being taken away or abridged. All that the State can do, by exercise of its legislative power, is to regulate these rights by imposition of reasonable restrictions on them. Upon an analysis of the law, the following tests emerge:-
 - a) The restriction can be imposed only by or under the authority of law. It cannot be imposed by exercise of executive power without any law to back it up.
 - b) Each restriction must be reasonable.
 - c) A restriction must be related to the purpose mentioned in Article 19(2).
4. For adjudging the reasonableness of a restriction, factors such as the duration and extent of the restrictions, the circumstances under which and the manner in which that imposition has been authorized, the nature of the right infringed, the underlining purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, amongst others, enter into the judicial verdict.³¹³
5. A restriction imposed in any form has to be reasonable and to that extent, it must stand the scrutiny of judicial review. It cannot be arbitrary or excessive. It must possess a direct and proximate nexus with the object sought to be achieved. Whenever and wherever any restriction is imposed upon the right to freedom of speech and expression, it must be within the framework of the prescribed law, as subscribed by Article 19(2) of the Constitution.

³¹²State of West Bengal v. SubodhGopal Bose [AIR 1954 SC 92]

³¹³Chintamanrao and Anr. v. State of Madhya Pradesh (AIR 1951 SC 118)

The above judgment has carefully and meticulously pointed at how freedom of speech and expression can turn into anarchy and mayhem in absence of reasonable restrictions, be it case of an individual or the media. Media acting in this direction can often lead to severe consequences whereby cases of paid news, media trial, etc. come to surface. Such scenarios have an extremely high potential of influencing the nation's political, social and legal picture and media should avoid such gimmicks merely for high TRP or profit motives. Reasonable restrictions should be respected and freedom of speech and expression must be exercised only so far as it does not hinder the restrictions.

A discussion of several judgments in light of respective media fields, viz. print, electronic and social media is given below:

(4.1) Article 19(1)(a) and Print media:

Print media which pertains to communicating news, entertainment, advertisements and other information through paper form in newspapers, magazines, tabloids, journals, etc. was the only source of media during initial years. As the electronic media was not that developed and social media was hardly in picture, print media carried the entire weightage of imparting all sorts of news across the nation. Being the single source of communication, it gave birth to numerous issues from time and again which were challenged in Supreme Court.

In case of *Srinivas vs. State of Madras*³¹⁴, it was held that the freedom of speech and expression includes liberty to propagate not one's views only. It also includes the right to propagate or publish the views of other people. In case of *Romesh Thapper vs. State of Madras*³¹⁵, the circulation of petitioner's weekly journal was prohibited by Madras Government in their State by exercising powers u/s. 9(1-A) of Maintenance of Public Order Act 1949. It was held that the expression "freedom of speech and expression" connotes also publication and thus the freedom of press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through press. The freedom of propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of

³¹⁴ AIR 1931 Madras 70

³¹⁵ AIR 1950 SC 124

publication. Indeed, without circulation the publication would be of little value. The said law was held invalid as it banned entry and circulation of journal. Thus, the factor of circulation was heavily harped upon in the judgment given in this case considering that ideas through press can be shared with one and all only by having liberty of circulation failing which the ideas though available cannot be shared. Liberty of circulation as also liberty of publication of views and ideas were equally important and absence of either of them would fail the purpose of the entire structure itself.

In case of *Express Newspapers vs. Union of India*,³¹⁶ petitioners challenged the validity of the Working Journalists Act 1955. The object of the said Act was to regulate the service-related conditions of the employees in print media, namely conditions like payment of gratuity, wage fixation, work hours, leave sanction, etc. It was contended that the Act would adversely affect financial position of newspaper forcing it to curtail its regulation and eventually be stopped thus narrowing the scope for dissemination of information and violating Article 19(1)(a). It was held that the press was not immune from laws of general application or ordinary forms of taxation or laws of industrial relations. The Act was passed to ameliorate the service conditions of workmen in newspaper industry and hence, the restrictions imposed were reasonable on the right guaranteed by Article 19(1)(a).

In case of *Sakal Papers P. Ltd. Vs. Union of India*³¹⁷, petitions were filed against the state by two readers, shareholders as also the company publishing the Marathi newspaper challenging the constitutional validity of the Newspaper (Price and Page) Act 1956. The said Act empowered central government to regulate the price of newspapers in relation to their pages and allocation of space for advertising matter. The publishing company also challenged the Daily Newspapers (Price and Page) Order 1960 passed by the government under the Newspaper Act to put such regulations in place. Effect of the Act and of the impugned Order was to regulate the number of pages according to the price charged, prescribe the number of supplements to be published and prohibit the publication and sale of newspapers in contravention of any Order made under Section 3 of the Act. The Act also provided for regulating by an Order under S. 3, the sizes and

³¹⁶ AIR 1958 SC 578

³¹⁷ AIR 1962 SC 305

area of advertising matter in relation to the other matters contained in newspaper. Penalties were also prescribed for contravention of the provision of the Act or Order. According to petitioners, the said Act and Order were violated their right of freedom of speech and expression guaranteed under Article 19(1)(a).

The Court held that by providing maximum number of pages for the particular price charged, effect of the said Act and Order was to compel newspapers either to reduce the number of pages or to raise the prices. If the number of pages were reduced, it would restrict the dissemination of news and views published by the newspaper whereas if the prices were increased, it would negatively affect the circulation. In either case Article 19(1)(a) would be affected as the freedom of newspaper to publish desired number of pages as also strive for maximum circulation is a vital aspect of free speech. It was also observed that the right to freedom of speech cannot be taken away with the object of restricting business activities. Accordingly, the Newspaper Act and Newspaper Order were held unconstitutional as they were directly infringing right to freedom of speech and expression.

In case of *Bennett Coleman and Co. vs. Union of India*³¹⁸, the petitioners who were newspaper publishers challenged the restrictions on import of newsprint under Import Control Order 1955 as also the manner in which this was being used by newspapers under the Newsprint Order 1962. Also, the latest Newsprint Policy 1972-73 came into implementation adding several restrictions as below:

- (i) No new newspapers may be started by establishments owning more than two newspapers if atleast one of which is a daily newspaper;
- (ii) Total number of pages in a newspaper may not exceed ten;
- (iii) Increase in number of pages may not be more than 20% for newspapers that are under ten pages;
- (iv) No interchangeability of newsprint may be permitted between different newspapers of the same establishment or between different editions of the same paper.

³¹⁸ AIR 1973 SC 106

In accordance with this policy, petitioners could not make adjustments in circulation even within the quota limit and hence challenged it for being in violation of Article 19(1)(a).

It was argued on behalf of respondents that the fundamental rights being available only to natural persons cannot be enjoyed by companies and also that emergency powers under Article 358 barred any challenge on ground of fundamental rights. The respondents also stated that instead of an “effects test”, a subject-matter test of restriction should be applied according to which restrictions became valid as they regulated commercial operations of newspapers in order to prevent monopolies by which any effect on freedom of expression was incidental.

The Supreme Court in its judgment made several observations, some of which are:

- (i) The fact that the petitioners are companies could not be a bar to award relief for violation of the rights of shareholders and editorial staff.
- (ii) Bar under Article 358 did not apply to laws passed before proclamation of emergency and hence newsprint policy could be challenged as a continuation of previous year’s policy and relevant orders.

In respect of freedom of press, following observations were made:

- (iii) Freedom of the press was an essential element of Article 19(1)(a) and the absence of an express mention of such freedom as a special category was irrelevant.
- (iv) Free press was to be regarded as an essential element of freedom of expression in general.
- (v) Shortage of newsprint can be tackled by fixing the quotas but direct interference in terms of page limits is not justified as limiting the pages would affect economic viability of newspapers considering that either advertisements or news content will have to be reduced. In either case, freedom of expression will be harmed.
- (vi) Freedom of press had quantitative as also qualitative elements and hence quantitative controls constituted restrictions on freedom of expression. Since they were not justified on the basis of shortage of newsprint, they could not be considered to be reasonable restrictions.

Accordingly the Newsprint Policy 1972-73 was held as unconstitutional though the Newsprint Order and Import Control Order were not struck down. The vitality of the judgment was that it gave importance to the significance of free press over ever-changing economic policies. Limitation on pages in a newspaper cannot be made without reducing the advertorial content or the news itself. Advertisements in themselves often have a content of informing the people about new products, government schemes, amended laws, notifications, etc. and hence reducing them would directly lead to increased cost whereas if news itself were curbed, it would directly hamper the right of free press.

In case of **Indian Express Newspaper vs. Union of India**,³¹⁹ Supreme Court had to decide the validity of import duty on newsprint as per Customs Tariff Act 1975 and auxiliary duty under the Finance Act 1981 as modified by notifications under Customs Act 1962 w.e.f. March 1 1981. There was no customs duty on newsprint before this notification was implemented. It was contended on behalf of petitioners that due to imposition of this duty had led to adversely affecting the printing costs and circulation of newspaper thus creating a crippling effect not only on freedom of expression under Article 19(1)(a) but also on the freedom to practice any trade or occupation under Article 19(1)(g). Also, as India's foreign exchange was sound during that period there was no immediate need for such imposition creating interference in fundamental rights. Also, the petitioners contended that principle of equality before law as enshrined under Article 14 of Constitution was violated as the newspapers had to be classified into small, medium and large newspapers for imposing the duty which in itself was arbitrary. On the other hand, respondents Union of India contended that the public interest involved in taxation was to increase government revenue and the exemption granted to newsprint was unjustified and hence removable by government.

The Supreme Court in its verdict partially favoring the Union of India held that publishing newspapers was a part of newspaper industry and hence, like other industries, government was empowered to levy taxes affecting the publication of newspapers. The Court further allowed classification of newspapers into small, medium and large based on

³¹⁹ (1985) 1 SCC 641

economic considerations as non-arbitrary as it had a rational nexus with the objective of taxation. However, it was also observed that where the power of taxation encroached upon freedom of expression under Article 19(1)(a), the restriction on freedom must be within reasonable restrictions. The Court held that under Article 19(2), freedom of expression can be restricted on ground of “public interest”. Accordingly, two basic principles must be borne in mind, firstly being that newspapers enjoy the benefits of government services like all other industries and must accordingly contribute a reasonable share of government revenue through taxation and secondly that the burden of taxation must not be excessive. The Court directed the government to re-examine the taxation policy by evaluating whether it constituted an excessive burden on the newspapers as government’s contention stand about it being irrelevant was itself incorrect and the notification had to be revised by considering this factor.

The case thus highlighted the vitality of media’s role as fourth pillar of democracy which had to be protected from executive interference. The burden of taxation on newspapers must be such that they can be feasibly discharged without crumbling under its very weight. Excessively imposing taxes on media would disable the newspaper in performing its duty of publishing and circulating newspapers and once the prices were increased, it would also affect the sales. Thus, to surmise, the judgment expanded freedom of press to dimensions beyond direct regulation of newspapers to economic control.

In case of *Express Newspapers P. Ltd. vs. Union of India*³²⁰, the constitutional validity of a notice of re-entry upon forfeiture of lease as also threatened demolition of Express Buildings on ground of being violative of Article 19(1)(a) was challenged. Under a lease agreement, petitioner was allotted certain plots by Government of India for construction of its press building which was accordingly constructed. However, it was alleged by Lt. Governor of Delhi that the new Express Building was constructed in contravention of municipal corporation laws and notice for demolition of the same was immediately issued. The petitioners stated that the construction of new building was in conformity with lease deed as also with express sanction of lessor, Union of India. They

³²⁰ 1986 AIR 872

contended that as the impugned notices had a direct impact on freedom of press, the same be withdrawn. The Court in its judgment held that the impugned notices did constitute a direct and immediate threat to the freedom of press and were violative of not only Article 19(1)(a) but also of right to equality under Article 14 and were hence declared invalid because they were sent with malafide intent to create hindrances in smooth functioning of the Indian Express newspaper.

In case of *Samaresh Bose vs. Amal Mitra*,³²¹ complaint was filed by an advocate against the author and publishers, complaining that the novel 'Prajapati' which was published in a journal of good reputation and wide circulation namely "SarodiyaDesh" contains matters which are obscene and both the accused persons have, sold, distributed, printed and exhibited the same which has the tendency to corrupt the morals of those in whose hands the said 'SarodiyaDesh' may fall and the reading public as well" and "both the accused persons have committed an offence punishable under S. 109 and 292, IPC. On the basis of the said complaint and after compliance with the necessary formalities, a criminal case was filed against both the accused persons and the Chief Presidency Magistrate of Calcutta declared the impugned novel as obscene and both the accused were held guilty with following reasons u/s. 292, IPC and convicted for two months imprisonment and a nominal fine. Against the judgment and order passed by learned Chief Presidency Magistrate both the accused preferred an appeal to the High Court at Calcutta. The complainant also filed a criminal revision in the High Court for enhancement of the sentence imposed by the Chief Presidency Magistrate on the two accused persons.

On behalf of the appellants it was contended that neither the novel as a whole nor any part thereof can be considered to be obscene within the meaning of S. 292, I.P.C. Also it was contended that in various portions of the novel and in particular the marked portions which were considered by the Chief Presidency Magistrate and also the High Court, various slang words might have been used and the description of the incidents including the description of various parts of female body may be verging on vulgarity and may offend sophisticated minds, but the same cannot be considered to be obscene, as the same cannot have any tendency of depraving and corrupting the minds of persons whose

³²¹ AIR 1986 SC 967

minds are open to such immoral influences and the same cannot also suggest to the minds of the young people of either sex or to persons of more advanced years thoughts of any impure and libidinous character. It was also submitted that the novel depicts the feelings, thoughts, actions and the life of Sukhen who is the hero of the novel and is its main character; and through the speeches, thoughts and actions of Sukhen the novel seeks to condemn and criticise various aspects of life in society now prevailing in its various strata. He submitted that slang words and almost vulgar language had to be used in keeping with the character of Sukhen who was accustomed to the use of only such language. He argued that if different kinds of words, cultured and sophisticated, were to be used in the thoughts, speeches and actions of Sukhen, the entire portrayal of Sukhen's character would become unreal and meaningless. He argued that true art and literature require that the character sought to be portrayed must be so depicted as to make it real and artistic; and, if for achieving that purpose the language which the kind of person sought to be portrayed indulges in is put into his mouth it does not become obscene. He also argued that in literature as also in life there is a good deal of distinction between obscenity and vulgarity though both may be offensive to any sophisticated mind. It was his submission that it is obscenity in literature which attracts the provisions of S. 292, I.P.C. and that the word 'obscenity' which was not defined in the Code has come up for consideration in various cases and has been judicially interpreted by various Courts including this Court. He also argued that the book in issue had a social purpose to serve and has been written with the main object of focusing the attention of persons interested in literature to the various ills and maladies ailing and destroying the social fabric and the author who is a powerful writer has used his talents for achieving the said purpose.

The State on the other hand supported the judgment of Chief Presidency Magistrate and the High Court affirming the judgment of the Chief Presidency Magistrate. He submitted that the novel has to be judged in the background of the conditions prevailing in the society at the time when the novel was written. He further submitted that the learned Chief Presidency Magistrate and the learned Judge of the High Court both had read the novel carefully a number of times and on their own appreciation of the merits of the novel they both had come to the conclusion after considering all the

submissions which were made on behalf of the accused persons that the novel in question was obscene.

The Court held that the book in question was not obscene within the meaning of S. 292, I.P.C. It agreed with Judge of the High Court that there was nothing in this or in the subsequent passages relating to characters namely, Neela, Vanita and Shama which amounted to pornography nor had the author indulged in a description of the sex act or used any language which can be classed as vulgar. Whatever has been done is done in a restrained manner though in some places there may have been an exhibition of bad taste, leaving it to the more experienced to draw the inferences, but certainly not sufficient to suggest to the adolescent anything which is depraving or lascivious. For people who are literate and interested in books referring to sex, innumerable books are readily available which contain references to sex. Their purpose is not, and they have not the effect of stimulating sex impulses in the reader but may form part of a work of art or are intended to propagate ideas or to instil a moral.

It was further observed that the concept of obscenity would differ from country to country depending on the standards of morals of contemporary society. What is considered as a piece of literature in France may be obscene in England and what is considered in both countries as not harmful to public order and morals may be obscene in some other country. But to insist that the standard should always be for the writer to see that the adolescent ought not to be brought into contact with sex, or that if they read any references to sex in what is written whether that is the dominant theme or not they would be affected, would be to require authors to write books only for the adolescents and not for the adults. In early English writings authors wrote only with unmarried girls in view but society has changed since then to allow litterateurs and artists to give expressions to their ideas, emotions and objectives with full freedom except that it should not fall within the definition of 'obscene' having regard to the standards of contemporary society in which it is read. The standards of contemporary society in India are also fast changing. The adults and adolescents have available to them, a large number of classics, novels, stories and pieces of literature which have a content of sex, love and romance. As observed in *Udeshi's case* (AIR 1965 SC 881) if a reference to sex by itself is considered

obscene, no books can be sold except those which are purely religious. In the field of art and cinema also the adolescent is shown situations which even a quarter of a century ago would be considered derogatory to public morality, but having regard to changed conditions are more taken for granted without in any way tending to debase or debauch the mind. What has to be seen is that whether a class, not an isolated case, into whose hands the book, article or story falls suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts aroused in their minds. The charge of obscenity must, therefore, be judged from this aspect."

The Court also held that in judging the question of obscenity, the Judge in the first place should try to place himself in the position of the author and from the view point of the author the judge should try to understand what is it that the author seeks to convey and what the author conveys has any literary and artistic value. The Judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have in the minds of the readers. A Judge should thereafter apply his judicial mind dispassionately to decide whether the book in question can be said to be obscene within the meaning of S. 292, I.P.C. by an objective assessment of the book as a whole and also of the passages complained of as obscene separately.

Referring to the publication "SarodiyaDesh", the Court observed that it was an immensely popular journal amongst Bengalis of both sexes as also in all the age groups and the book printed therein cannot be considered as obscene. Reference to kissing, description of body and figures of the female characters in the book and suggestions of acts of sex by themselves may not have the effect of depraving, debasing and encouraging the readers of any age to lasciviousness and the novel on these counts, may not be considered to be obscene. Likewise because of the slang language used as also the episodes in relation to sex life narrated in the novel, appear vulgar and may create a feeling of disgust and revulsion. The mere fact that the various affairs and episodes with emphasis on sex have been narrated in slang and vulgar language may shock a reader who may feel disgusted by the book does not resolve the question of obscenity.

Thus the Apex Court set aside Lower Court order stating that the observations made by them and recorded earlier go to indicate that in their thinking there was a kind of confusion between vulgarity and obscenity. It clarified that a vulgar writing is not necessarily obscene. Vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing and corrupting the morals of any reader the novel, whereas obscenity has the tendency to deprave and corrupt those whose minds are open to such immoralities. The Court stated that the author has used the offensive language as also frequent sexual descriptions so as to focus the readers' attention on such characters in real life. The author intends to expose various evils and ills pervading the society and to pose with particular emphasis the problems which ail and afflict the society in various spheres. He has used his own technique, skill and choice of words which may, in his opinion, serve properly the purpose of the novel.

The Court thus allowed the appeal and the judgment of the lower court was set aside. The appellants were acquitted of the charges framed against them and the novel was held as neither obscene nor offending S. 292, I.P.C. merely for using sexual descriptions and slang language at several places. The sole purpose of any literature cannot be to protect adolescents from getting exposure to offensive language and if it were so, only religious literature would have to be made available. Where any literature requires descriptions or slang words which have been used only to emphasize on the character but do not have obscenity at the core cannot be considered as offending under the law. In judging the question of obscenity, the judge in the first place should try to place himself in the position of the author and from the viewpoint of the author, the judge should try to understand what is it that the author seeks to convey and whether what the author conveys has any literary and artistic value. Judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have on the minds of the reader.

The case of *R. Rajagopal vs. State of Tamilnadu and others*³²² involved a question concerning the freedom of press vis-a-vis the right to privacy of the citizens of

³²² AIR 1995 SC 264

this country. It also raised the question as to the parameters of the right of the press to criticize and comment on the acts and conduct of public officials. The petitioners in this case were the editor, associate editor, printer and publisher of a Tamil weekly magazine `Nakkheeran', published from Madras. They had sought issuance of an appropriate writ, order or direction under Art. 32 of the Constitution, restraining the respondents, viz., (1) State of Tamil Nadu, (2) Inspector General of Prisons, Madras and (3) Superintendent of Prisons (Central Prison), Salem, Tamil Nadu from interfering with the publication of autobiography of the condemned prisoner, Auto Shankar, in their magazine. The said Shankar alias Gauri Shankar alias Auto Shankar was charged and tried for as many as six murders and was convicted and sentenced to death. His appeal was dismissed and it was stated that his mercy petition to the President of India was pending for consideration. During his period in prison, Shanker wrote his autobiography of nearly 300 pages which highlighted close nexus between him and several IAS, IPS and other officers, some of whom were indeed his partners in several crimes. The presence of several such officers at the house warming ceremony of Auto Shankar's house was proved by the video cassette and several photographs taken on the occasion. The prisoner requested his advocate to ensure that his autobiography is published in the petitioners' magazine, `Nakkheeran' and affirmed this desire in several letters written to his advocate and the first petitioner. The petitioners announced prior to releasing the autobiography that very soon the magazine would be coming out with the sensational life history of Auto Shankar. This announcement sent shock waves among several police and prison officials who were afraid that their links with the condemned prisoner would be exposed. They forced the said prisoner, by applying third degree methods, to write letters addressed to the second respondent (Inspector General of Prisons) and the first petitioner requesting that his life-story should not be published in the magazine.

Auto Shankar wrote his autobiography running into 300 pages while confined in Chenglepat sub jail during the year, 1991. The autobiography was handed over by him to his wife, Smt. Jagdishwari, with the knowledge and approval of the jail authorities, for being delivered to his advocate, Sri Chandrasekharan. Simultaneously, certain correspondence ensued between the petitioners and the prison authorities in this connection. Ultimately, the Inspector General of Prisons wrote the impugned letter dated

June 15, 1994 to the first petitioner. The letter stated that the petitioner's assertion that Auto Shankar had written his autobiography while confined in jail in the year 1991 is false and prisoner had himself denied the writing of any such literature. The letter concluded, "from the above facts, it is clearly established that the serial in your magazine under the caption "Shadowed Truth" or "Auto Shankar's Dying Declaration" is not really written by Gauri Shankar but it is written by someone else in his name. Writing an article in a magazine in the name of a condemned prisoner is against prison rules and your claim that the power of attorney is given by the prisoner is unlawful. In view of all those it is alleged that your serial supposed to have written by Auto Shankar is (false?) since with an ulterior motive for this above act there will arise a situation that we may take legal action against you for blackmailing. Hence, I request you to stop publishing the said serial forthwith."

The petitioners submitted that the contents of the impugned letter were untrue. The argument of jeopardy to prisoners interest was a hollow one. The petitioners have a right to publish the said book in their magazine as desired by the prisoner himself. Indeed, the petitioners have published parts of the said autobiography in three issues of their magazine dated June 11, 1994, June 18, 1994 and June 22, 1994 but stopped further publication in view of the threatening tone of the letter dated June 15, 1994. The petitioners have reasons to believe that the police authorities may swoop down upon their printing press, seize the issues of the magazine besides damaging the press and their properties, with a view to terrorise them. On a previous occasion when the petitioners' magazine published, on August 16, 1991, an investigative report of tapping of telephones of opposition leaders by the State Government, the then editor and publisher were arrested, paraded, jailed and subjected to the third degree methods. There were several instances when the petitioners' press was raided and substantial damage done to their press and properties. The petitioners were apprehensive that the police officials may again do the same since they were afraid of their links with the condemned prisoner being exposed by the publication of the said autobiography. The petitioner asserted the freedom of press guaranteed by Art. 19(1)(a), which, according to them, entitled them to publish the said autobiography. It was submitted that the condemned prisoner had the undoubted right to have his life story published and that he cannot be prevented from doing so.

The respondents submitted that the writ petition filed by the petitioners in the High Court was dismissed by the learned single Judge on June 28, 1994 holding inter alia that the question whether the said prisoner had indeed written his autobiography and authorised the petitioner to publish the same is a disputed question of fact. This was so held in view of the failure of the learned counsel for the petitioners, to produce the alleged letters written by the prisoner to his counsel, or to the petitioners, authorising them to publish his autobiography. It was submitted that the letter dated June 15, 1994 was addressed to the first petitioner in as much as "there was a genuine doubt regarding the authorship of the autobiography alleged to have been written by the condemned prisoner while he was in prison and which purportedly reached his wife. Besides, it was also not clear whether the said prisoner had as a matter of fact authorised the petitioner to publish the said autobiography. In the context of such a disputed claim both as to authenticity as well as the authority to publish the said autobiography, the said communication was addressed to the petitioners herein, since the petitioners have threatened to publish derogatory and scurrilous statements purporting to be based on material which are to be found in the disputed autobiography". It was submitted that the allegation that a number of IAS, IPS and other officers patronized the condemned prisoner in his nefarious activities was baseless. "It is only in the context of such a situation coupled with the fact that the petitioner might under the guise of such an autobiography tarnish the image of the persons holding responsible positions in public institution that the communication dated 15-6-94 was sent to him", say the respondents. They also denied that they subjected the said prisoner to third degree methods to pressurise him into writing letters denying the authorisation to the petitioners to publish his life-story.

Following issues were framed after considering the petition:

- (1) whether a citizen of this country can prevent another person from writing his life-story or biography? Does such unauthorised writing infringe the citizen's right to privacy? Whether the freedom of press guaranteed by Art. 19(1) (a) entitle the press to publish such unauthorised account of a citizen's life and activities and if so to what extent and in what circumstances? What are the remedies open to a citizen of this country in case of

infringement of his right to privacy and further in case such writing amounts to defamation?

(2)(a) Whether the government can maintain an action for its defamation?

(b) Whether the government has any legal authority to impose prior restraint on the press to prevent publication of material defamatory of its officials? and

(c) Whether the public officials, who apprehend that they or their colleagues may be defamed, can impose a prior restraint upon the press to prevent such publication?

(3) Whether the prison officials can prevent the publication of the life-story of a prisoner on the ground that the prisoner being incarcerated and thus not being in a position to adopt legal remedies to protect his rights, they are entitled to act on his behalf?

It was held that the petitioners have a right to publish the autobiography of Auto Shanker in so far as it appears from public records even without his consent or authorization. But if they go beyond that and publish his life story they may be invading his right to privacy and will be liable for the consequences in accordance with law. Similarly the State and its officials who apprehend that they may be defamed cannot impose prior restraint upon publication of alleged autobiography. The remedy of the affected officials, if any, is after the publication.

Following observations were also made:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone." A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public

records including Court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others.

- (3) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.

Conclusively, it was also held that the principles above mentioned are only the broad principles. They are neither exhaustive nor all-comprehending; indeed no such enunciation is possible or advisable. The said right has to go through a case-by-case development as the concepts dealt with herein are still in the process of evolution.

Applying the above principles, it was held that the petitioners have a right to publish, what they allege to be the lifestory / autobiography of Auto Shankar in so far as it appears from the public records, even without his consent or authorisation. But if they go beyond that and publish his lifestory, they may be invading his right to privacy and will be liable for the consequences in accordance with law. Similarly, the State or its officials cannot prevent or restrain the said publication. The remedy of the affected public officials/ public figures, if any, is after the publication, as explained hereinabove. Thus Supreme Court took a balanced view between public life and private life of those in power in the nation. It held that though freedom of press extends to engaging in uninhabited debate about the involvement of public figures in public issues, it does not extend to interfering in their private lives and at such level, a balance between freedom of press and right to privacy is a must. To surmise it can be said that Supreme Court has recognized and respected the right of privacy of individuals and the same cannot be sacrificed at the cost of media's right of free speech.

In case of *Re. Harijai Singh*³²³ it was also held that the expression "freedom of the press" has not been used in Article 19 but it is comprehended within Article 19(1)(a). The expression means freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers. There cannot be any interference with that freedom in the name of public interest. The purpose of press is to

³²³ AIR 1997 SC 73

advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Freedom of the press is heard of social and political intercourse. It is the primary duty of courts to uphold the freedom of press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate. The fundamental principle behind the freedom of press is people's right to know. The primary function of press is to provide comprehensive and objective information of all aspects of country's political, social, economic and cultural life. It has an educative and mobilizing role to play. It plays an important role in moulding public opinion. But freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints, it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In an organized society the rights of press free have to be recognized with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterance has a far greater circulation and impact than utterance of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views."

Thus, the Court in this case heavily tried to balance the scales between a free press on one hand and the restrictions on the other. The power of information to the right human mind is extremely invaluable. The same follows for putting wrong information in wrong hands which can be just as dangerous. Press being a powerful medium with its capabilities to do such harm needs to be careful in news reporting. Of course, free press has to be maintained at all costs as that's how the real picture can be presented to the society but likewise, abuse or misuse of this free press will only lead to damages, sometimes irreversible.

In case of *Ajay Goswami vs. Union of India*³²⁴, the petition was filed against Union of India, Press Council of India and leading newspapers namely The Times of India and Hindustan Times to seek protection from this Court to ensure that minors are not exposed to sexually exploitative materials, whether or not the same is obscene or is within the law. The objective was that the nature and extent of the material having sexual contents should not be exposed to the minors indiscriminately and without regard to the age of minor and the discretion in this regard should vest with parents, guardians, teachers or experts on sex education. The petitioner prayed to direct the authorities to strike a reasonable balance between the fundamental right of freedom of speech and expression enjoyed by the press and the duty of the Government, being signatory of United Nations Convention on the Rights of the Child, 1989 and Universal Declaration of Human Rights, to protect the vulnerable minors from abuse, exploitation and harmful effects of such expression. A classification or introduction of a regulatory system was sought from the Court for facilitating climate of reciprocal tolerance which may include :-

- (a) an acceptance of other people's rights to express and receive certain ideas and actions; and
- (b) accepting that other people have the right not to be exposed against their will to one's expression of ideas and actions.

The reciprocal tolerance was further necessary considering the growing tendency among youngsters and minors in indulging in X-rated jokes, SMS and MMS.

The petitioner specified that he was in no way seeking restraint on the freedom of press or any censorship prior to the publication of article or other material but only at the receiving end, i.e. when the literature in any form with obscene content is received easily by children. The petitioner stated that The Press Council of India which was constituted for preserving the freedom of press and maintaining and improving the standards of newspapers and news agency is a powerless body and no guidelines have been framed for

³²⁴ AIR 2007 SC 493

the minors and adolescents in particular, which can be enforced in Court of law. Petitioner-in-person made the following proposals at the end of his arguments:

- i) Guidelines in detail may be issued to all the newspapers regarding the matter which may not be suitable for the reading of minors or which may require parents or teachers discretion.
- ii) Newspapers should have self-regulatory system to access the publication in view of those guidelines.
- iii) In case the newspapers publish any material which is categorized in the guidelines the newspaper be packed in some different form and should convey in bold in front of newspapers of the existence of such material.
- iv) This would give discretion to the parents to instruct the news vendor whether to deliver such newspaper or not.

In the alternative, he suggested a Committee be appointed to suggest ways and means for regulating the access of minors to adult oriented sexual, titillating or prurient material.

In response to petitioner's arguments, it was submitted on behalf of Union of India that publishing as well as circulating of obscene and nude/semi-nude photographs of women already constitutes a penal offence under the provisions of the Indecent Representation of Women (Prohibition) Act, 1986, administered by the Department of Women and Child Development, Ministry of Human Resources Development. It was further submitted that sale, letting, hiring, distributing, exhibiting, circulating of obscene books and objects of young persons under the age of twenty years also constituted a penal offence u/s. 292 and 293 of the Indian Penal Code.

On behalf of Press Council of India it was submitted that the Press Council enjoys only limited authority, with its power limited to giving directions, censure etc. to the parties arraigned before it, to publish particulars relating to its enquiry and adjudication etc. The powers of the Council in so far its authority over the press is concerned are enumerated u/s. 14 of the Press Council Act, 1978. However, it has no further authority to ensure that its directions are complied with and its observations implemented by the

erring parties. Lack of punitive powers with Press Council has tied its hands in exercising control over the erring publications. On behalf of The Times of India it was submitted that legislations, rules and regulations already existed within the Indian legal framework to check publication of obscene materials and articles as also that Press Council is empowered under the Press Council of India Act to impose serious checks on the Newspaper, News Agency, an editor or a journalist who flouts the norms as formulated by the Press Council and is against societal norms of decency. It was also submitted that the Indian Constitution under Article 19 (1) (a) guarantees every citizen the right to freedom of speech and expression and respondent being a leading newspaper has the right to express its views and various news of national and international relevance in its edition and any kind of unreasonable restriction on this right will amount to the violation of the right guaranteed by the Indian Constitution.

Likewise referring American cases it was stated that even nudity per se is not obscenity. In 50 Am Jur 2d, para 22 at page 23, it was observed that "Articles and pictures in a newspaper must meet the Miller's test's Constitutional standard of obscenity in order for the publisher or distributor to be prosecuted for obscenity. Nudity alone is not enough to make a material legally obscene." In *Alfred E Butler v. State of Michigan*³²⁵ the U.S. Supreme Court held that: "The state insists that, by thus quarantining the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence, it is exercising its power to promote the general welfare. Surely, this is to burn the house to roast the pig."

Relying on the fame and circulation of the newspaper, the Times of India and Hindustan Times, it was submitted that they are leading newspapers of nation and their popularity only stands to show that the pictures published are not objectionable and also that respondent while publishing any news article has any intention to cater to the prurient interest of anybody. Also there was an internal regulatory system to ensure that no objectionable photograph or matter gets published.

In conclusion, it was urged that any step to ban publishing of certain news-pieces or pictures would fetter the independence of free-press.

³²⁵1 Led 2d 412

In its judgment, the Court held that the globalisation and liberalization does not give licence to the media to misuse freedom of the Press and to lower the values of the society. The media performs a distinct role and public purpose which require it to rise above commercial consideration guiding other industries and businesses. So far as that role is concerned, one of the duties of the media is to preserve and promote our cultural heritage and social values. The Court relied upon American case *Reno vs. the American Civil Liberties Union*³²⁶ wherein the U.S. Supreme Court struck down two provisions of the Communications Decency Act, 1996 which criminalized online transmission of “obscene or indecent” messages to any recipient under 18 years of age. The Court partly tried to respond by saying that protecting children from harmful materials does not justify an unnecessarily broad suppression of speech addressed to adults. The Court also held that where art and obscenity are mixed, what must be seen is whether the artistic, literary or social merit of work in question outweighs its “obscene” content. It is necessary that publication must be judged as a whole and the impugned should also separately be examined so as to judge whether the impugned passages are so grossly obscene and are likely to deprave and corrupt. The test for judging a work should be that of an ordinary man of common sense and prudence and not that of a hypersensitive man. It was observed that a culture of 'responsible reading' should be inculcated among the readers of any news article. No news item should be viewed or read in isolation. It is necessary that publication must be judged as a whole and news items, advertisements or passages should not be read without the accompanying message that is purported to be conveyed to the public. Also the members of the public and readers should not look for meanings in a picture or written article, which is not conceived to be conveyed through the picture or the news item.

The court opined that a blanket ban on publication of obscene materials or article in order to shield juvenile innocence cannot be imposed as it will lead to situation of newspapers publishing only that content which is in requirement of children despite being a source of information for all ages. It also held that no news item should be viewed in isolation and publication must be judged as a whole and fictitious imagination of anybody

³²⁶ 521 US 844 (1997)

especially of minors should not be agitated in court of law. The Court also suggested Press Council to amend the provisions of its Act.

In case of **Aveek Sarkar and another v. State of W.B. and others**³²⁷ a widely circulated German magazine titled "STERN" published an article alongwith a picture of Boris Becker, a world renowned tennis player, posing nude with his dark-skinned fiancée by name Barbara Feltus, a film actress, which was photographed by none other than her father. The article stated that, in an interview, both Boris Becker and Barbara Feltus spoke freely about their engagement, their lives and future plans and the message they wanted to convey to the people at large, for posing to such a photograph. The said article portrayed Boris Becker as a staunch protester of the evil practice of "apartheid".³²⁸ They had also mentioned in the article that the purpose of photograph was also to signify that love triumphs over hatred. The same article was later published by "Sports World" magazine as also Ananda Bazar Patrika - a newspaper with wide circulation in Kolkata.

The present case arose after a lawyer practicing at Alipore Judge's Court, Kolkata, filed a complaint under Section 292 of the Indian Penal Code against the Editor, the Publisher and Printer of the newspaper as well as against the Editor of the Sports World, former Captain of Indian Cricket Team, late Mansoor Ali Khan of Pataudi, before the Sub-Divisional Magistrate at Alipore. According to the complaint, the complainant Advocate being an experienced Advocate and an elderly person had a strong apprehension that the nude photograph appearing in the AnandabazarPatrika, as well as in the Sports World, would corrupt young minds, both children and youth of this country, and that it was against the cultural and moral values of Indian society which had a vast difference from the western culture.

The complainant stated that unless such types of obscene photographs are censured and banned and accused persons are punished, the dignity and honour of our

³²⁷ AIR 2014 SC 1495

³²⁸The term 'apartheid' refers to racial segregation. After the National Party gained power in South Africa in 1948, its all-white government immediately began enforcing existing policies of racial segregation under a system of legislation that it called apartheid. Under apartheid, nonwhite South Africans (a majority of the population were forced to live in separate public facilities, and contact between the two groups was limited. Despite strong and consistent opposition to apartheid within and outside South Africa, its laws remained in effect for nearly 50 years. (www.history.com/topics/apartheid) (Visited on 22.5.2017)

womanhood would be in jeopardy. Complainant also urged that the accused persons should not only be prosecuted under Section 292, IPC, but also be prosecuted under Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986, since the photograph prima facie gives a sexual titillation and its impact is moral degradation and would also encourage the people to commit sexual offences.

In response thereto, the accused persons filed an application before the Court for dropping the proceedings stating that there was no illegality in reproducing in the Sports World as well as in the AnandabazarPatrika of the news item and photograph appeared in a magazine 'STERN' published in Germany. Further, it was pointed out that the said magazine was never banned entry into India and was never considered as 'obscene', especially when Section 79 of Indian Penal Code states that nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

The Court after seeing the photographs and hearing the arguments of either side, held that until evidence was brought on record, responsibility of accused persons could not be determined. However, the Court observed that though Sec. 292 does not define word 'obscene', but considering the precedents, it does have a harmful effect of depraving and debauching the mind of the persons into whose hands it may come and also for other sufficient reasons process was issued against the accused persons u/s. 292, I.P.C. The Magistrate after holding so, held the accused persons to be examined under Section 251, Cr.P.C. and ordered that they would be put to face the trial for the offence punishable u/s. 292, IPC alternatively under Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986. The accused appealed against the said order.

In appeal proceedings before the High Court, it was pointed out that the Magistrate had not properly appreciated the fact that there was no ban in importing the German sports magazine 'STERN' into India. Consequently, reproduction of any picture would fall within the general exception contained in Section 79, IPC. Referring to the picture, it was pointed out that the picture only demonstrates the protest lodged by Boris Becker as well as his fiancée against 'apartheid' and those facts were not properly

appreciated by the learned Magistrate. Further, it was also pointed out that the offending picture could not be termed as obscene inasmuch as nudity per se was not obscene and the picture was neither suggestive nor provocative in any manner and would have no effect on the minds of the youth or the public in general. Further, it was also pointed out that the learned Magistrate should not have issued summons without application of mind. The High Court, however, did not appreciate all those contentions and declined to quash the proceedings under Section 483, Cr.P.C., against which this appeal has been preferred. It was also pointed out:

- That obscenity has to be judged in the context of contemporary social norms, current socio-moral attitude of the community and the prevalent norms of acceptability/susceptibility of the community, in relation to matters in issue.
- That the learned Magistrate as well as the High Court have completely overlooked the context in which the photograph was published and the message it had given to the public at large.
- That the photograph is in no way vulgar or lascivious.
- That the Courts below have not properly appreciated the scope of Section 79, IPC and that the appellants are justified in law in publishing the photograph and the article which was borrowed from the German magazine.

On behalf of the respondents it was submitted as under:

- That the Courts below were justified in holding that it would not be proper to give an opinion as to the culpability of the accused persons unless they are put to trial and the evidence is adduced.
- That the question whether the publication of the photograph is justified or not and was made in good faith requires to be proved by the appellants since good faith and public good are questions of fact and matters for evidence.
- That the learned Magistrate as well as the High Court was justified in not quashing the complaint and ordering the appellants to face the trial.

The Court after hearing both the sides observed as under:

That looking at the circumstances of present case, the landmark Hicklin test is not the correct test to be applied to determine "what is obscenity". Therefore, "community standard test" should be applied rather than "Hicklin test" to determine what is "obscenity". A bare reading of sub-section (1) of Section 292, makes clear that a picture or article shall be deemed to be obscene (i) if it is lascivious; (ii) it appeals to the prurient interest, and (iii) it tends to deprave and corrupt persons who are likely to read, see or hear the matter, alleged to be obscene. Once the matter is found to be obscene, the question may arise as to whether the impugned matter falls within any of the exceptions contained in Section. A picture of a nude/semi-nude woman, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire. The picture should be suggestive of deprave mind and designed to excite sexual passion in persons who are likely to see it, which will depend on the particular posture and the background in which the nude/semi-nude woman is depicted. Only those sex-related materials which have a tendency of "exciting lustful thoughts" can be held to be obscene, but the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards.

The Court in present case, had to examine whether the photograph of Boris Becker with his fiancée Barbara Fultus, a dark-skinned lady standing close to each other bare bodied but covering the breast of his fiancée with his hands can be stated to be objectionable in the sense it violates Section 292, IPC. If the community tolerance test was applied, it did not appear to be a photograph suggestive of depraving minds and designed to excite sexual passion in persons who are likely to look at them and see them, which would depend upon the particular posture and background in which the woman is depicted or shown. Further, the photograph, had no tendency to deprave or corrupt the minds of people in whose hands the magazine Sports World or Anandabazar Patrika would fall. The Court further held that the said picture has to be viewed in the background in which it was shown, and the message it has to convey to the public and the world at large. The cover story of the magazine carries the title, posing nude, dropping of harassment, battling racism in Germany. Boris Becker himself in the article published in the German magazine, speaks of the racial discrimination prevalent in Germany and the article highlights Boris Becker's protests against racism in Germany.

The controversial photograph was taken in such a manner to convey that people may belong to different regions and religions, their skin colors maybe different or in stark contrast, but the element of love wins over such petty matters. The picture promoted love affair, leading to a marriage, between a white-skinned man and a black skinned woman. Therefore, photograph and the article should be appreciated in the light of message it wants to convey, that is to eradicate the evil of racism and apartheid in the society and to promote love and marriage between white skinned man and a black skinned woman. When viewed in that angle, the Court held that the picture or the article which was reproduced by Sports World and the AnandabazarPatrika did not appear to be objectionable so as to initiate proceedings under Section 292, IPC or under Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986.

The Queen's Bench gave the Hicklin Test while deciding the case of Regina vs. Hicklin. As per the Test, in order to find out if any matter, i.e. literature, film, play, etc. is obscene or not, it shall be required to pass the Hicklin Test which stated that whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. If it was decided that the matter has such tendency, it shall be considered obscene irrespective of any other facts. Any publication could be considered as "obscene" solely based on isolated passages of a work considered out of context. Works could be considered as obscene by their possible influence on most susceptible readers such as children or weak-minded adults. The rule was considered severe as any piece of work could be entirely considered as obscene based on certain parts of it without considering its entirety. Later, in Roth vs. United States, it was held that sex and obscenity should not be considered as synonymous. The Court elaborated that only those sex-related materials which had the tendency of exciting lustful thoughts were found to be obscene and the same has to be judged from the viewpoint of an average person by applying contemporary community standards test. The Hicklin Test eventually gave away to the Community Standards Test which came to be accepted by several nations through their judgments of similar nature. What could be obscene to some persons might not be so for the society at large. Again, that may have been obscene at one point of time might not be so after some decades. Considering the various segments of society and how different

individuals carry different tastes, the community standards came to be considered as the final test for deciding obscenity.

In case of *S. Khushboo v. Kanniammal*³²⁹, the famous and widely circulated national magazine "India Today" had gathered and published the views expressed by several individuals from different segments of society, including those of the appellant on subject of sexual habits as also premarital sex of people residing in bigger cities of India. The appellant expressed her personal opinion wherein she had noted the increasing incidence of pre-marital sex, especially in the context of live-in relationships and called for the societal acceptance of the same. However, appellant had also qualified her remarks by observing that girls should take adequate precautions to prevent unwanted pregnancies and the transmission of venereal diseases. The said remarks of appellant were published in Tamil newspaper "DhinaThanthi" on 24.9.2005 which first quoted the appellant's statement published in 'India Today' and then opined that it had created a sensation all over the State of Tamil Nadu. This news item also reported a conversation between the appellant and a correspondent from 'DhinaThanthi', wherein the appellant had purportedly defended her earlier views. Soon after publication of the said news item, the appellant sent a legal notice to the Editor of 'DhinaThanthi', categorically denying that she had made the statement quoted above. In fact, the appellant had asked the publisher to withdraw the entire news-item published earlier and to publish her objections prominently within three days of receipt of the notice, failing which the appellant would be constrained to take appropriate legal action against the newspaper.

In the meantime, the publication of these statements in 'India Today' and 'DhinaThanthi' drew criticism from people and organizations across the nation and some of them also filed criminal complaints against the appellant.

- In one complaint, the complainant stated that she is a married woman who is the Treasurer of a District-level unit of the PattaliMakalKatchi [hereinafter referred as 'PMK'], a political party, and is also involved in social service. She had quoted some parts of the statements published in 'India Today' and 'DhinaThanthi' to allege that the appellant's interview had brought great shame on her since it had suggested that

³²⁹ AIR 2010 SC 3196

women of her profile had engaged in premarital sex. The complainant further alleged that the appellant's remarks had caused mental harassment to a large section of women, and in particular women from Tamil Nadu were being looked down upon with disrespect and contempt.

- In another complaint, the complainant stated that he found second-hand accounts of the same to be quite shocking since the appellant had questioned the need for women to maintain their virginity or chastity. It was alleged that these remarks were an abuse against the dignity of the Tamil women and that they had grossly affected and ruined the culture and morality of the people of the State. It was further submitted that these statements could persuade people to involve themselves in unnatural crimes and that the appellant's acts amounted to commission of offences punishable under Sections 499, 500, 504, 505(1)(b) and 509 IPC read with Sections 3 and 4 of Act 1986.
- Yet another complaint was filed by a lady advocate who was practicing in the Trichy District Courts for more than 10 years. She quoted some portions from the statements published in 'India Today' and 'DhinaThanthi' to submit that the appellant's acts were punishable under Sections 292, 500, 504, 505(1)(b) and (c), 505(2) and 509 IPC read with Section 6 of Act 1986.

On behalf of appellant, the actress who gave the interview, it was submitted that the complainants (respondents in these appeals) were not 'persons aggrieved' within the meaning of Section 199(1)(b) Cr.P.C. and hence they were not competent to institute private complaints for the alleged offences. It was stated that the appellant had made a fair and reasonable comment as a prudent person, and therefore, the opinion expressed by the appellant is fully protected under Article 19(1)(a) of the Constitution of India which guarantees freedom of speech and expression to all citizens. Furthermore, it was contended that even if the allegations in the various complaints are taken on their face value and accepted in their entirety, the same do not disclose any offence whatsoever and the opinion of the appellant does not, by any means, fall within the ambit of Sections 499, 500 and 505 IPC or Sections 3 and 4 of Act 1986. It was also canvassed that the criminal proceedings had been instituted in a

mala fide manner by the workers of a particular political party, with the intention of vilifying the appellant and gaining undue political mileage.

In response, advocates appearing for the respondents, submitted that since the High Court has refused to quash the complaints, this Court should not interfere either since the complaints require determination of factual controversies that are best left to be decided by a court of first instance. They asserted that the complainants in these cases are mostly women belonging to Tamil Nadu, who were personally aggrieved by the appellant's remarks. It was argued that the endorsement of pre-marital sex by a prominent person such as the appellant would have a morally corruptive effect on the minds of young people. Her statement would definitely obscure some basic moral values and expose young people to bizarre ideas about pre-marital sex, thereby leading to deviant behaviour which would adversely affect public notions of morality. It was contended that the constitutional protection for speech and expression is not absolute and that it is subject to reasonable restrictions based on considerations of 'public order', 'defamation', 'decency and morality' among other grounds.

After perusal of the complaints, it was revealed that most of the allegations pertained to offences such as defamation (Sections 499, 501 and 502 IPC), obscenity (Section 292 IPC), indecent representation of women and incitement among others. At the outset, Court was of the view that there is absolutely no basis for proceeding against the appellant in respect of some of the alleged offences. For example, the Act, 1986 was enacted to punish publishers and advertisers who knowingly disseminate materials that portray women in an indecent manner. However, this statute cannot be used in the present case where the appellant has merely referred to the incidence of pre-marital sex in her statement which was published by a news magazine and subsequently reported in another periodical. It would defy logic to invoke the offences mentioned in this statute to proceed against the appellant, who cannot be described as an 'advertiser' or 'publisher' by any means.

Similarly, Section 509 IPC criminalised a 'word, gesture or act intended to insult the modesty of a woman' and in order to establish this offence it was necessary to show that the modesty of a particular woman or a readily identifiable group of women has been

insulted by a spoken word, gesture or physical act. Clearly this offence cannot be made out when the complainants' grievance is with the publication of what the appellant had stated in a written form. Likewise, some of the complaints have mentioned offences such as those contemplated by Section 153A IPC ('Promoting enmity between different groups etc.,') which have no application to the present case since the appellant was not speaking on behalf of one group and the content of her statement was not directed against any particular group either.

The Court observed that in respect of substance of the complaints, it could not see how the appellant's remarks amounted to 'obscenity' in the context of Section 292 IPC. Clause (1) to Section 292 stated that the publication of a book, pamphlet, paper, writing, drawing, painting, representation, figure, etc., will be deemed obscene, if -

- It is lascivious (i.e. expressing or causing sexual desire) or
- Appeals to the prurient interest (i.e. excessive interest in sexual matters), or
- If its effect, or the effect of any one of the items, tends to deprave and corrupt persons, who are likely to read, see, or hear the matter contained in such materials.

In the past, authors as well as publishers of artistic and literary works have been put to trial and punished under this section. In the present case, the appellant takes full responsibility for her statement which was published in 'India Today', a leading news magazine. The Court also referred to the case of *Ranjit D. Udeshi v. State of Maharashtra*³³⁰, wherein it was held that if a mere reference to sex by itself is considered obscene, no books can be sold except those which are purely religious. It was observed that in the field of art and cinema, the adolescent is shown situations which even a quarter of a century ago would be considered derogatory to public morality, but having regard to changed conditions, the same are taken for granted without in any way tending to debase or debauch the mind. What is to be considered is whether a class of persons, not an isolated case, into whose hands the book, article or story falls will suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts aroused in their minds. Even though the decision in that case had upheld a conviction for

³³⁰AIR 1965 SC 881

the sale of a literary work, it became clear that references to sex cannot be considered obscene in the legal sense without examining the context of the reference.

In the present case, the appellant has merely referred to the increasing incidence of premarital sex and called for its societal acceptance. She has at no point of time described the sexual act or said anything that could arouse sexual desires in the mind of a reasonable and prudent reader. Furthermore, the statement has been made in the context of a survey which has touched on numerous aspects relating to the sexual habits of people in big cities. Even though this survey was not part of a literary or artistic work, it was published in a news magazine thereby serving the purpose of communicating certain ideas and opinions on the above-mentioned subject. In the long run, such communication prompts a dialogue within society wherein people can choose to either defend or question the existing social mores. It is difficult to appreciate the claim that the statements published as part of the survey were in the nature of obscene communications.

The Court also observed that all that the appellant did was to urge the societal acceptance of the increasing instances of pre-marital sex when both partners are committed to each other. This cannot be construed as an open endorsement of sexual activities of all kinds. If it were to be considered so, the criminal law machinery would have to take on the unenforceable task of punishing all writers, journalists or other such persons for merely referring to any matter connected with sex in published materials. For the sake of argument, even if it were to be assumed that the appellant's statements could encourage some people to engage in pre-marital sex, no legal injury has been shown since the latter is not an offence.

The Court found it difficult to fathom how the appellant's views can be construed as an attack on the reputation of anyone in particular. Even if the remarks published in 'DhinaThanthi' (dated 24.9.2005) were referred, which were categorically denied by the appellant, there was no direct attack on the reputation of anyone in particular. Instead, the purported remarks were in the nature of rhetorical questions wherein it was asked if people in Tamil Nadu were not aware of the incidence of sex. The Court concluded that even if Court thesaid remarks were considered in their entirety, nowhere was it

suggested that all women in Tamil Nadu have engaged in premarital sex. It clearly was a case of complainants over-assuming hypothetical facts which were yet to occur.

The Court observed that the threshold for placing reasonable restrictions on the 'freedom of speech and expression' is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. The initiation of a criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused.

It was further observed that even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as 'decency and morality' among others, the Court laid stress on the need to tolerate unpopular views in the socio-cultural space. The framers of Constitution recognised the importance of safeguarding this right since the free flow of opinions and ideas was essential to sustain the collective life of citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, Courts must also promote a culture of open dialogue when it comes to societal attitudes. Admittedly, the appellant's remarks did provoke a controversy since the acceptance of pre-marital sex and live-in relationships is viewed by some as an attack on the centrality of marriage. While there can be no doubt that in India, marriage is an important social institution, it should also be remembered that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in pre-marital sex. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and Criminality are not co-extensive. In the present case, the substance of the controversy does not really touch on whether pre-marital sex is socially acceptable. Instead, the real issue of concern is the disproportionate response to the appellant's remarks. If the complainants vehemently disagreed with the appellant's views, then they

should have contested her views through the news media or any other public platform. The law should not be used in a manner that has chilling effects on the 'freedom of speech and expression'.

Thus, dissemination of news and views for popular consumption was held as permissible under our constitutional scheme. Proponents to an idea can propose their views while those against it have just as much a right to oppose it. A culture of responsible reading is to be inculcated amongst the prudent readers. Morality and criminality are far from being coextensive. An expression of opinion in favour of non-dogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalise the author. It is, therefore, not only desirable but imperative that electronic and news media should also play positive role in presenting to general public as to what actually transpires during the course of the hearing and it should not be published in such a manner so as to get unnecessary publicity for its own paper or news channel. Such a tendency, which is indeed growing fast, should be stopped.

In conclusion, the Court found that the various complaints filed against the appellant do not support or even draw a prima facie case for any of the statutory offences as alleged. Therefore, the appeals were allowed and the impugned judgment and order of the High Court dated 30.4.2008 was set aside.

In case of *S. Narayan, Editor-in-Chief, Hindustan vs. Hon'ble High Court of Allahabad through Registrar General*³³¹, the appellants filed an affidavit tendering unqualified apology for publishing a controversial article in Hindustan Times on 20.9.2010 out of which contempt proceedings had arose. In this case, an article was published in Hindustan Times against the Chief Justice of Allahabad without verifying the authenticity of facts which tarnished his image. The Lower Court allowed the petition seeking contempt of court against which appeal was filed by appellants. In appeal, the Appellate Court specifically provided as under:

1. The media, be it electronic or print media, is generally called the fourth pillar of democracy. The media, in all its forms, whether electronic or print, discharges a very

³³¹ (2011) AIR SCW 5761

onerous duty of keeping the people knowledgeable and informed. The impact of media is far-reaching as it reaches not only the people physically but also influences them mentally. It creates opinions, broadcasts different points of view, brings to the fore wrongs and lapses of the Government and all other governing bodies and is an important tool in restraining corruption and other ill-effects of society. The media ensures that the individual actively participates in the decision-making process. The right to information is fundamental in encouraging the individual to be a part of the governing process. The enactment of the Right to Information Act is the most empowering step in this direction. The role of people in a democracy and that of active debate is essential for the functioning of a vibrant democracy.

2. With this immense power, comes the burden of responsibility. Media collects exorbitant amounts of information everyday from all parts of the world and hence it is the responsibility of the media to ensure that the information is thoroughly verified and processed and that they are not providing the public with information that is factually wrong, biased or simply unverified information. The right to freedom of speech is enshrined in Article 19(1)(a) of the Constitution. However, this right is restricted by Article 19(2) in the interest of the sovereignty and integrity of India, security of the State, public order, decency and morality and also Contempt of Courts Act and defamation. The unbridled power of the media can become dangerous if check and balance is not inherent in it. The role of the media is to provide to the readers and the public in general with information and views tested and found as true and correct. This power must be carefully regulated and must reconcile with a person's fundamental right to privacy. Any wrong or biased information that is put forth can potentially damage the otherwise clean and good reputation of the person or institution against whom something adverse is reported. Instances like anticipating the case, pre-judging the issues and rushing to conclusions must be avoided as has happened in the present case. The then Chief Justice of the Allahabad High Court who had otherwise proved himself to be a competent and good Judge wherever he was posted during his career was brought under a cloud by the reporting which is the subject-matter of this petition. His image was sought to be tarnished by a newspaper report which was apparently based on surmises and conjectures and not based on facts and figures. The dignity of the courts and the people's faith in

administration must not be tarnished because of biased and unverified reporting. In order to avoid such biased reporting, one must be careful to verify the facts and do some research on the subject being reported before a publication is brought out.

The Appellate Court also showed its gladness that the persons against whom contempt proceedings were initiated for a wrong and incorrect reporting about the then Chief Justice had realized their mistake and also had expressed their repentance through their advocate and also themselves by filing an unqualified apology before the court for the wrong done by them, which was not done by them before the Lower Court. The Court further held that the judiciary also must be magnanimous in accepting an apology when filed through an affidavit duly sworn, conveying remorse for such publication. This indicates that they have accepted their mistake and fault. This Court has also time and again reiterated that this Court is not hypersensitive in matter relating to Contempt of Courts Act and has always shown magnanimity in accepting the apology. Thus, the aforesaid unqualified apology submitted by appellants was accepted and proceedings were dropped. Simultaneously, the Court also ordered for appellants to publish the apology as stated in the affidavit on first page of Lucknow edition of Hindustan Times and also at such other place wherever there was any such publication, in a daily issue of the newspaper at some prominent place of newspaper.

In case of *Ratan N Tata vs Union of India*³³², the income tax authorities during the years 2008-09 intercepted telephonic talks between one Ms. NiraRadia and several other people after seeking approval from Ministry of Home Affairs because the authorities had a strong suspicion that the said Ms. Nadia as well as other individuals namely politicians, corporates, lobbyists, bureaucrats and journalists with whom she had conversations were indulging in tax evasion, money laundering and restricted financial practices. Shri Tata who was one of the many individuals whose conversation with Ms. Radia was intercepted and after the conversations were leaked to the media by an unknown source, he filed petition before Hon'ble Supreme Court of India to protect his right of privacy and declare the act of tax authorities as invasion of his right to privacy. According to Ratan Tata, his conversations with Ms. Radia were of private nature and the

³³² AIR 2014(Supp) 827

tapes which were in custody of media should be withdrawn from public. The leak of conversations had also exposed a scam pertaining to the 2G spectrum auction. Considering the petition, Supreme Court issued notice to restrain the unauthorized publication of intercepted tapes.

The Court after hearing both sides ordered CBI to conduct thorough investigation into various issues highlighted in the report of the Central Vigilance Commission, as also report of the CAG who had prima facie found serious irregularities in the grant of licences to 122 applicants, majority of whom are said to be ineligible, the blatant violation of the terms and conditions of licences and huge loss to the public exchequer running into several thousand crores. Court also directed CBI to probe how licences were granted to large number of ineligible applicants and who was responsible for the same and why TRAI and DoT did not take action against those licensees who sold their stakes/equities for many thousand crores and also against those who failed to fulfil rollout obligations and comply with other conditions of licence.

In November, 2010 some news magazines published portions of the conversation which Ms. Radia had with politicians, corporates, lobbyists, bureaucrats and journalists. Shri Ratan Tata, whose name figured in some of these publications filed Writ Petition under Article 32 of the Constitution seeking immediate retrieval and recovery of all recordings removed from their custody as also thorough inquiry in the manner in which the secret recordings were made available to the unauthorized personnel. Reliefs were also sought to ensure that no further publication of these recordings either as audio files through the internet or any print as transcripts appeared in any media - print or electronic.

Eventually, Centre for Public Interest Litigation filed Writ Petition praying to direct the Government to release all the 5800 conversations of Ms. NiraRadia tapped by the Government agencies into the public domain as also to frame guidelines that protected 'public whistle-blowers' who make public disclosures that effectuate the citizens' 'right to know',

The Court considered the respective submissions and made the following observations:

"That analysis of the calls of Ms. NiraRadia revealed that during the period of interception i.e. year 2008-2009, she had been talking over her phone to her employees, clients, media persons and other important persons in the field of politics, business, bureaucracy and journalism, etc. During investigation of 2G Spectrum Case and the scrutiny of the transcripts, it emerged that Ms. NiraRadia, through her companies, provided consultancy to Tata Group of companies, M/s. Unitech Ltd., and M/s. Reliance Industries Ltd. (MukeshDhirubhaiAmbani Group). During her conversations, she discussed several important issues including judicial judgments, policy matters of Government of India, insider information of important issues related to Department of Telecommunications (DOT), condition of civil aviation in India, allocation of coal and iron ore mines and issues related to gas and petroleum sector etc."

The conversations between Ms. NiraRadia and her associates with various persons suggested that unscrupulous elements have used corrupt means to secure favours from the Government Officers, who appear to have acted for extraneous considerations. The court was convinced that instead of asking the State Police or other agencies to make inquiries in several aspects of the case, it would be appropriate to direct an inquiry by CBI in respect of these issues as well. Accordingly, CBI was directed to make inquiry in the case and positively submit a report promptly. As regards allocation of iron ore mine without having a steel plant, the matter was directed to be referred to the Chief Vigilance Officer, Ministry of Mines, Government of India for taking appropriate action. A report based on detailed conversations which were relating to corruption in judiciary and malpractices of judges was directed to be referred to the Chief Justice of India for consideration and appropriate action.

16. In the second report, the team had categorised suspected calls under the following 6 issues:

"Issue No. 1 - Alleged criminal misconduct by public servant in respect of survey/raid conducted by Income Tax Department.

Issue No. 2 - Payment of illegal gratification to Income Tax Officials to get work done.

Issue No. 3 - Chartered Accountant working as tout of Income Tax Officer.

Issue No. 4 - Payment of illegal gratification/favours extended to Public Servants.

Issue No. 5 - Conversations regarding allocation of spectrum.

Issue No. 6 - Miscellaneous issues."

After considering the second report, the Court directed CBI to make inquiries in terms of Chapter 9 of CBI Manual on the subjects mentioned in all the 6 issues and submit its report. During the course of argument, it was suggested that the remaining tapes should be scrutinized by the same team and a comprehensive report be submitted to the Court. Both the learned Additional Solicitor Generals submitted that a bigger team may be constituted because a very large number of tapes are required to be scrutinized.

Thus, right of privacy was given a major platform while considering freedom of speech and expression of any individual. No man can freely speak and express himself unless he's given a certain amount of privacy through which he may communicate only to those he desires and keep it private from those he doesn't want to communicate it. If the element of privacy were removed and all communications were made publicly open, it would in fact be against the very essence of freedom of speech and expression because the said freedom though not specified, is ingrained with the right to privacy. Expression of thoughts maybe to an audience or to a person and if interchanged without the knowledge of communicator, can lead to unpleasant circumstances.

In case of *Rajat Prasad vs. CBI*³³³, a news story was published in the Indian Express on Nov. 16, 2003 stating that Union Minister of State for the Environment and Forests namely Dalip Singh Judeo had accepted a bribe of Rs. 9 lacs. During CBI investigation, it came on record that Amit Jogi, son of AjitJogi, former chief minister of Chattisgarh had conspired to conduct this sting operation and also release the footage to media. The accused argued that the said sting was carried out so as to expose the criminal acts of people who were misusing their vital position and giving the face of criminal intention to sting operations would nullify the entire effect of sting itself. Rajat Prasad named above was one of the co-conspirators who booked the hotel room wherein the said sting operation took place.

³³³ AIR 2014 SC (Supp) 1236

Learned counsels for the appellants have placed before Court, the relevant part of charge-sheet mentioning the claim raised during investigation, that the act of payment of illegal gratification and the secret video recording of the same was prompted by a journalistic desire to expose corruption in public life. It was contended that the present case raised an issue of great public importance, namely, the legality of a sting operation prompted by overwhelming public interest. According to learned counsel, the said operation had been carried out to reveal the murky deeds in seats of governmental power. If an intention to commit any such criminal act was to be attributed to a citizen/journalist who had undertaken a sting operation, public interest would be severely jeopardized. It was also argued that in the charge-sheet filed it was mentioned that investigations had revealed that the entire operation was carried out to disgrace the first appellant prior to the elections to the Chhatisgarh State Assembly and that the motive behind the operation was to derive political mileage in favour of the AjitJogi who was the then Chief Minister of State of Chhatisgarh. It was contended that if the above was the aim of sting operation, surely, no offence under Section 12 of the Act or 120-B, IPC was even remotely made out against the accused-appellants.

Learned counsels elaborately laid before the Court the ingredients of the offence of criminal conspiracy defined in Section 120-A of the IPC to contend that there must be (1) commonality of object to be accomplished; (2) a plan or scheme embodying means to accomplish; and (3) an agreement or understanding between two or more persons whereby they become committed to co-operate for accomplishment of the object by the means embodied in the agreement. It was pointed out that going by the result of the investigation mentioned in the charge-sheet, as elicited earlier, namely that the operation was aimed to disgrace the accused as also to derive political mileage in favour of the father Amit Jogi, the conspiracy, if any, was to defame AjitJogi and not to commit any of the offences alleged in the charge-sheet. It was also argued that there was no criminal intent behind the giving of bribe and the absence of mensrea to commit the offences alleged is ex facie apparent. Learned counsels for the accused-appellants have, by referring to the specific allegations mentioned in the charge-sheet, submitted that even if the said allegations are accepted to be correct no criminal offence was made out against

either of the accused-appellants. It was argued that in respect of several accused, the complaint was unsustainable

On behalf of respondents it was submitted that the sting operation involved giving of bribe to AjitJogi who was a Union Minister at the relevant point of time and in return certain favours were sought. While the motive behind the act of videographing the incident may have been to derive political mileage by discrediting the accused, the giving of bribe amounts to abetment within the meaning of Section 107 of the IPC. The said criminal act would not stand obliterated by what is claimed to be the pious desire of the accused to expose corruption in public life. Several facts would come to light only after recording of evidence.

Held:

Hon'ble Court after hearing both the sides observed as under:

The Court highlighted the origin of expression 'sting operation' which appeared to have emerged from the title of a popular movie from 1973 called "The Sting". The movie was based on a somewhat complicated plot hatched by two persons to trick a third person into committing a crime. Being essentially a deceptive operation, though designed to nab a criminal, a sting operation raises certain moral and ethical questions. The victim, who is otherwise innocent, is lured into committing a crime on the assurance of absolute secrecy and confidentiality of the circumstances raising the potential question as to how such a victim can be held responsible for the crime which he would not have committed but for the enticement. Another issue that arises from such an operation is the fact that the means deployed to establish the commission of the crime itself involves a culpable act.

The Court in its judgment also discussed the position and validity of stings in other countries like U.S. and U.K. and observed that:

Unlike the U.S. and certain other countries where a sting operation is recognized as a legal method of law enforcement, though in a limited manner, the same is not the position in India which makes the issues arising in the present case somewhat unique. Even in countries like the United States of America where sting operations are used by law enforcement agencies to apprehend suspected offenders involved in different

offences like drug trafficking, political and judicial corruption, prostitution, property theft, traffic violations etc., the criminal jurisprudence differentiates between "the trap for the unwary innocent and the trap for the unwary criminal" (per Chief Justice Warren in *Sherman v. United States*³³⁴) approving situations where government agents "merely afford opportunities or facilities for the commission of the offence" and censuring situations where the crime is the "product of the creative activity" of law-enforcement officials (*Sorrell v. United States*³³⁵). In the latter type of cases the defence of entrapment is recognized as a valid defence in the USA. If properly founded such a defence could defeat the prosecution.

9. In United Kingdom the defence of entrapment is not a substantive defence as observed in *R v. Sang*³³⁶ by the House of Lords:-

"The conduct of the police where it has involved the use of an agent provocateur may well be a matter to be taken into consideration in mitigation of sentence; but under the English system of criminal justice, it does not give rise to any discretion on the part of the judge himself to acquit the accused or to direct the jury to do so, notwithstanding that he is guilty of the offence."

In stark contrast to the above judgment, in another case of *R v. Loosely*³³⁷ the House of Lords found that:-

"A prosecution founded on entrapment would be an abuse of the court's process. The court will not permit the prosecutorial arm of the State to behave in this way."

"Entrapment is not a matter going only to the blameworthiness or culpability of the defendant and, hence, to sentence as distinct from conviction. Entrapment goes to the propriety of there being a prosecution at all for the relevant offence, having regard to the State's involvement in the circumstance in which it was committed." (para 17)

Thus, sting operations conducted by the law enforcement agencies themselves in the above jurisdictions have not been recognized as absolute principles of crime detection

³³⁴ 356 US 359 (1958)

³³⁵ 287 US 435 (1932)

³³⁶ (1980) AC 402

³³⁷ (2001) UKHL 53

and proof of criminal acts. Such operations by the enforcement agencies are yet to be experimented and tested in India and legal acceptance thereof in Indian legal system is yet to be answered. Nonetheless, the question that arises in the present case is what would be the position of such operations if conducted not by a State agency but by a private individual and the liability, not of the principal offender trapped into committing the crime, but that of the sting operator who had stained his own hands while entrapping what he considers to be the main crime and the main offender. Several questions posed serious threat in the final outcome namely:

- Should such an individual i.e. the sting operator be held to be criminally liable for commission of the offence that is inherent and inseparable from the process by which commission of another offence is sought to be established?
- Should the commission of the first offence be understood to be obliterated and extinguished in the face of claims of larger public interest that the sting operator seeks to make, namely, to expose the main offender of a serious crime injurious to public interest?
- Can the commission of the initial offence by the sting operator be understood to be without any criminal intent and only to facilitate the commission of the other offence by the "main culprit" and its exposure before the public?

It was observed that a crime does not stand obliterated or extinguished merely because its commission is claimed to be in public interest. Any such principle would be abhorrent to criminal jurisprudence. At the same time the criminal intent behind the commission of the act which is alleged to have occasioned the crime will have to be established before the liability of the person charged with the commission of crime can be adjudged. The doctrine of mensrea, though a salient feature of the Indian criminal justice system, finds expression in different statutory provisions requiring proof of either intention or knowledge on the part of the accused. Such proof is to be gathered from the surrounding facts established by the evidence and materials before the Court and not by a process of probe of the mental state of the accused which the law does not contemplate. The offence of abetment defined by Section 107 of the IPC or the offence of criminal conspiracy under Section 120A of IPC would, thus, require criminal intent on the part of the offender like any other offence. Both the offences would require existence of a

culpable mental state which is a matter of proof from the surrounding facts established by the materials on record. Therefore, whether the commission of offence under Section 12 of the PC Act read with Section 120B, IPC had been occasioned by the acts attributed to the accused appellants or not, ideally, is a matter that can be determined only after the evidence in the case is recorded. What the accused appellants assert is that in view of the fact that the sting operation was a journalistic exercise, no criminal intent can be imputed to the participants therein. Whether the operation was really such an exercise and the giving of bribe was a mere sham or pretence or whether the giving of the bribe was with expectation of favours in connection with mining projects, are questions that can only be answered by the evidence of the parties which is yet to come. Such facts cannot be a matter of an assumption. The inherent possibilities of abuse of the operation as videographed, namely, retention and use thereof to ensure delivery of the favours assured by the receiver of the bribe has to be excluded before liability can be attributed or excluded and this was possible only after the evidence of witnesses is recorded.

Also, merely because in the charge-sheet it was stated that the accused had undertaken the operation to gain political mileage could not undermine the importance of proof of aforesaid facts to draw permissible conclusions on basis thereof as regards the criminal intent of accused in the present case.

Appellants also stated that any finding with regard to the culpability of the accused, even prima facie, would be detrimental to the public interest inasmuch as any such opinion of the Court would act as an inhibition for enterprising and conscious journalists and citizens from carrying out sting operations to expose corruption and other illegal acts in high places. The Court however viewed the matter differently. A journalist or any other citizen who has no connection, even remotely, with the favour that is allegedly sought in exchange for the bribe offered, cannot be imputed with the necessary intent to commit the offence of abetment under Section 12 or that of conspiracy under Section 120B, IPC. Non applicability of the aforesaid provisions of law in such situations, therefore, may be ex facie apparent. The cause of journalism and its role and responsibility in spreading information and awareness will stand subserved. Considering the above aspects, the High Court order dated 30.5.2008 refusing to interfere with the

charges framed against accused-appellants was fully justified. Accordingly, the appeals were dismissed and the order dated 30.5.2008 passed by the High Court was affirmed.

This judgment has thus reiterated that the public interest continues to be the lone factor that justifies a sting operation by a journalist or citizen or entrapment by the police. In a sting operation where a person lures another to accept a bribe while secretly video recording the act, it is entrapment, which could be legal or criminal depending on intention and motive of the bribe giver and all those who supported the operation.³³⁸

In case of *M/s. Omega Printers & Publishers P. Ltd. vs. Union of India*³³⁹ the North East Frontier Railway stopped release of instructions and guidelines in form of advertisement to two newspapers despite having wide circulation on ground of irregularities committed by newspapers without issuing any notice or opportunity of being heard in respect of alleged irregularities. The said newspapers namely “The Sentinel”(English) and “The Sentinel” (Hindi) were not suspended till date from empanelment with Directorate of Advertising and Visual Publicity (DAVP) whose guidelines had to be followed by Railway Authority while publishing its advertisements. The Supreme Court held action of railway authority in stopping to release advertisement only to two newspapers as arbitrary and violative of Article 19(1)(a) and directed the N.F. Railway authorities to release their advertisements in future to both the newspapers. It observed in the judgment that:

- A newspaper not only sustains itself from its sale proceeds but also from the revenue generated through advertisements. Therefore, advertisements play a very crucial role in the overall viability of a newspaper.
- Government advertisements including advertisements by Government agencies form a major portion of a newspaper’s advertisements. If these are reduced or stopped altogether, it will increase the financial burden on newspaper. This will lead to newspaper increasing the price thus reducing the circulation and leading to eventual closing down of

³³⁸Madabhushi Sridhar, Law and Policy “A sting without public interest is a crime” (Available at <http://asu.thehoot.org/media-watch/law-and-policy/a-sting-without-public-interest-is-a-crime-7672>) (Visited on 12.11.2018)

³³⁹ AIR 2012 Gauhati 53

newspaper or compel it to seek government assistance to survive leading to pressure of government.

In case of *N. Radhakrishnan vs. Union of India*³⁴⁰, ban was sought on novel “Meesha” on ground that some parts of novel were describing women going to temple in bad light and having disturbing effect on community. Supreme Court held that banning of books should not be allowed simply at somebody’s view or perception and such banning will even directly impact free flow of ideas and is an affront to freedom of speech, thought and expression. Supreme Court gave a wide view of how important is freedom of speech and expression to writers and artists and other people working in fields requiring creativity. It held as under:

- Literature can act as medium to connect to readers only when creativity is not choked or smothered. Writer or an artist or any person in creative sphere has to think in unfettered way free from shackles that may hinder his musings and ruminations. Writers possess freedom to express their views and imagination and readers too enjoy freedom to perceive and imagine from their own viewpoint.
- It is perilous to obstruct free speech, expression, creativity and imagination for it leads to state of intellectual repression of literary freedom.
- Any direct or veiled censorship or ban of book unless defamatory or derogatory to any community for abject obscenity, would create unrest and disquiet among intelligentsia by going beyond bounds of intellectual tolerance and further creating danger to intellectual freedom thereby gradually resulting in “intellectual cowardice” which is said to be greatest enemy of writer, for it destroys free spirit of writer.
- It is called from readers and admirers of literature and art to exhibit certain degree of adherence to unwritten codes of maturity, humanity and tolerance so that freedom of expression reigns supreme and is not inhibited in any manner.
- Creative work has to be read with matured spirit, catholicity of approach, objective tolerance and sense of acceptability founded on reality that is differently projected but not with obsessed idea of perversity that immediately connects on with passion of

³⁴⁰ AIR 2018 SC 4154

didacticism or perception of puritanical attitude. Reader should have sensibility to understand situation and appreciate character and not draw conclusion that everything that is written is in bad taste and deliberately so done to pollute young minds.

- It has to kept uppermost in mind that imagination of writer has to enjoy freedom. It cannot be asked to succumb to specifics. That will tantamount to imposition. Writer should have free play with words, like painter has it with colors.
- Final publication must not run counter to law but application of rigours of law has to also remain alive to various aspects that have been accepted by authorities of Court. Craftsmanship of writer deserves respect by acceptance of concept of objective perceptibility.

(4.2) Article 19(1)(a) and electronic media

In case of *Secretary, Ministry of Information & Broadcasting, Government of India vs. Cricket Association of Bengal*³⁴¹ it was held that right to freedom of speech and expression was not restricted to a few persons but available to all citizens equally. The State is under an obligation to ensure conditions in which the right can be meaningfully and effectively enjoyed by all citizens. Declaring a right of access to broadcasting, the Court enumerated its attributes to include:

- (a) Freedom from State control and censorship;
- (b) Freedom of listeners/viewers to a variety of views and plurality of opinions based on their retaining an interest in free speech;
- (c) Right of citizens to have access to the broadcasting media.

The judgment was landmark in the sense that it marked the end of era of monopoly of Doordarshan in the matters of telecast and broadcast of programmes and events. The court had unequivocally pronounced that the constitution of India forbids monopoly either in print or electronic media and a citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. It was held that “broadcasting is a means of communication and therefore a medium of speech and expression. Hence in a

³⁴¹ (1995) 2 SCC 161

democratic policy, neither any private individual, institution or organization nor any government or government organization can claim exclusive right over it.”³⁴²

In case of *Mohammad Ajmal Mohammad Amir Kasab vs. State of Maharashtra*³⁴³ Pakistan planned a terror attack on the business hub of India and in furtherance of that conspiracy a savage attack was unleashed on Mumbai by a team of ten terrorists, including Mohd. Kasab, who landed on the city's shores via the Arabian Sea. The attack began on November 26, 2008 at about 9.15 p.m. and it ended when the last of the attackers, who was holed up in Hotel TajMahal Palace, was killed by Indian security forces at about 9.00 a.m. on November 29. The brutal assault left Mumbai scarred and traumatized and the entire country shocked. The terrorists killed 166 people and several hundreds were seriously injured. The loss to property resulting from the terrorist attack was assessed at over Rs. 150 crores. Of those dead, at least seven 7 were killed by the appellant personally, 72 were killed by him in furtherance of the common intention he shared with one Abu Ismail (deceased accused No.1) and the rest were victims of the conspiracy to which he was a party along with 9 dead accused and 35 other accused.

During the entire terrorist attack, even while the rescue operation was in process, the Indian media namely the anchors of news channels had jumped into the picture eager to send the “breaking news” and the first pictures and videos of the live coverage of the rescue operation. Such was a frenzy to telecast the same on TV channels that nobody cared to realize that while the TV channels were broadcasting the rescue operations to their citizens in order to earn a few TRP ratings, the same broadcasts were also helping the terrorists who had planned the entire attack to take their next step and keep an eye over how their terror attack was being accomplished.

Held:

The Courts observed heavily on the role of media during live coverage of such terror attacks in following words:

³⁴² N.V. Anjaria, “Updating Broadcasting Law in India: Supreme Court’s Milestone Judgment (AIR 1995 SC 1236)

³⁴³ AIR 2012 SC 3565

1. We feel compelled to say a few words about the way the terrorist attacks on Taj Hotel, Hotel Oberoi and Nariman House were covered by the mainstream, electronic media and shown live on the TV screen. From the transcripts, especially those from Taj Hotel and Nariman House, it is evident that the terrorists who were entrenched at those places and more than them, their collaborators across the border were watching the full show on TV. In the transcripts there are many references to the media reports and the visuals being shown on the TV screen. The collaborators sitting in their hideouts across the border came to know about the appellant being caught alive from Indian TV: they came to know about the killing of high ranking police officers also from Indian TV. At one place in the transcript, the collaborators and the terrorists appear to be making fun of the speculative report in the media that the person whose dead body was found in Kuber was the leader of the terrorist group whom his colleagues had killed for some reason before leaving the boat. At another place in the transcript the collaborators tell the terrorists in Taj Hotel that the dome at the top (of the building) had caught fire. The terrorists holed up in some room were not aware of this. The collaborators further advise the terrorists that the stronger they make the fire the better it would be for them. At yet another place the terrorists at Hotel Taj tell the collaborators that they had thrown a grenade. The Collaborators reply, "the sound of the grenade has come, they have shown the grenade, the explosion has taken place, people are wounded". At yet another place the collaborators tell the terrorists at Hotel Oberoi that the troops were making their position very strong on the roof of the building. At yet another place the collaborators tell the terrorists at Taj Hotel the exact position taken by the policemen (close to a building that belonged to the navy but was given to the civilians) and from where they were taking aim and firing at them (the terrorists) and advised them the best position for them to hit back at those policemen. There are countless such instances to show that the collaborators were watching practically every movement of the security forces that were trying to tackle the terrorists under relentless gun fire and throwing of grenades from their end.
2. Apart from the transcripts, we can take judicial notice of the fact that the terrorists attacks at all the places, in the goriest details, were shown live on the Indian TV from beginning to end almost non-stop. All the channels were competing with each other in showing the latest developments on a minute to minute basis, including the positions and the

movements of the security forces engaged in flushing out the terrorists. The reckless coverage of the terrorist attack by the channels thus gave rise to a situation where on one hand the terrorists were completely hidden from the security forces and they had no means to know their exact position or even the kind of firearms and explosives they possessed and on the other hand the positions of security forces, their weapons and all their operational movements were being watched by the collaborators across the border on TV screens and being communicated to the terrorists.

3. In these appeals, it is not possible to find out whether the security forces actually suffered any casualty or injuries on account of the way their operations were being displayed on the TV screen. But it is beyond doubt that the way their operations were freely shown made the task of the security forces not only exceedingly difficult but also dangerous and risky.
4. Any attempt to justify the conduct of the TV channels by citing the right to freedom of speech and expression would be totally wrong and unacceptable in such a situation. The freedom of expression, like all other freedoms under Article 19, is subject to reasonable restrictions. An action tending to violate another person's right to life guaranteed under Article 21 or putting the national security in jeopardy can never be justified by taking the plea of freedom of speech and expression.
5. The shots and visuals that were shown live by the TV channels could have also been shown after all the terrorists were neutralized and the security operations were over. But, in that case the TV programmes would not have had the same thrill, scintillating and chilling effect and would not have shot up the TRP ratings of the channels. It must, therefore, be held that by covering live the terrorists attack on Mumbai in the way it was done, the Indian TV channels were not serving any national interest or social cause. On the contrary they were acting in their own commercial interests putting the national security in jeopardy.
6. It is in such extreme cases that the credibility of an institution is tested. The coverage of the Mumbai terror attack by the mainstream electronic media has done much harm to the argument that any regulatory mechanism for the media must only come from within.

In a recent case, Gujarat High Court rejected website's petition seeking in its prayers that defamation case filed by Jay Shah for its report accusing him of corruption be cancelled. The court said based on initial impression that there was a case against Wire's reporter, publisher and editors and held that the most disturbing part of the article which could be prima facie termed as defamatory is linking the rise in Jay's firm's turnover with the election of Narendra Modi as Prime Minister. The Wire had in its article "The Golden Touch of Jay Amit Shah" alleged that Jay Shah's company's turnover grew exponentially after BJP came to power in 2014. The Wire had said its report is based on documentary evidence and so they cannot be tried for criminal defamation.³⁴⁴ The court had originally granted an all encompassing ex parte injunction to Jay Shah barring The Wire from using and publishing or printing in any electronic, print, digital or any other media or broadcast, telecast, print and publish in any manner including by way of interview, holding TV talks, debate, news items, programs in any language on the basis of the article published in The Wire dated 8.10.2010 either directly or indirectly the subject matter with respect to the plaintiff in any manner whatsoever. However, the injunction was later restricted only to the line "Narendra Modi becoming Prime Minister/elected as Prime Minister" as per the court ruling on 23.12.17. The media house had earlier challenged injunction saying that it was a violation of freedom of the press and had also claimed that the original article "The Golden Touch of Jay Amit Shah" did not contain any content that was derogatory in nature and was based completely on public records and information provided by Jay Shah himself.³⁴⁵ The Supreme Court in its judgment strictly stated that a section of the press, mainly in electronic media had crossed the line by "writing what they think." It held that media, especially the electronic media should be more responsible in its reporting rather than churning baseless publications containing insinuations and also added that it should not feel like the "Pope sitting in the Pulpit". It should refrain from writing anything which is several times just sheer contempt of court as also defamatory. Such acts cannot be considered as journalists' right to freedom of speech and expression. Everyone should assume their duty to assist the law and feel some kind of responsibility. The court cannot be seen as gagging the press but at the same time

³⁴⁴ Available at <https://www.ndtv.com/india-news/electronic-media-cant-think-they-become-popes-overnight-chief-justice> (Visited on 15.11.2018)

³⁴⁵ Available at <https://www.thequint.com/news/india/injunction-the-wire-lifted-by-jay-shah> (Visited on 15.11.2018)

media cannot just baselessly nurture, construct, construe, create anything as seems fit to their heart and mind.³⁴⁶

In case of *R.K. Anand vs. Registrar, Delhi High Court*,³⁴⁷ the petitioner was filmed by the media while attempting to bribe a key witness for gaining a deposition in favor of his client Sanjeev Nanda. This sting was aired on NDTV alongwith story encouraging the fact that rich could bribe their way out of any charge in criminal prosecution. The Delhi High Court issued suomotu criminal contempt of court proceedings against R.K. Anand and Supreme Court upheld the judgment of High Court holding him guilty. The defence of media trial as contended by Anand was refuted and efforts of press were conformed in the case as sting operation here had served an important public cause.

Likewise, in the recent Muzaffarpur shelter home case, the Supreme Court held that there cannot be a blanket ban as was imposed by Patna High Court on reporting of sexual abuse and rape cases but at the same time, the media should treat cautiously while writing on such incidents. In the instant case, 30 girls were allegedly raped and sexually abused over a period of time in the Muzaffarpur shelter home. The Supreme Court in its judgment requested both print and electronic media not to sensationalise incidents of sexual assault.³⁴⁸ The electronic media was restrained from showing imaged of alleged rape victims even in blurred or morphed form observing they cannot be compelled to “relive the trauma” again and again. It was also held that such act on part of media was a cause of serious concern that alleged victims of sexual violence were being interviewed a number of times and were made to repeat the incident. It said that victims of child sex abuse can only be interviewed by members of National Commission for Protection of Child Rights and State Commissions for Protection of Child Rights in presence of counsellors.³⁴⁹

³⁴⁶ Available at <https://m.timesofindia.com/india/section-of-electronic-media-has-crossed-the-line-says-supreme-court> (Visited on 15.11.2018)

³⁴⁷ (2009) 8 SCC 106

³⁴⁸ Available at <https://www.hindustantimes.com/india-news/treat-cautiously-in-reporting-rape-supreme-court-to-media> (Visited on 15.11.2018)

³⁴⁹ Available at <https://www.newindianexpress.com/supreme-court-restrains-media-from-showing-images-of-bihar-shelter-home-rape-victims> (Visited on 15.11.2018)

(4.3) Article 19(1)(a) and media trials

It would not be an exaggeration to call media omnipotent and omnipresent just like the God who is prayed everywhere. Not only are its powers supreme and universal, it also creates a lasting impression on the minds of those who use it, which in today's world includes almost everyone. Media operates by covering news stories and events across the world and presenting them before the public, readers or viewers through print, electronic or social media. The news stories and events maybe either political, sports oriented, from science or technology, high profile crime cases and so on. Media having been bestowed with the freedom of speech and expression as every other citizen can express its views on the topic of the news story being covered by it and give it a picture of its own. Whether this picture creates a positive impact or a negative one on the minds of the viewers is what has these days become the term "media trial". Trial by media refers to sensational reporting done by news media aimed at determining the blameworthiness of suspects in high-profile criminal cases. In other words, media investigates (tries) high-profile matters by reporting them in a 'whodunit' manner.³⁵⁰ People think and comprehend a crime and those involved in the direction in which media has covered its story. As a matter of fact, media should only report the actual events as and when they have occurred or at the most, those the occurrence of which is most likely. However, in today's highly competitive world, even media has to keep up in the race with its peers. This comes sometimes at the price of vices like media trials wherein media itself takes up the role of judiciary and presents the news story in its own way, be it biased, prejudiced or unbased on complete facts. This act has far-reaching implications not only on the viewers, but also on those involved in crime as well as on those who are actually responsible for judging the matter.

Media trial means the pre-trial and in-trial reporting of case, whether civil or criminal which is likely to prejudice fair trial of every accused.³⁵¹ When those who are obliged by law to speak, but choose not to speak, those who are obliged by law to investigate but choose not to investigate, those who are to take action, choose not to do so,

³⁵⁰ Available at <https://www.firstpost.com/india/shashi-tharoor-right-to-silence-balancing-free-speech-and-trial-by-media-3922079.html> (Visited on 10.9.2018)

³⁵¹ Shyam Singh vs. State 1973 CrLJ 441

in those circumstances when the course of justice is thwarted or blocked, the public have right to know the facts. When that is done by media, it is perceived as media trial.³⁵²

The subject of “trial by media” has posed a imminent danger since the increase in number of news channels. Each news channel claims right to free speech as also free media and while exercising the same often indulges in cases of media trials by putting forward its own views and even judging the case itself before the same can be done by the judiciary. If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who had indeed committed the crime, it amounts to undue interference with the “administration of justice” calling for proceedings for contempt of court against the media. Other issues about the privacy rights of individuals or defendants may also arise. There appears to be very little restraint in the media in so far as the administration of criminal justice is concerned.³⁵³

Thus, it can be said that media trials have an impact on the fair trial itself. As public has a deep interest in both, viz. free trial as well as free press, the media trials are a resultant vice of conflict between the two. On one hand, freedom of press rises from citizens’ right and interest to know the everyday national events of political, social, economic nature. On the other hand, free trial which is uninfluenced by extraneous pressures is the crux of justice in India. A journalist publishing anything which prejudices fair trial or impairs the impartiality of Court while deciding the case on merits is liable for contempt of Court under the Contempt of Courts Act 1971 and under Articles 129 (Contempt jurisdiction power of Supreme Court) and Article 215 (power of High Court to punish for contempt of itself).

In case of *Shri Surya Prakash and another vs. Smt. Madhu Trehan and others*³⁵⁴, it was observed that “the whole gamut of public affairs is the domain for fearless and critical comment and not least the administration of justice. But the public function which belongs to the press makes it an obligation of honour to exercise the function only with fullest sense of responsibility. Without such a lively sense of responsibility, a free press

³⁵² Outlook, New Delhi Edition 22.3.2010

³⁵³ Pg. 11, 200th Report of Law Commission of India on Trial By Media – Free Speech and Fair Trial under Criminal Procedure Code 1973, August 2006

³⁵⁴ 2001 CrLJ 3476

may readily become a powerful instrument of injustice. It should not and may not attempt to influence Judges before they have made up their minds on pending controversies.”

In case of *ZahiraHabibullah Sheikh vs. State of Gujarat*³⁵⁵, Supreme Court held that a fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses or the cause which is being tried is eliminated.

In case of *KartongenKemiOchForvaltning AB and others vs State through CBI*³⁵⁶, the Court observed that through media publicity those who know about the incident may come forward with information and it prevents perjury by placing witnesses under public gaze and also reduces crime through the public expression of disapproval for crime and also promotes public discussion of important issues. All this is done in interest of freedom of communication and right of information little realizing that right to a fair trial is equally valuable.

In *Sanjeev Nanda vs. State*³⁵⁷ the appellant belonging to an affluent family caused the death of 6 persons while rashly driving his BMW car leading to a “hit and run” case. He was later also accused of fleeing the scene of crime and attempting to destroy the evidence. The media, highlighted the plight of innocent victims and raised considerable public outrage against the accused. The trial court succumbed to the public pressure created by press and erroneously convicted him for culpable homicide not amounting to murder instead of death by negligence. The error was later corrected by Delhi High Court but the negative effect of media’s hullabaloo on a pending matter also came to surface.

Media trials prove most harmful in the sense that even before the court has taken cognizance of a crime, media is already in action with its news stories, probable loose ends and possible reasons and outcomes of the crime. Media declares those arrested as guilty at the time of arrest itself. Again, as media is not bound by any laws of evidence, it keeps churning endless outcomes out of whatever material or information it comes across often thus leading to irreparable harm to the entire case. In case of *Manu Sharma vs.*

³⁵⁵ (2004) 4 SCC 158

³⁵⁶ 2004 (72) DRJ 693

³⁵⁷ 160(2009) DLT 775

*State (NCT of Delhi)*³⁵⁸ the Court also used precautionary words against the spread of media trials and said that “Presumption of innocence of an accused is a legal presumption and it should not be destroyed at the very threshold through the process of media trial and that too when investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21. Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media is always maintained.” The Court also held that “Despite the significance of print and electronic media in present day, it is not only desirable but least that is expected of the persons at the helm of affairs in the field to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

However, it must be also kept in mind that if public becomes used to witnessing pseudo trials held by news media time and again, it will have severe consequences in long run because courts might no longer be accepted as the proper forums for settlement of legal disputes. Besides, their long and tedious process backed by frequent adjournments will kill the interest of public in courts and increase it in media trials which are given a sensational coverage as compared to the original courtroom trials.

In case of *State of Maharashtra vs. Rajendra Gandhi*³⁵⁹ Supreme Court observed that “there is a procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law.”

In case of *M.P. Lohiavs State of West Bengal*³⁶⁰, despite an ongoing criminal trial connected to death of a female, the press reported in favor of the deceased and gave it the color of a dowry death merely on basis of interviewing family of the deceased. The Court

³⁵⁸ CDJ 2010 SC 361

³⁵⁹ (1997) 8 SCC 386

³⁶⁰ AIR 2005 SC 790

in its judgment held that “the facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that this type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against in such trial by media when the issue is subjudiced.”

In case of *Rajendra Sail vs. Madhya Pradesh High Court Bar Association and others*³⁶¹, the editor, printer and publisher as also a reporter of newspaper along with petitioner who was a labour union activist were given a six month imprisonment by High Court for publishing disparaging remarks against High Court judges which were made by union activist at a rally of workers. The remarks said that the decision given by High Court was rubbish and fit to be thrown in dustbin. The Supreme Court upheld the contempt in appeal but modified and reduced the sentence. It was observed that “for rule of law and orderly society, a free responsible press and an independent judiciary are both indispensable and both have to be therefore protected. The aim and duty of both is to bring out the truth. And it is well known that the truth is often found in shades of grey. Therefore the role of both cannot be but emphasized enough especially in a “new India” where the public is becoming more aware and sensitive to its surroundings than ever before. The only way of orderly functioning is to maintain the delicate balance between the two. The country cannot function without two of the pillars its people trust the most.”

In case of *Y.V. Hanumantha Rao vs K.R. Pattabhiram and another*³⁶², it was observed that “when litigation is pending before a Court, no one shall comment on it in such a way that there is a real and substantial danger of prejudice to the trial of action as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making a comment honestly believes it to be true, it is still contempt of Court if he prejudices the truth before it is ascertained in the proceedings. To this general rule of fair trial one may add a further rule and that is that none shall by misrepresentation or otherwise bring unfair pressure to bear on one of the parties to a cause so as to force him to drop his complaint or defense. It is

³⁶¹ 2005(2) LRC 156(SC)

³⁶² AIR 1975 AP 30

always regarded as of the first importance that the law which we have just stated should be maintained in its full integrity. But in so stating the law we must bear in mind that there must appear to be a real and substantial danger of prejudice.”

In case of *Sushil Sharma vs. The State (Delhi Administration)*³⁶³ and others, the petitioner Sushil Sharma was booked on charge of murder of NainaSahni as also for destroying evidence. According to petitioner, news items were being printed in press as also frequently telecast on electronic media in such a manner that it coloured public opinion as also aroused public passions against him. So much so the senior police officials by their utterances published in the press had prejudged the case thereby holding him guilty even before the Court could consider all aspects of the case and pronounce its judgment. To cut short, the press had initiated a parallel public trial holding him guilty of the charge of murder of NainaSahni. On account of such circumstances, the petitioner prayed for postponement of trial or his discharge from the case as he could not expect fair trial due to media’s over-interference in the matter. It was held by Delhi High Court that “conviction, if any, would be based not on media’s report but what facts are placed on record. Judge dealing with the case is supposed to be neutral. Now if what petitioner contends regarding denial of fair trial because of these news items is accepted it would cause aspiration on the Judge being not neutral. Press reports or no reports, the charge to be framed has to be based on the basis of material available on record. The charge cannot be framed on extraneous circumstances or facts dehors the material available on record.” The Court also held that “the awareness of what is happening around in the society to a great extent is the work force of journalists. Mature investigative journalism helps in unearthing many skeletons. Democratic institutions are surviving thanks to the eternal vigilance of the journalists. But for journalists also there is code of conduct and ethical norms. The task to keep restraint in pending matters is expected more from the investigating and prosecuting agencies. Similarly the judge dealing with sensitive and important matters have to exercise due restraint in their utterances.”

Media trials tend to leave a mark on the minds of judges deciding the case and are bound to create a parallel path of probabilities as against evidence on record of court. It

³⁶³ 1996 CrLJ 3944

may not only confuse the judge in deciding the matter but may also create a severe delay in giving justice.

In case of *Saibal Kumar Gupta and others vs. B.K. Sen*³⁶⁴ and another, it was held that “No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between a trial by a newspaper and what has happened in the case.”

However, it is also equally true that media cannot be completely bound by government regulations while performing its functions as it will lead to revealing only stories favoring government and not those which bring out its drawbacks.

In case of *S.P. Gupta vs. President of India*³⁶⁵, while dealing with the case relating to appointment and transfer of judges, where there had been inappropriate reporting by the press regarding the case, it was held that “such behavior of a section of the press has been most distressing and has unnecessarily affected the image of judiciary and the high constitutional functionaries involved.”

In case of *Indian Express Newspapers (Bombay) Ltd. Vs. Union of India*³⁶⁶, it was held that “freedom of press is the heart of social and political intercourse. The press has now assumed the role of public educator making formal and non-formal education possible in a large scale particularly in the developing world where television and other kinds of modern communication are still not available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to governments and other authorities.” India being a democratic country it becomes imperative that every citizen must have his say in

³⁶⁴ 1961 AIR 633

³⁶⁵ AIR 1982 SC 149

³⁶⁶ (1985) 1 SCC 641

the democratic process for which he must have a clear picture of the public matters. This picture in earlier times could be presented only through print media which was the sole form of media. Hence, freedom of press is essential for proper functioning of democratic process.

In case of *Printers (Mysore) Ltd. vs. CTO*³⁶⁷, it was reiterated that even though freedom of press is nowhere expressly guaranteed as fundamental right in the Constitution, it is implicit in the freedom of speech and expression. Freedom of press has always been a cherished right in all democratic countries and the press has been rightly described as the fourth pillar of democracy.

In case of *Anukul Chandra Pradhan vs. Union of India*³⁶⁸, it was observed that “No occasion should arise for an impression that publicity attached to the hawala transactions has tended to dilute the emphasis on essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of accused unless found guilty at the end of trial.

In case of *Mother Dairy Foods & Processing Ltd. vs. Zee Telefilms*³⁶⁹, Delhi High Court in para 33 of judgment quoted from an article “Journalism and Ethics, Can they co-exist?” written by Andrew Belsey that “Journalism and ethics stand apart. While journalists are distinctive facilitators for democratic process to function without hindrance, media has to follow the virtues of accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect or autonomy of ordinary people. These are all part of democratic process. But practical considerations namely pursuit of successful career, promotion to be obtained, compulsion of meeting deadlines and satisfying media managers by meeting growth targets are recognized as factors for temptation to print trivial stories salaciously presented. In the temptation to sell stories, what is presented is what public is interested in rather than what is in public interest.” The Court also pointed towards good journalism stating that it aims at discovering and promoting the understanding of an event via truth promoting events. A failure of impartiality in journalism is a failure to respect one of the methods required in order to fulfill the goal of journalism; getting at the truth of the matter. Where reporting turns away from the goal of

³⁶⁷ 1994 SCC(2) 434

³⁶⁸ Laws(SC)-1997-7-1

³⁶⁹ AIR 2005 Delhi 195

truth and journalists treat events as open to many interpretations, according to their prejudices, assumption, news agenda or the commercial drive towards entertainment, the justification and self-confessed rationale of journalism threatens to disappear. In concluding remarks, the Court also held that “media has the onerous responsibility to ensure that facts are verified and the matter is thoroughly investigated and researched and salient and critical information is collection. As part of its responsibility and accountability, media should eschew sensationalism, exaggeration and sweeping comments especially in matters of food and public health.”

Despite all its negativities, there have been specific but limited number of cases when the interference by media has led to a positive outcome in the case as compared to judicial outcome. The infamous Jessica Lal murder case is the best example of media trial which resulted in getting justice done in a criminal case. When the victim Jessica Lal was murdered in a Delhi bar by Manu Sharma at late night for not selling him a drink, he shot her dead. During legal proceedings, the witnesses turned hostile and in absence of any circumstantial evidence, the case was almost reaching its dead end without any visible justice. During the same period, media had highly publicized the case by repeating the news story and probable culprits behind the murder mainly through news channels as well as in print media. This had caused a high level of awareness as well as outrage in public across the nation. During police investigation of the culprit Manu Sharma, he had admitted to have shot Jessica Lal but the tape never saw light of the day during the trial and Manu Sharma eventually started denying his hand in her murder. The said tape was eventually acquired by NDTV and broadcasted on nationwide news. As the already anxious and angry public saw the tape, it resulted in a hue and cry for not giving justice in the murder and the culprit running scot-free. Meanwhile, news magazine Tehelka also organized a sting operation in the case on its witnesses wherefrom it was discovered that Vinod Sharma had bribed all the witnesses for going hostile. The said sting operation was broadcast by Star News and it came into public light that the case had been manipulated in order to save the culprit. Also Hindustan Times, a newspaper conducted a poll seeking opinion of people’s faith in Indian judiciary, result of which was only 2.7 on a scale from 1 to 10. All this led to reopening of the case and the Court convicted Manu Sharma who was given life sentence in December 2006.

Likewise, in PriyadarshiniMattoo's case, the said girl living in Delhi was found raped and murdered at her residence on 23.1.1996 and the prime accused was Santosh Kumar Singh who was her senior in the same college. He had been harassing and stalking Mattoo since several months in person as well as through phone calls. Despite the victim filing police complaint against Singh and being provided with private security, there was no change in Singh's behavior as he belonged to influential family. On the day of incident, he entered the victim's house under the pretext of getting compromise in the complaint filed by the victim. Once inside, he raped PriyadarshiniMattoo and left the place after brutally murdering her. Later, he was arrested but given benefit of doubt and acquitted due to lack of sufficient evidence though sufficient testimonials and samples from crime site were available. This led to nationwide protests against the culprit and media gave a huge coverage to this issue by showing frequent interviews of victim's father demanding justice. Through use of investigative journalism, media detected the lapses in murder case and brought the same before nationwide public. The case was reopened after massive uproar from public created more pressure on CBI as well as judiciary. Ultimately, in February 2000, CBI submitted appeal against the verdict in Delhi High Court and in October 2006, Delhi High Court held Santosh Kumar Singh guilty and charged him with death sentence for committing rape with murder. The role of media's interference in this case was a positive one as it continuously covered the issue through its investigative journalism bringing to light what had been till then kept back from the public in order to save the culprit.

In the NitishKatara murder case, the said person was murdered by VikasYadav, son of influential politician D.P. Yadav for having a love affair with VikasYadav's sister. After the murder, witnesses turned hostile through the political influence of culprit's father. Initially trial court held the murder as a case of honour killing but eventually media came into picture and through its investigative journalism, brought the real picture before the society as also the nation.

In case of *Sahara India Real Estate Corp. Ltd. vs. Securities and Exchange Board of India*,³⁷⁰ the vitality of freedom of expression was declared in following words:

- Freedom of expression is one of the most cherished values of a free democratic society. It is indispensable to the operation of a democratic society whose basic postulate is that the government shall be based on consent of the governed. But such a consent implies not only that the consent shall be free but also that it shall be grounded on adequate information, discussion and aided by the widest possible dissemination of information and opinions from diverse and antagonistic sources.
- Freedom of expression which includes freedom of the press has a capacious content and it is not restricted to expression of thoughts and ideas which are accepted and acceptable but also to those which offend or shock any section of the population. It also includes the right to receive information and ideas of all kinds from different sources. In essence, the freedom of expression embodies the right to know.
- One of the Heads on which Article 19(1)(a) rights can be restricted is in relation to contempt of Court under Article 19(2).
- To see that the administration of justice is not prejudiced or perverted clearly includes power of the Supreme Court to prohibit temporarily statements being made in media which would prejudice or obstruct or interfere with the administration of justice in a given case pending in the Supreme Court or the High Court or even in the subordinate Courts. Such statements which could be prohibited temporarily would include statements in the media which would prejudice the right to a fair trial of a suspect or accused under Article 21.
- The order to postpone publicity of judicial proceedings can be passed only when other alternative measures for warding off ill effect of media publicity such as change of venue or postponement of trial are not available. In passing such orders of postponement, Courts have to keep in mind the principle of proportionality and the test of necessity.
- There is no general law for Courts to postpone publicity either prior to adjudication or during adjudication as it would depend on facts of each case. The necessity for any such order would depend on extent of prejudice, the effect on individuals involved in the case, the overriding necessity to curb the right to report judicial proceedings conferred on the

³⁷⁰ AIR 2012 SC 3829

media under Article 19(1)(a) and the right of media to challenge the order of postponement.

- Open justice permits fair and accurate reports of Court proceedings to be published but sometimes fair and accurate reporting of trial would nonetheless give rise to substantial risk of prejudice not in the pending trial but in later or connected trials. In such cases there is no other practical means short of postponement orders that is capable of avoiding such risk of prejudice to the later or connected trials. Thus postponement order not only safeguards fairness of the later or connected trials, it prevents possible contempt by the media.
- Orders of postponement of publications/publicity can be made considering factors such as the timing(the stage at which it should be ordered), its duration and the right of appeal to challenge such orders is just a neutralizing device when no other alternative such as change of venue or postponement of trial is available, evolved by courts as a preventive measure to protect the press from getting prosecuted for contempt and also to prevent administration of justice from getting perverted or prejudiced.

Thus, as postponement orders once granted have the effect of curtailing the freedom of expression of third parties, they must be passed only in cases of actual risk of prejudice to fairness of trial or even to proper administration of justice. Care must be taken that these orders are implemented for a limited period only and also without disturbing the content of publication.

In case of *High Court Bar Association, Odisha vs. State of Odisha*,³⁷¹ there was an exaggerated and incorrect reporting of incident of misbehaving with lady inspector by some advocates in High Court at Odisha. The Court in this matter found itself duty bound to interfere as matter would affect administration of justice and save from tarnishing image of institution of class of people, viz. the legal fraternity. Accordingly directions were issued to print and electronic media to restrict highlighting matter against advocates and from publishing names and photographs of accused persons or informants.

To surmise it may well be said that media trials have done somewhat good in specific cases and brought the culprit to the book. However, this should not be its

³⁷¹ AIR 2017 Orissa 62

certificate to conduct media trials carelessly in each and every case. In 2014, after SunandaPushkar, wife of ShashiTharoor was found dead in a hotel room, the medical board declared that her death was due to poisoning and was not a natural death. Ever since then, media went into frenzy trying to find, create, even concoct stories as to the persons and reasons behind her death. ShashiTharoor who's a former Union Minister became media's favorite culprit in the case with all probable stories ending up as Tharoor being the person behind Sunanda's murder. Tharoor blamed media for delivering concocted stories to police stories without any basis. Case was also filed by Tharoor against ArnabGoswami and Republic TV on the ground that they had implicated Tharoor in the case wrongly and were also prejudicing the investigation and subsequent trial. The Delhi High Court while hearing the defamation suit observed that ArnabGoswami and his TV channel must respect Tharoor's right to silence pending investigation in the murder case.³⁷² It further held that public opinion as shaped by media can influence the police and judges in criminal cases and can even pressurize the police to formally charge certain individuals in criminal cases based on media reports and judges to decide a case one way or the other. Trial by media also threatens the cardinal principle in criminal law that an accused is to be presumed innocent until proved guilty under the law.

The following categories of publications in the media are generally recognizes as prejudicial to a suspect or fraud:³⁷³

- (i) Publications concerning the character of accused or previous conclusions which tend to excite "feelings of hostility" against the accused amount to contempt because they tend to induce the Court to be biased. Such hostile feelings can be most easily inducted by commenting unfavourably upon the character of accused.³⁷⁴
- (ii) Publications of confessions before trial are treated as highly prejudicial and affecting the Court's impartiality and amount to serious contempt.³⁷⁵

³⁷² Available at <https://www.firstpost.com/india/shashi-tharoor-right-to-silence-balancing-free-speech-and-trial-by-media-3922079.html> (Visited on 10.9.2018)

³⁷³ Chapter IX, What categories of media publications are recognizes as prejudicial to a suspect or fraud? Pg. 195 200th Report on Trial by Media Free Speech and Fair Trial under CrPC 1973, August 2006

³⁷⁴ R. vs. O'Dogherty (1848) 5 Cox C C 348 (354) (Ireland)

³⁷⁵ R. vs. Clarke ex p Crippen (1910) 103 LT 636

- (iii) Publications wherein newspapers usurp the functions of Court without the safeguards of procedure, right to cross examine, etc. amount to contempt. In *R v Bolam ex p Haigh*, Haigh was described as a vampire and that he had committed other murders and publication printed names of victims as well. The editor was sent to jail and proprietors of newspaper were fined heavily. Lord Goddard called it a disgrace to English journalism.³⁷⁶
- (iv) Publishing photographs interfering with the procedure of identification of accused also prove harmful to the trial of the case. In *AG vs News Group Newspapers Ltd.*³⁷⁷, Sun Newspaper published photograph of a man on the second day of trial. He was charged with causing serious injuries to his baby and the baby's mother also was accused of offences. Though the caption being "Baby was blinded by Dad", in actuality, the said allegation was not part of Crown's allegations. It was held that the juxtaposition of photograph undoubtedly carried with it the risk that the accused who had pleaded not guilty might be regarded in a very unpleasant light by those who saw this particular photograph and headline. Fine was imposed for the said contempt.
- (v) A disclosure by police of an alleged confession after arrest is held to be contempt.³⁷⁸ Publishing references to police activity surrounding a crime such as various searches, questioning of suspects and connected arrests that may be made but it is not immune from arrest.
- (vi) Direct imputations of accused's innocence can be considered as contempt.³⁷⁹
- (vii) Creating an atmosphere of prejudice by showing news reports captions with charges more sensationalized than the actual ones amounts to contempt.³⁸⁰
- (viii) Criticism of witnesses by publishing that a witness was being paid by a national newspaper, the amount being contingent upon final outcome of the case shall amount to contempt.³⁸¹
- (ix) A newspaper conducting its own private investigation and publishing the results before or during trial is also an example of trial by newspaper.³⁸²

³⁷⁶ (1949) 93 Sol Jo 220

³⁷⁷ (1984) 6 Cr App (S) 418

³⁷⁸ *AG(NSW) v Dean* (1990) NSWLR 650

³⁷⁹ *R v Castro Onslow and Whelley* (1873) LR 9 QB 219

³⁸⁰ *R v Hutchison ex p McMahon* 1936(2) All ER 1514

³⁸¹ *AG v New Statesman and Nation Publishing Co Ltd.* 1980(1) All ER 644

Also, whenever there is trial by media, there is always a conflict between two constitutional rights, namely right to fair trial and freedom of the press. While media argues that they have a duty to report the news as it happens to the public, it sometimes interferes with an accused person's right to a fair trial. The terms of fair trial comprise all processes of criminal justice commencing from investigation to ultimate stage of trial, i.e. sentencing or acquittal of accused. However, Article 19(1)(a) does not confer any right on the press to have an unrestricted access to means of information.³⁸³

(4.4) Article 19(1)(a) and Paid news

The evil of paid news can be said to have evolved from the sole object of maximization of profits. As several media channels are owned by corporate conglomerates and multinational media houses, they see a media news channel as a mere source of profit rather than recognizing its duties towards the nation as a responsible media channel. Commercial benefits outweigh the interest of nation's citizens and information is put out on news channels as if it has been independently and objectively produced while in actuality, it has been paid for. Maximum cases of paid news are found connected to politicians and political parties during election campaigns and such cases challenge the very purity of vote which has now been colored with the media stories favoring particular parties who have already converted media house into a business hub for commercial benefits.

Of the 22 states in which Assembly elections were held between 2010 and 2013, Madhya Pradesh was in top three for the highest number of cases of alleged paid news. Election Commission of India found 42 cases of "paid news" that contributed to Narottam Mishra's victory in 2008 Assembly elections in Madhya Pradesh. However, as no specific is available to deal with paid news, Election Commission finally decided that Mishra had misrepresented his campaign expenses and was disqualified on those grounds. 279 notices in this regard were issued in Madhya Pradesh in 2013 of which 165 were confirmed. Likewise, after 2012 elections in Punjab and Gujarat, 339 notices were

³⁸²Borrie & Lowe (1996, 3rd Ed P 151)

³⁸³Dr. N. S. Santhosh Kumar, Trial By Media – Transgressing the Lakshmanrekha, Pg. 14, (2010) 5MLJ

issued in Punjab and 523 cases were confirmed while in Gujarat, 495 notices were issued and 414 cases were confirmed.³⁸⁴

In December 2013, Chief Electoral Officer at Election Commission, N. Delhi said that the Commission would be recommending action against atleast six candidates for not disclosing the amounts they paid for planting “news” reports in publications in the run-up to the elections in their expenditure statements. The Commission had calculated the amounts spent by these candidates on “paid news” and if their total expenditure on campaigning was found to be exceeding the statutory ceiling of Rs. 14 lacs per candidate, they could be disqualified even if they are elected as members of legislative assembly.³⁸⁵

In October 2011, UmeshYadav was disqualified by Election Commission for her failure to record expenditure incurred on advertising during her election campaign. The Commission opined that “by suppressing expenditure on ‘paid news’ and filing an incorrect or false account, the candidate is guilty of not merely circumventing the law relating to election expenses but also of resorting to false propaganda by projecting wrong picture and defrauding the electorate.” The said findings were challenged wherein Allahabad High Court upheld the same as consistent with law and also cited Supreme Court’s decision in L.R. Shivaramagowda vs. T.M. Chandrasekhar wherein it was held that in addition to checking whether accounts had been duly lodged, it was fully within the Election Commission’s powers to check to see if “true and correct” accounts of expenditure incurred or authorized were provided by candidates.

(4.5) Article 19(1)(a) and Social Media

In the landmark case of *Shreya Singhal vs. Union of India*³⁸⁶, the petitioner alongwith her friend was arrested for posting allegedly offensive and objectionable comments on social networking website Facebook about the correctness of government’s decision to keep the entire Mumbai city shut down due to death of a famous political leader. The

³⁸⁴ Available at <https://www.indianexpress.com/article/explained/what-is-the-menace-of-paid-news-election-commission-narottam-mishra-madhya-pradesh-minister-2008-assembly-elections-4755328.html> (Visited on 10.9.2018)

³⁸⁵ Available at <https://www.indianexpress.com/article/explained/what-is-the-menace-of-paid-news-election-commission-narottam-mishra-madhya-pradesh-minister-2008-assembly-elections-4755328.html> (Visited on 10.9.2018)

³⁸⁶ AIR 2015 SC 1523

petitioner had made the actual post while her friend agreed with such decision on the original post which was open for public viewing. The police arrested both the women u/s. 66A of Information Technology Act which punishes any person who sends through a computer resource or communication device any information that is grossly offensive or with the knowledge of its falsity, the information is transmitted for purpose of causing annoyance, inconvenience, danger, insult, injury, hatred or ill will. They were later released and prosecution was dismissed but the entire incident invoked substantial media attention and criticism. The women filed a petition through their lawyer challenging the constitutional validity of Section 66A on the ground that it violated their right to freedom of expression.³⁸⁷

On behalf of petitioners, it was submitted that Section 66A was violative of the right to free speech and expression and it could not be protected under any of the reasonable restrictions. Nor could sending of information for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, through any electronic form be protected under any of the reasonable restrictions. They further contended that the Section 66A was immensely vague because none of the terms for which it held someone liable were anywhere defined due to which even those who were not guilty were held so under the said Section. Intelligible differentia between those exercising free speech on internet and those using freedom of speech by spoken words was also missing.

Contentions by the respondents

Against petitioners contentions, the respondents contended on several vague grounds stating that the Court interferes in a legislative process only if a statute has violated rights of citizen. Respondents also argued that mere possibility of abuse of a provision cannot be a ground to decide the validity of any provision. They also argued that if a provision was vague, it cannot be a ground to declare any statute unconstitutional.

³⁸⁷ Globalfreedomofexpression.columbia.edu/cases/singhal-v-union-of-india/ (Visited on 18.5.2017)

HELD:

1. The Court tried to discuss what was the content of expression "freedom of speech and expression". It observed that the discussion and advocacy of any particular subject are the essence of Article 19(1)(a). However, if such discussion and advocacy reached to the extent of incitement, reasonable restrictions could be used to curtail such discussion/advocacy.
2. It further observed that an individual's act if leading to disturbing the entire community's everyday living should be punishable rather than an act which affected merely the individual and left the society undisturbed. Going by this test, it is clear that Section 66A is intended to punish any person who uses the internet to disseminate any information that falls within the sub-clauses of Section 66A. It was also observed that for something to be defamatory, injury to reputation is a basic ingredient and Section 66A did not cover such instances.
4. The Court also stated that Section 66A was in no way connected to incitement for committing an offence. It only restricts information that may be sent on the internet based on whether it is grossly offensive, annoying, inconvenient, etc. and being unrelated to any of the eight subject matters under Article 19(2) is declared as unconstitutional.
5. It was also stated that any person likely to be an offender u/s. Section 66A as also the authorities in charge of handling cases under the said Section had no specific laid down standards under which they could hold a person liable. It was held that clearly, Section 66A arbitrarily, excessively and disproportionately invaded the right of free speech.
6. The Court considering the stand of petitioners also observed that Section 66A had several vague and undefined terms and they were capable of hindering free speech at several levels. One person expressing his views over the internet may cause annoyance to someone with a different thinking pattern and if Section 66A is used to shut down every such case, freedom of speech will hardly be exercisable at all.
7. Considering these reasons, it was held that the Section is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in

nature and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth.

Possibility of an act being abused is not a ground to test its validity.

10. Thus, the Court held that:

- Section 66A creates an offence which is vague and overbroad, and, therefore, unconstitutional under Article 19(1)(a) and not saved by Article 19(2).
- No part of Section 66A is severable and the provision as a whole must be declared unconstitutional.
- Wider range of circulation over the internet cannot restrict the content of the right under Article 19(1)(a) nor can it justify its denial.

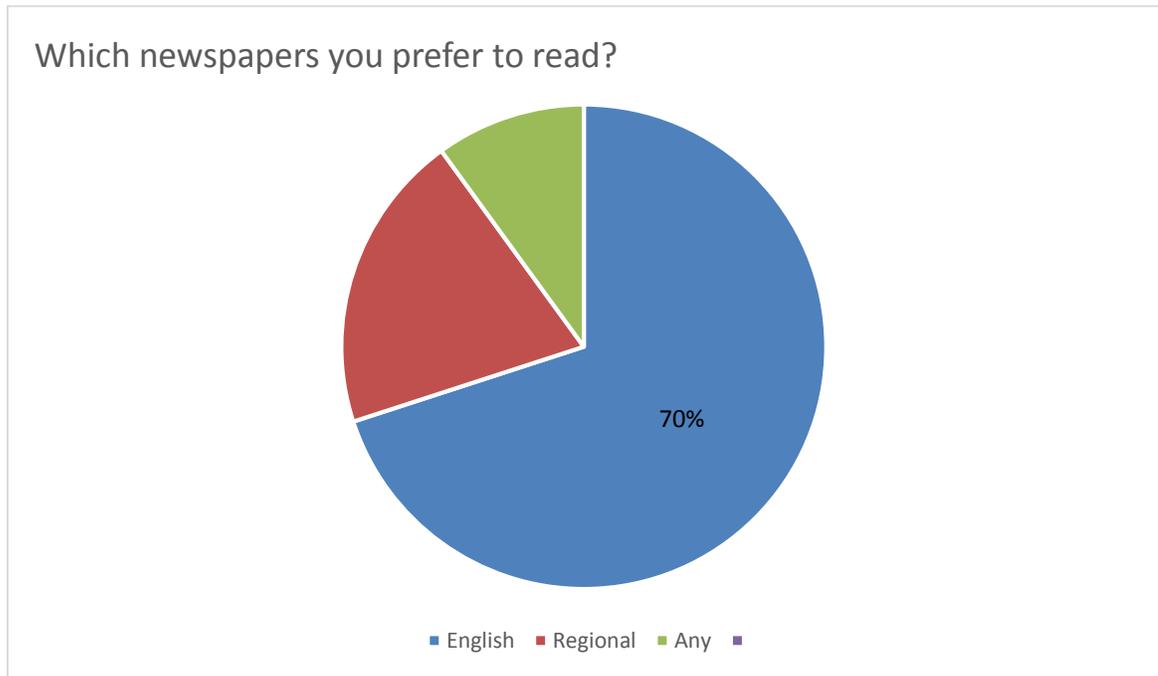
The said judgment was a major one since the rise of social media as it gave a platform to millions of everyday social media users to express their views and opinions freely. After the rise of internet and social media, many people had started using the same to exchange their ideas of political views, current affairs, etc. The Information Technology Act, 2000 under Section 66A had laid down rigid criteria due to which law enforcing agencies often interpreted it in a narrow and limited manner. Again, the Section had used several terms like “offensive”, “causing annoyance”, “grossly menacing”, etc. but nowhere were they defined which made them open to an unlimited number of interpretations as maybe desired by the law enforcers. Likewise, the Section also indirectly restricted political satire, caricatures and cartoons which were based on current affairs. Due to this, even a healthy expression of ideas by artists and cartoonists became getting restricted. The Court in its judgment held that Section 66A was vague, open-minded and undefined. It was unconstitutional, void and hindered free speech on social media. Also, it nowhere specifically provided as to what acts if performed on internet would amount to defamation. The Section had lacunae both for internet users as well as law enforcement agencies as neither the terms used were well-defined nor the extent of speech within the scope of the Section was mentioned. Thus, the Section had a intimidating effect on free speech.

To conclude, judiciary has played a vital role in giving a face and voice to the media when freedom of speech and expression is concerned. As such media was devoid of any specific rights under the Constitution wherein despite several freedoms for all segments of society, none were provided for media. For this reason, media could not stand on its own when rights and freedom of media were disputed. However, after several landmark cases as discussed above, media now holds a firm ground of its own and has freedom of speech and expression like any other citizen albeit subject to reasonable restrictions. From being the Fourth Estate, it won't be wrong to say that media has come to being the first estate itself as it has become a mirror of the activities of legislature, executive and judiciary to the society. However, in the process, media has also misused and tried to step beyond the powers conferred over it by the said judicial decisions. While exercising freedom of speech and expression, media has often not taken care of exercising it by simultaneously considering reasonable restrictions but has considered the same as its birthright and often indulged in cases of media trials, paid news and sting operations.

CHAPTER 5

DATA ANALYSIS

The present study has been conducted on freedom of speech and expression in respect of social and electronic media. Researcher has attempted to learn the reach of various forms of media, i.e. print, social and electronic media in public today and levels of exposure of freedom of speech and expression through several questions as under:

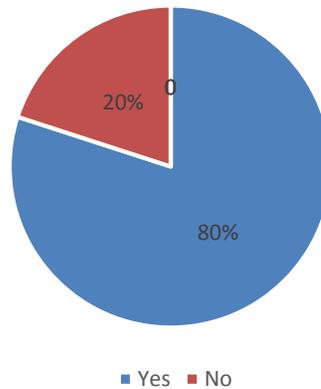


Newspapers being a part of print media are considered one of the oldest forms of mass communication. Despite availability of e-papers, social media, news channels and online news portals, print media has continued to maintain its position as an important form of imparting news to the society as well as the nation. The vast reach and usage of newspapers can be recognized from the fact that an online portal is also available for newspaper archives consisting of 300+ million pages of historical newspapers from 8800+ newspapers from around the United States and beyond. Newspapers provide a unique view of the past and prove helpful in understanding and connecting with the people, events and attitudes of an earlier time.³⁸⁸ Thus,

³⁸⁸ Available at <http://www.newspapers.com/about/> (Visited on 28.8.2018)

despite being a vital part of print media, newspapers have found space in social media as well through the form of e-papers. In the present research, the researcher has found that 70% of general public prefers reading English language newspapers while only 20% of the public prefers reading regional newspapers. 10% of public does not have any specific choice and reads newspapers in either English or regional languages. It can be thus concluded that newspapers continue to hold a major position in today's rapidly changing media scenario.

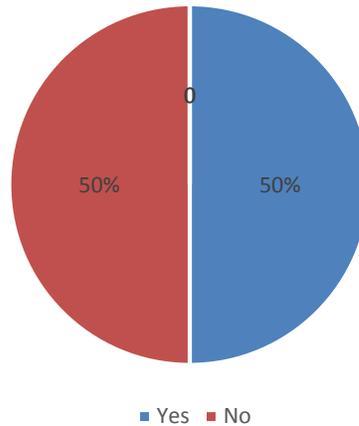
Do newspapers have a more authentic version of facts than the news channels?



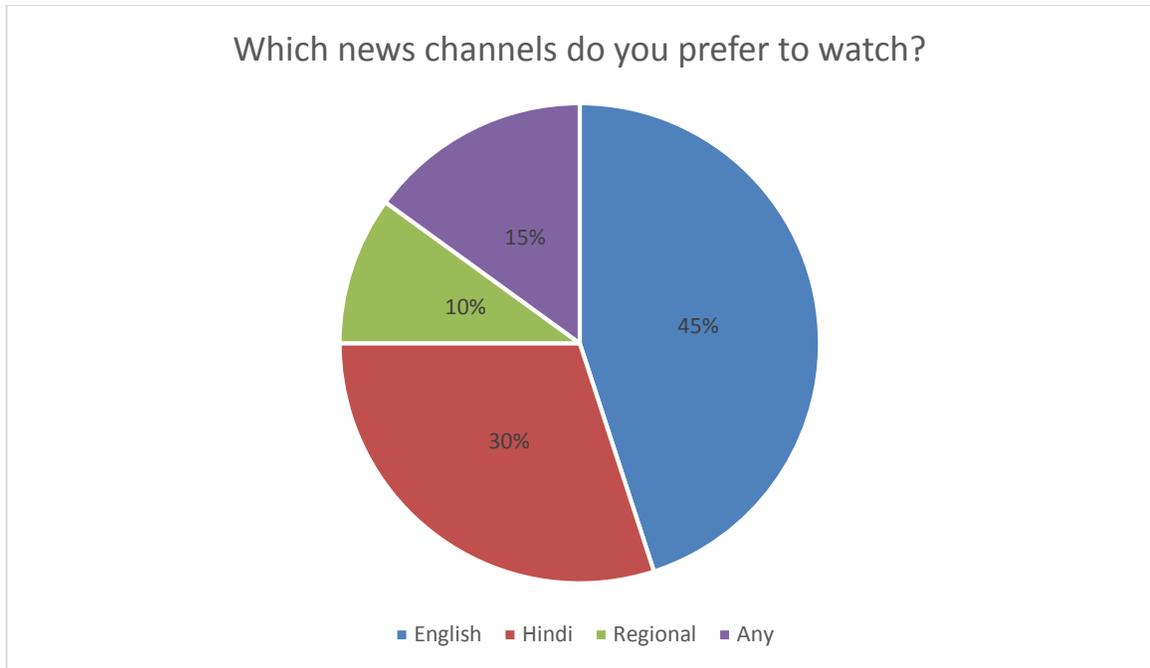
News channels have a major advantage over newspapers because news channels support the news stories with live footage and are always available in the background by turning on the TV set without giving them exclusive time as needed in case of reading newspapers. While the news channels report straight before the television for almost entire day, most of the newspapers pick up selected important news stories throughout the day and put them before the public in the morning hours of the next day thus creating a vast time gap between the actual occurrence and its reporting. Also news channels are supported by live footage and continuous coverage of the news item whereas newspapers deliver only the final picture of the entire incident supported with limited photos if any. The only probable gain newspapers have over the news channels could be that newspapers carry an indepth explanation of the event in simplified language with all its pros and cons explained. On the other hand, news channels are often found reporting continuously for 24x7 all sorts of news, some of which may have significance while others are merely an attempt for filling in the blank spaces. For e.g. Some news channels have slots for delivering news relating to movies while others often cover incidents which may not have national significance but are telecast as news only out of rarity of its occurrence. Likewise, news channels often continue to linger on facts of a single nature in absence of any progress of the actual event, thus hindering the progress of reporting. Newspapers have another advantage in this case as they can cut down on such lingering and report only the facts as they occurred. In present question, 80% of participants have

agreed that newspapers carry an authentic version of the news rather than news channels while only 20% of participants feel it otherwise.

Are you aware of any law/body governing print media?



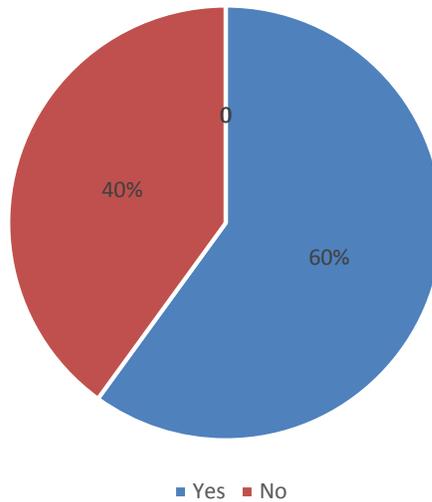
Print media being the earliest form of media has been governed by several legislations. The Press and Registration of Books Act 1867 regulates printing presses and newspapers and requires all printing presses to be registered with appointed Authority under the Act. Likewise, for regulating the content of news reportings, The Press (Objectionable Matters) Act, 1951 has been implemented which provides against the printing and publication of incitement to crime and other objectionable matters. The Defence of India Act 1962 empowered Central Government to issue rules regarding prohibition of publication or communication which was prejudicial to the military operations and also prevented publication of prejudicial reports. The Press Council Act 1978 was implemented to maintain and improve the standards of newspaper and news agencies in India. In response to present question, 50% of the participants have replied in affirmative about being aware of laws governing print media while 50% of them have replied negatively.



Electronic media today holds a major place in the world of mass communication. As a result of consistent development in science and technology, almost every Indian house now owns a television set. No more do people sit in vast numbers before a single television in order to find the happenings across the nation. Every family owns a TV set and every TV has an option of endless channels of varied tastes from news to entertainment, sports to science and technology. The Ministry of Information and Technology itself has given an official number of India having 832 channels overall of which 403 are news channels.³⁸⁹ As found in the response to present question, 45% of participants prefer to watch English channels while 30% prefer watching Hindi news channels. 15% do not have any exclusive preference while 10% prefer to watch regional news channels. Thus, in addition to print media, news channels in almost all languages also are a major form of imparting news to the public at large.

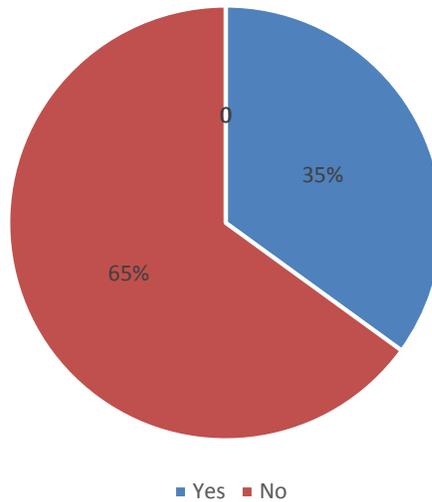
³⁸⁹ Available at <https://telecomtalk.info/total-number-tv-channels-india/139844/> (Visited on 28.8.2018)

Does a round-the-clock follow-up of any news story on electronic media help in finding out new facts?

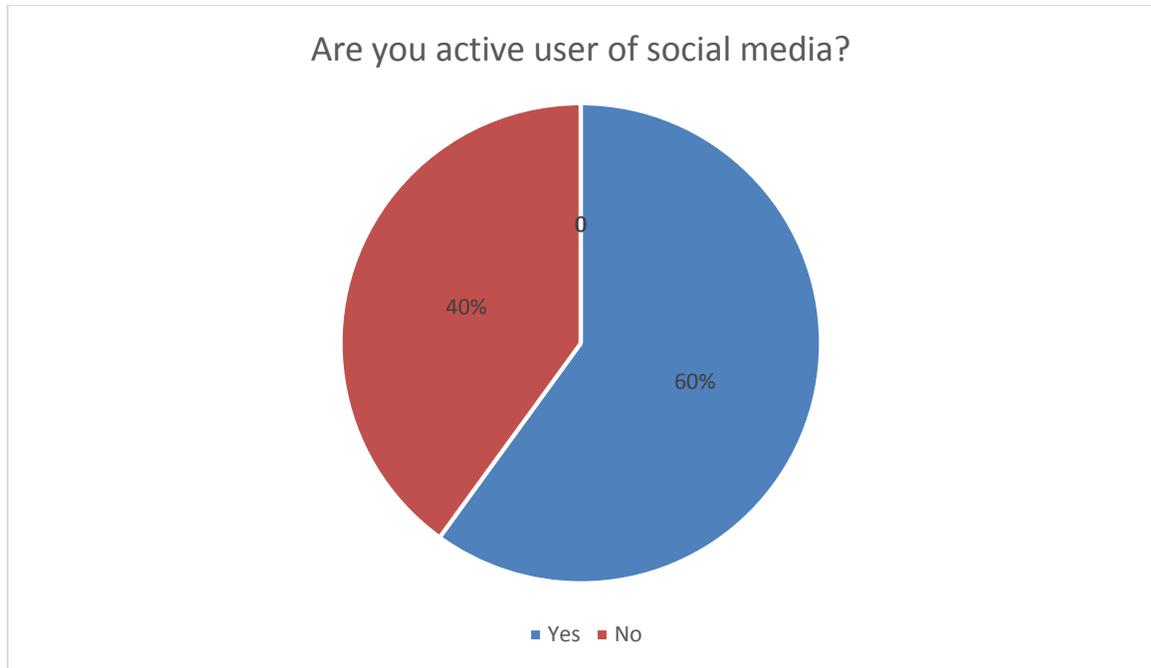


There were no 24x7 news channels in the period of early 90s. Only at the end of the decade did they come in picture. Before that news was only telecast only for 1 hour slot every day while programs in nature of news telecast, i.e. The World This Week were telecast once a week. As the number of satellites and channels increased, several news channels came into existence one after the other. 60% of participants agree that a continuous follow-up of the news stories reveals new facts while 40% have disagreed with the question. The comparison between the two eras, i.e. before advent of 24x7 news channels and after it leads to a probable conclusion that 24x7 news channels work on the rule of creating news when there is no news. How otherwise can news that needs to be delivered for 24 hours a day today used to be telecast in merely 1 hour before the launch of 24x7 news channels? An ongoing follow-up to any news story is vital sometimes when several new facts are revealed in a short time span while in other cases, when the news reporters themselves lack any new findings, the same findings are repeated with different words and occasionally with different probabilities.

Are you aware of any law/body governing electronic media?

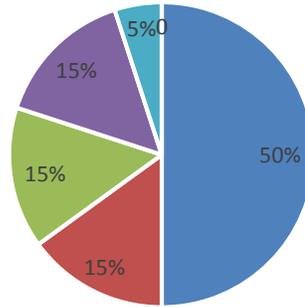


The electronic media encompasses freedom of speech and expression through several ways, be it news stories, advertisements, films, serials, songs, speeches, etc. Likewise, it also needs to be regulated in as many ways so that the right of everybody's free speech is neither hindered nor stepped upon. Apart from Ministry of Communication and Information Technology, legislations like Indian Telegraph Act 1885, The Cinematograph Act 1952, The PrasarBharati (Broadcasting Corporation of India) Act 1990 and The Cable Television Networks Act & Rules 1994 have been implemented in order to provide for several aspects of media. Likewise, bodies like Indian Broadcasting Foundation (IBF), Broadcasting Content Complaints Council, Broadcast Audience Research Council (BARC), News Broadcasting Standards Authority (NBSA) and Telecom Regulatory Authority of India have also been made functional in order to regulate the electronic media. While 65% of present respondents are aware of laws or bodies governing electronic media, 35% have responded of being unaware of the same.



The rise of social media since past two decades has been notably visible in the modes of everyday communication. Letters, postcards, telephone calls have been substituted with e-mails, chats, posts, feeds and video calls. Effect has also fallen on the way news is delivered. News channels and newspapers have been substituted with news websites, online news videos, opinion and view seeking platforms and blogs. Instead of one-sided delivery of news since ages via newspapers and news channels, social media has made news sharing a more interactive phenomenon where one on receiving end of news can also make his opinions heard on the news website or the videos. Likewise people can also raise topics of national interest, current affairs, social changes or on any subject through social platforms like Facebook, Twitter, Instagram, etc. With the advent of social media, everybody has become aware of the right of free speech and everybody is willing to exercise it to the fullest. In the present survey, 60% of respondents have agreed to be active users of social media while 40% have responded negatively.

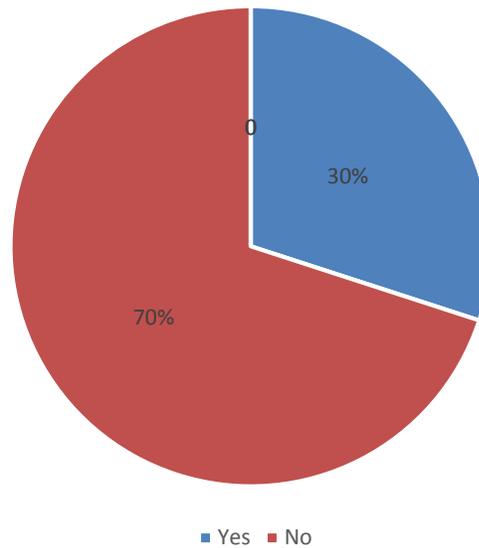
Which purposes do you use social media for?



- All i.e. latest events/current affairs, leisure activity, finding information
- Leisure activity
- Finding information
- Latest events, current affairs
- Any other/none

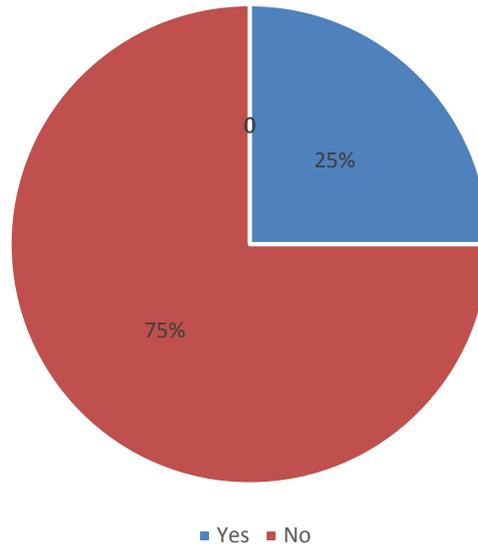
Initially, social media was restricted to forums, groups, chats and messengers but as the social networking in form of Orkut, Facebook, LinkedIn and other platforms were launched, people found more uses of social media than merely remaining in touch with each other. Social media deals with not just keeping in touch with people but also includes discussing topics of national interest, current affairs, etc. Facebook had recently itself provided an option of “news” subscription to its users where under news stories would be visible on their user page itself. This itself shows how far social media has created an impact in news reporting. Again, as Facebook is also a platform for making people’s voices heard, a single news story itself can carry several distinctive opinions from the people world across. Amidst such a vast array of opinions, some of which may be a violation of reasonable restrictions over free speech, it becomes necessary that laws which regulate free speech on the internet are implemented. 50% of present respondents have said that they use social media for almost all major purposes, namely leisure activities, finding information as well as for keeping up with current affairs whereas 15% use it only for leisure activity, 15% use it for finding information and 15% use it for keeping abreast with current affairs and events.

Do you participate in online opinion polls, tweets, etc.?



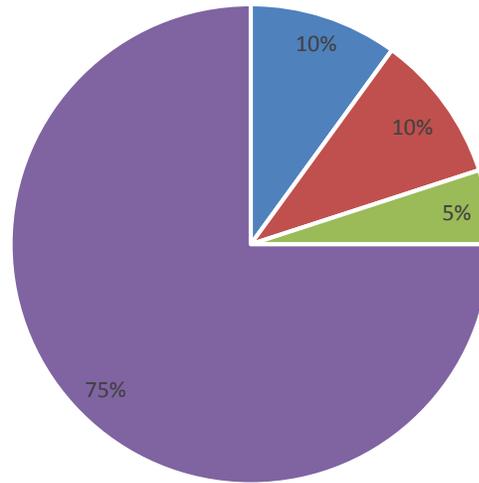
As social media took over electronic media, news channels created their websites to keep up with the changing technology. The main advantage of websites like Facebook, Twitter, etc. was that news was not just received by the viewers but it was also responded back with personal opinions and views as well as shared further. It was not just a one-way communication but almost a two-way interaction. In present case, merely 30% have agreed to be participating in online polls and tweets whereas 70% have denied the same.

Are you aware of any law/body governing social media?



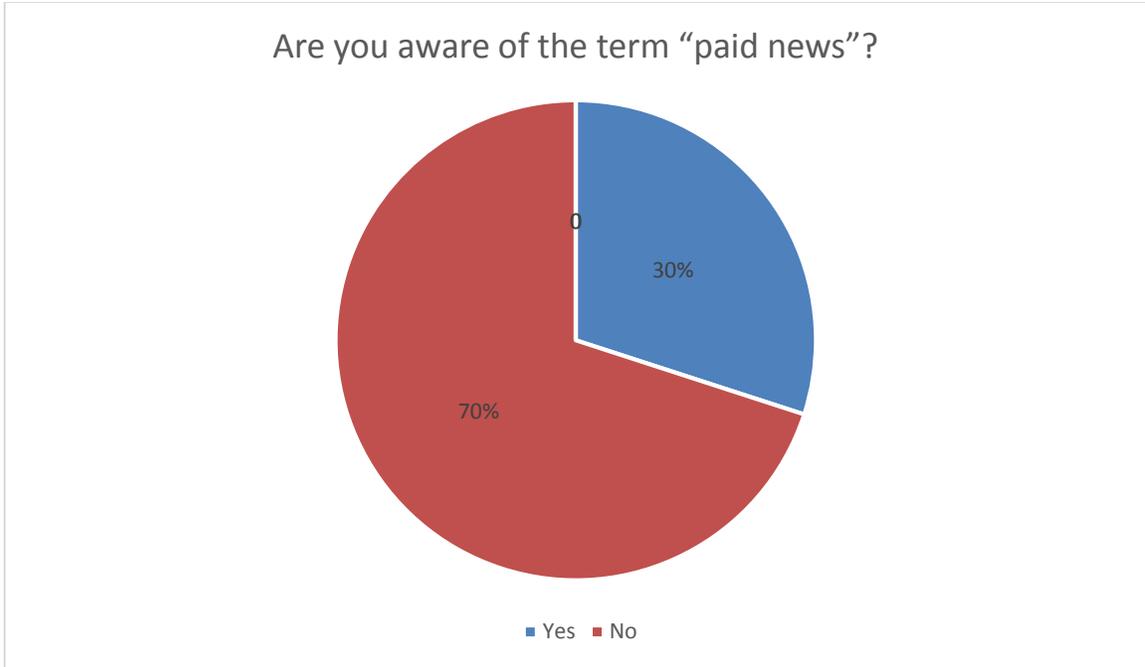
The rapid increase in number of social media users found a need for governing it with a well-provided legislation. While 75% of users are unaware of any legislation governing social media, merely 25% are aware of the same.

Which is the most appropriate form of media regulation?

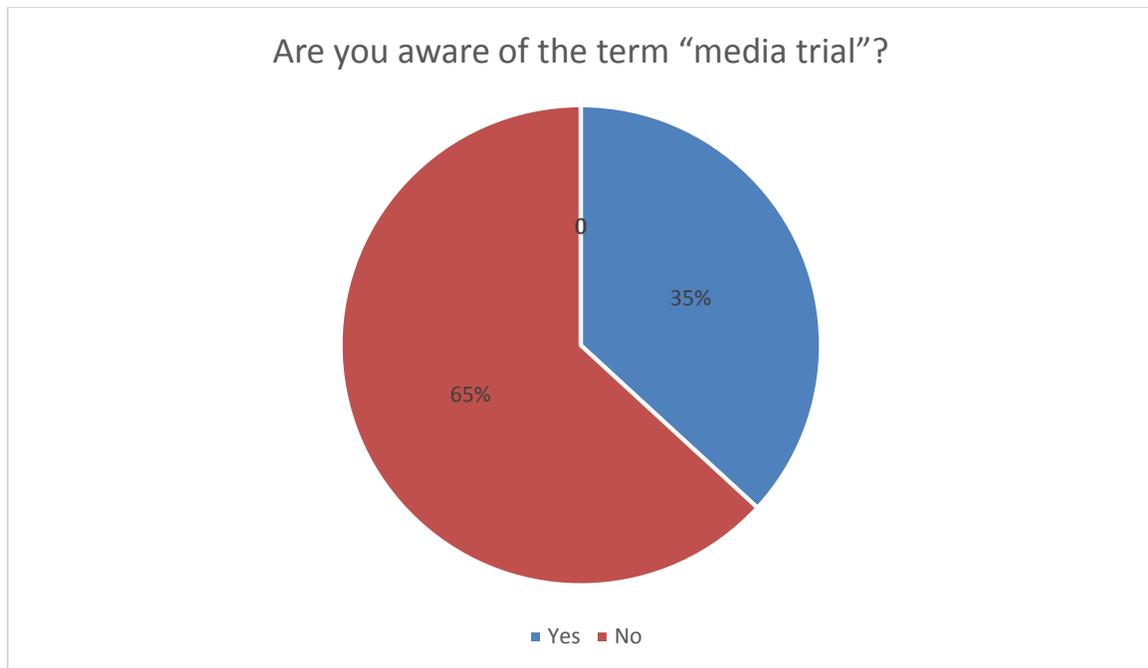


■ From internally ■ By an external body ■ No regulation ■ Both, internal & external regulation

Media regulation is indispensable and more so as the print and electronic media have been now joined by the social media. Everybody is keen on exercising his right of free speech and sometimes at the cost of other's similar rights too. The same stands true for media as well whose rights of free speech have been recognized in several landmark judgments. When media steps over its right of free speech and violates the rights to privacy, cases of sting operation come into the picture. Likewise, cases of "paid news" and "media trial" are found when media tries to take law and order in its own hands and deliver its own views as the final word in notorious trials or at other times, attempts to sell news stories against hefty amounts mainly during election periods. For this very reason, it becomes mandatory that media be regulated. 75% of respondents have opined that media should be regulated by an internal as well as an external regulator so that any mischiefs on part of media can be detected at the earliest from either side. 10% of respondents have opined for internal regulation of media while the other 10% have opined that media should have an external regulator. In opinion of 5%, media need not be regulated.

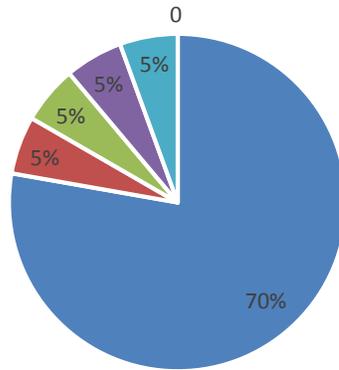


While 70% of respondents have replied affirmatively regarding being aware of the term “paid news”, 30% have responded negatively to the same. When asked about knowledge of any specific “paid news” instance, there have been mixed views as to the same.



65% of respondents are aware of the term “media trial” while 35% are unaware of this term. Those who are aware were further asked of the news story in nature of “media trial”, response to which is shown in the next chart.

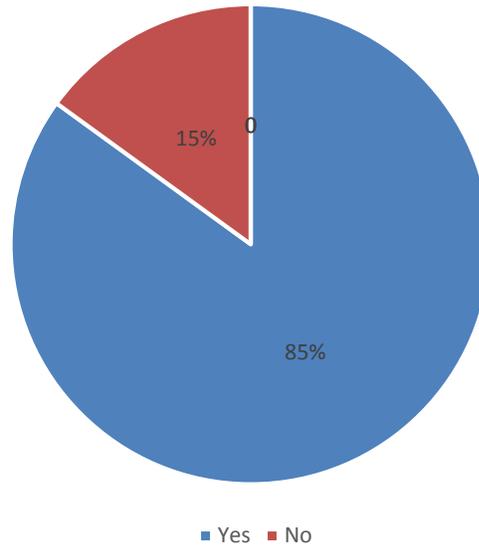
Kindly mention any one story in print/electronic media which according to you is in nature of “media trial”



■ Aarushi Murder Case ■ Nirbhaya Case ■ Sunanda Pushkar
■ Jessica Lall Case ■ Sheena Bohra Case ■ Others

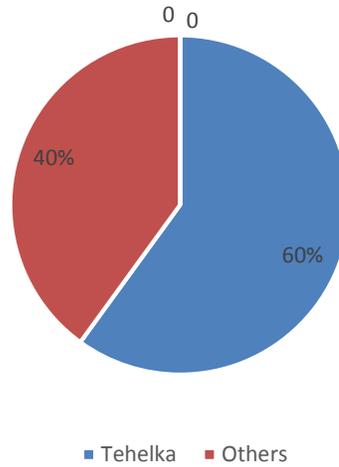
While most of the respondents (70%) were aware of Aarushi murder case, the other cases in nature of media trial were found to be not as well-known though they were equally hyped, analyzed and almost judged by media itself.

Are you aware of the term “sting operation”?



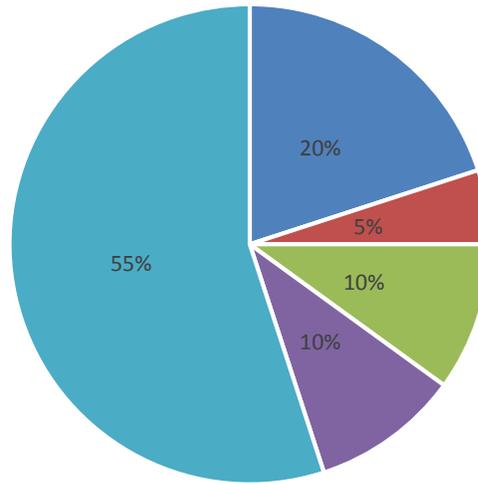
85% of respondents are aware of “sting operations” while 15% responded they are unaware of it. Sting operations are fake operations carried out mainly to catch criminals red-handed and are mainly handled by detectives or undercover law enforcement officers. While the main object of a sting operation is to catch hold of a criminal in the actual act itself with support of hidden cameras, it is often found that the targeted people attempt to take the shelter of violation of their right to privacy. On the other hand, media uses sting operations to expose the criminals before society and often airs the entire stings on their channels across the nation claiming their right of free speech.

Kindly mention any one story in print/electronic media which according to you is in nature of “sting operation”



60% of respondents are familiar with the sting operations conducted by Tehelka, i.e. match-fixing scandal (2000) and Operation West End (2001) while 40% are familiar of other infamous sting operations namely casting couch by Shakti Kapoor, Zee News and Navin Jindal sting wherein senior journalists of Zee News were arrested on charges of trying to extort hefty amounts of money from Congress MP Navin Jindal in lieu of not airing negative stories of Jindal Group, India TV casting couch, anti-corruption stings, etc.

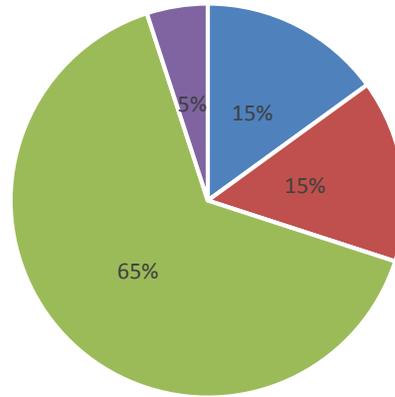
Have you ever participated in any of the following?



■ Debate ■ Talk show ■ Opinion poll ■ All of the above ■ None of the above

While 55% of respondents have never participated in either a debate, talk show or opinion poll, 20% have been a part of debate, 10% have been a part of opinion poll whereas 5% have been in a talk show. 10% have claimed to have participated in all of them. The areas of debate/talk show have been in varied subjects namely globalization, women empowerment, demonetization, reservation, corruption, election poll, etc. Respondents were also asked if they could express themselves fully to which 90% have replied affirmatively while 10% have replied in negative. The response shows that media to a great extent respects the views and opinions of general public and those who have participated in the programs.

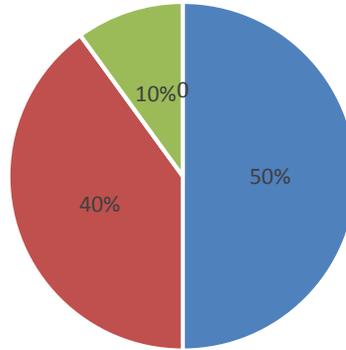
What should be the extent of protection given to freedom of press?



- Specifically covered under Art.19(1)(a)
- Impliedly covered through judicial decisions
- Through both
- Neither

Free speech is safeguarded under Article 19(1)(a) of the Constitution while reasonable restrictions have been provided under Article 19(2). Though nowhere specified in the Constitution, time and again, the right of free speech of press and media has also been recognized through judicial decisions and guidelines to be implemented. 65% of respondents have stated that press and media should be protected through not only judicial decisions as it is currently being done but should also be specifically given protection under Article 19(1)(a). 15% opine that the protection given through judicial decisions alone is sufficient while the other 15% feel that only by specifically giving it protection under Article 19(1)(a) shall be sufficient. Only 5% have responded that no protection at all needs to be given to media.

Should there be any additional restrictions other than those mentioned in Article 19(2) that limit the freedom of press



■ Yes, more restrictions are needed
■ No, only those currently available are sufficient
■ No restrictions at all on freedom of press

Article 19(2) imposes several reasonable restrictions on freedom of speech and expression namely on grounds of sovereignty and integrity of India, security of State, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to an offence. Wherever judiciary finds media exercising its right of free speech so widely that either of these reasonable restrictions are violated, it may impose necessary orders and ban the acts accordingly. It is in interest of public as well as media itself that reasonable restrictions if not additional, atleast the prevailing ones should be strictly adhered to. Media is neither above law nor above the citizens of the nation and its acts should be in accordance with laws as well as guidelines from judicial precedents. If on one hand media has a right of free speech and can question the acts of those in power, it is also duty bound to present a clear picture of the society and nation before the people, without modifying it according to its personal interests. 50% of respondents opine that in addition to these restrictions, additional restrictions are needed on media's rights of free speech. 40% have opined that the current restrictions are sufficient while 10% have opined that there should be no restrictions at all on free speech rights of media.

CHAPTER 6

CONCLUSIONS AND SUGGESTIONS

6.1 Conclusion

In this research work, the researcher has attempted to study the freedom of speech and expression in respect of social and electronic media focusing mainly on right of free speech in new age social and electronic platforms as also media's misadventures by indulging in media trials, sting operations and paid news. The research has been done with the following objectives:

- 1. To find if existing laws related to media in India are sufficient to deal with media trial**
- 2. To study the existing laws governing the media**
- 3. To study the powers of regulatory bodies.**

The study has been systematically carried out by first studying the development of media. The development of media has been dealt in Chapter **Two**. In this Chapter the researcher has traced the evolution of various platforms namely the print, electronic and social media. Major platforms of social media and features of social media have been discussed as social media has been an ever-evolving and an ever-developing area. At the initiation when there was no specific term as social media, people still used to socialize online though in limited numbers through chatrooms and e-mails and sites like Orkut and Yahoo Groups. However, after Facebook, Twitter, Instagram, etc. were launched, social media has been an ever-developing field as each app keeps updating itself by bringing new and innovative features to its page.

Fundamental right of free speech as provided under Article 19(1)(a) hence keeps getting new ways of utilization as also interpretation. In a world without social media, people still utilized the right to free speech though in different manners and limited numbers. However, since the advent of social media, everybody who posts online is exercising his right to free speech as internet is at the crux of all the social

media. The consistent population rise across the world merged with technological advancements and easy availability of internet have resulted in social media spreading easily everywhere. Also, social media delivers results faster, is convenient to use and gives multiple platforms to an individual in order to share his opinion with others. Thus, a person can share photos by Instagram, write a blog on a blogger, capture video and share it on YouTube or simply give an opinion on Twitter or have a post on FaceBook – the choices of expression are endless. The same also applies to electronic media which was the pioneer of communication before social media took over. The rapid growth and convenience of social media have forced even the print as also electronic media to mark their presence on a different platform entirely.

Today, several news channels, entertainment and sports channels for which initially electronic media was the only medium of broadcast now have used the medium of social media to spread themselves. News channels have their webpages on Facebook and Instagram which can be followed to get regular updates of whatever they post on it and live video page on YouTube which can be subscribed to view the latest newsstories. That apart, with the help of social media, news channel also conducts opinion polls, surveys and researches which prove helpful in making the voice of a common man heard before others and spreading to corners of the nation where access to electronic media is limited.

Thus, the researcher has studied development of media starting from print media because it is the earliest form of communication which is still going strong today despite tough competition from electronic and social media. Also, the new technologies like internet, smartphones, laptops, etc. which have shaped up social media also have been studied in the chapter. It can be concluded that development of media has been a boon to a great extent. Newspapers, news channels, social networking sites, etc. have greatly helped mankind in communicating with each other not only one-sidedly as was the case with print and electronic media but even a two-way communication is possible due to social media. It was only when some

groups started misusing media for their limited motives that media has started getting cases of vices like media trials, fake news, paid news and sting operations.

Likewise, even newspapers, magazines, journals, books, etc. which could be initially accessed only through paper form have now started becoming paperless and available on social media in form of e-papers, e-magazines, etc. It proves beneficial in saving paper even though a huge number of population still prefers reading newspaper compared to its digital copy. But the penetration of social media in public in such a manner where even print and electronic media need to take its support in a timespan of merely one decade or so is one of the biggest achievements of social media. The development of social and electronic media has also given rise to certain legal issues affecting the freedom of speech and right to privacy which needs to be addressed.

In Chapter **Three**, namely Legislations: National and International the researcher has dealt with the said objects as the current legislations in USA, UK and India as well as international conventions and treaties which provide for free speech have been studied in the said chapter. The Chapter studies following international instruments, conventions and treaties like Universal Declaration of Human Rights 1948, International Convention on Civil and Political Rights, 1966, American Declaration of the Rights and Duties of Man, European Convention for Protection of Human Rights and Fundamental Freedoms, UNESCO Mass Media Declaration 1978, Charter for a Free Press 1987 and The Madrid Principles on the Relationship between Media and Judicial Independence (1994)

Constitutional provisions of USA have been studied namely the First Amendment of the American Constitution which specifically provides that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances. That said, media has specific right of free press without any reasonable

restrictions and hence can exercise all its activities without any separate precedent or judicial pronouncement. That apart, Sedition Act, 1918, Privacy Act 1974, Communications Decency Act 1996 and regulative bodies like CTIA – The Wireless Association, Federal Communications Commission and Fairness and Accuracy in Reporting (FAIR), Newseum Institute and American Society of News Editors, National Association of Broadcasters have been studied to study how free speech is being regulated at different levels. Likewise, in UK, the European Convention was incorporated and the guarantee of freedom of expression it provided under Article 10 was implemented into its domestic law under the Human Rights Act subject to almost the same restrictions as in India. Legislations like Obscene Publications Act 1959, Telecommunications Act 1984, Malicious Communications Act 1988, Independent Television Commission Program Code and Broadcasting Act 1990 govern the print and electronic media so that each program or communication is in decent and good taste without giving rise to objections from any part of society. Bodies like Ofcom (Office of Communication), IPSO (International Press Standards Organisation), IMPRESS (Independent Monitor for the Press), PRESSBOF, Press Complaints Commission (PCC), Leveson Regulation Reforms work together to regulate media in its different sectors.

Likewise, in India, the functions and powers of following regulatory bodies have been studied:

- Indian Broadcasting Foundation (IBF)
- Broadcasting Content Complaints Council
- Broadcast Audience Research Council (BARC)
- News Broadcasting Standards Authority (NBSA)
- News Broadcasters Association
- Ministry of Communication and Information Technology
- Telecom Regulatory Authority of India

Apart from the said bodies, the Chapter also discusses various legislations to which various forms of print, electronic and social media have been subjected. It has been

concluded that despite the prevailing bodies and legislations, a need is felt for a separate legislation that deals with cases of media trials, paid news and sting operations.

The Researcher has studied the effect of Media trial on the various segments of the society namely, the media itself, the viewers, the Judiciary and the accused.

- On the media:

The media is creating an impression with each news story it covers. A journalist is duty bound to present true story, without any bias and based on complete facts because the story presented will be how the event will be perceived by the world at large. A heinous and condemnable crime calls for harshest punishment to its perpetrators and media has a duty to present stories like these before its audience and even appeal for harshest punishment possible. However, when media works solely on profit-making and TRP gain, it often lets go of facts and presents stories which may be half-baked, inconsistent, incomplete and often giving rise to more questions than answering some. The real picture when finally comes out badly tampers the image of media.

On the viewers:

Viewers are at the receiving end of media stories. Whatever mold, good or bad the media houses give to its stories, the same reaches till the viewers and that is the light in which they comprehend the event or the person. Likewise, the same perception is carried ahead in their minds and connected with other news stories thus forming a larger image based on facts presented by media.

On the accused:

As a helpless person waiting for justice from the judiciary, a wrongly condemned accused is the most pitiable victim of the media trial. The 24x7 media channels require that news stories keep getting covered throughout day and night and when a sensitive crime takes place, the same is instantly converted to a news story and those involved, connected or suspected of being a part of it immediately become a part of

media's breaking news for several hours. The positive or negative exposure which the media gives to such persons has a potential of seriously and permanently damaging their reputation. Until media is performing its duty of presenting facts before the public, no harm is done but once media begins its assumptions and presumptions and works out its stories based on them, it can seriously endanger the actuality of facts as well as those involved even remotely.

- On the Judiciary:

Judiciary functions for giving justice to the needy. Courts at every level, be it High Court or Supreme Court are responsible for providing justice to those who approach it in cases of any nature. When media indulges in acts like media trials, they are influencing the minds of its viewers and directing them in a particular direction as to the trial, i.e. like holding parents of Aarushi Talwar guilty as her murderer and harping on the same story by questioning the experts and relatives and showing the same on TV channels makes the audience feel that the murder was actually committed by parents of Aarushi Talwar though the Court had not delivered its verdict. On completion of CBI investigation, it was later discovered that her parents were in no way involved in her murder. Media had made all possible attempts to show this murder in light of illicit relationships, adultery and even honor killing simply to keep its TRPs against highly popular daily soaps. However, when the minds of viewers have been deeply influenced by such a media trial, not only the viewers but even the judiciary and those who are responsible for deciding the case at the apex level are pressurized to a great extent to let go of the facts available before it and consider the facts which are being shown on the news channels and which have been almost accepted by the viewers as the final facts.

The researcher has also analysed several unsanctioned bills related to media, some of which are as under:

- Communications Convergence Bill 2000
- Broadcasting Services Regulation Bill 2007
- Self-Regulation Guidelines for Broadcasting Sector 2008

- Print & Electronic Media Standards & Regulation Bill 2012
- Guidelines regarding Fake News 2018

The Communications Convergence Bill 2000 provided for suspension of media organisation's operations for upto 11 months as well as cancellation of its license as well as establishment of a media regulatory authority which has the power to ban or suspend the coverage of an event or incident that may pose a threat to national security from foreign or internal sources. Thus, the researcher finds that the said Bill had draconian provisions and they attempted to curb the media's freedom very heavily but nowhere any provision as to media trials or paid news was found.

Likewise, the Broadcasting Services Regulation Bill 2007 included obtaining compulsory license for broadcasting services, registration of channels and compliance with the Content Code and special powers of Central Government in a situation of external threat or war involving India. One of its main objectives was to provide for establishment of an independent authority to be known as Broadcast Regulatory Authority of India for the purpose of regulating and facilitating development of broadcasting services in India. After going through the bill, the researcher found that the provisions were mainly government regulated and media on its own had no independency to regulate and had to strictly comply with government rules in this regard.

Likewise, the Communications Convergence Bill 2001 and the recent Guidelines on Fake News 2018 also nowhere saw light of the day due to their straitjacketed provisions. While the Guidelines on Fake News nowhere in itself defined the term "fake news" itself it provided for temporary and eventual permanent suspension of the journalist on report of being indulged in fake news. Similarly, the Communications Convergence Bill aimed at establishing modern and effective communication infrastructure taking into account the convergence of information technology, media, telecom and consumer electronics and also creating a single body to monitor both the carriage and content of communication namely the

Communications Commission of India. It also had several other ambitious objectives for which the sole Bill was not sufficient. Hence, a new Bill was required to be passed due to which this Bill did not move further. Thus, as can be seen from above analysis, neither of the Bills nor prevailing legislations provide for media trials, fake news, sting operations or paid news. Hence, the researcher could identify a need for a separate legislation to deal with the newer issues arising out of the scientific and technological development of media. Hence, a separate suggestive legislation that deals with cases of media trials, paid news and sting operations has been given at the end of this chapter.

Freedom of press has been time and again reiterated by the Supreme Court in various landmark cases as discussed in Chapter **Four**. Chapter **Four** discusses the judicial position of some landmark as also some recent cases which have defined the position of media in India today. Being the fourth pillar of democracy and yet not finding a firm right to free speech in the Constitution of India, judiciary of India through its years of judgments and landmark cases by several Benches has specifically laid down media's right to free speech in same class as Article 19(1)(a). As the precedent was repeated eventually, the same had an unpleasant effect on media channels and journalists when cases of media trials, paid news, fake news and sting operations being operated by them under the garb of freedom of press came to surface. News channels started leaving behind the motives of social welfare and progress of society and started working for profit motives. Cutthroat competition with peers, fast-paced information pouring in from everywhere around the world led to deterioration of news quality and sometimes relying on frequently repeated news stories.

Chapter **Five** is non-doctrinal study conducted to find views and opinions of people from various parts of society on the freedom of speech and expression as available to them and to media

Accordingly, all the objects for which the research was carried out have been achieved through studying the various existing legislations and the powers of the regulatory bodies.

6.2 Observations / Inference of the Researcher on the study conducted

Legislative Position

The present bodies and legislations mainly aim at improving the current standards of news broadcast, compliance with code of conduct, maintaining standards of public taste, promoting interest of news broadcasters, and so on. However, no single body or legislation has defined media trials, paid news, social media, sting operations, etc. Considering this, such cases will be dealt with like any other cases in available provisions and punished accordingly. However, considering the gravity of the matter, it is suggested that an enactment is brought into force that exclusively deals with such cases because they involve sensitive issues of rights of media as against rights of the accused, corruption and purchase of airtime in order to broadcast news stories favoring a single political party and privacy rights of suspicious persons by arranging for sting operations.

In Nov 2006, former Chief Justice of India Y K Sabharwal expressed concern over the recent trend of media conducting ‘trial’ of cases before courts pronounce judgments and said that “if this continues, there can’t be any conviction. Judges are confused because the media has already given a verdict.”³⁹⁰ Citing pressure on the judiciary during the Nirbhaya rape case, Supreme Court Judge Kurian Joseph said media trials in pending cases should be avoided and thereby judges be saved of the enormous strain created by it. He further said that a judge is expected to speak only through his judgment. While performing work as a judge, if he makes a comment in the bench, media should not ever build upon that. By doing such things the media will do a great service to the nation and democracy.³⁹¹ Such is the force of media trial that the judges who are yet to decide the case themselves feel the force of media

³⁹⁰ Available on <https://m.timesofindia.com/edit-page/Media-on-trial/articleshow/1460248.cms> (Visited on 15.9.2018)

³⁹¹ Available at <https://m.timesofindia.com/india/media-trials-strain-us-says-SC-judge/> (Visited on 6.9.2018)

backed by millions of viewers urging him to decide the case in footsteps of the media itself.

After studying and analyzing the existing laws, the Researcher has found that the existing laws are insufficient to deal with Media Trial. The major reason is that there is no specific definition of media trial in any of the existing laws because of which the issue of media trial can't be dealt with.

Judicial Position

After studying and analyzing the various judicial decisions, the Researcher has the following observations:

- Press is not immune from laws of general application or ordinary forms of taxation or laws of industrial relations.
- Liberty of circulation as also liberty of publication of views and ideas were equally important and absence of either of them would fail the purpose of the entire structure itself.
- Right to freedom of speech cannot be taken away with the object of restricting business activities.
- Where the power of taxation encroached upon freedom of expression under Article 19(1)(a), the restriction on freedom must be within reasonable restrictions.
- The fundamental principle behind the freedom of press is people's right to know. The primary function of press is to provide comprehensive and objective information of all aspects of country's political, social, economic and cultural life. It has an educative and mobilizing role to play. It plays an important role in moulding public opinion.
- A blanket ban on publication of obscene materials or article in order to shield juvenile innocence cannot be imposed as it will lead to situation of newspapers publishing only that content which is in requirement of children despite being a source of information for all ages.
- It is perilous to obstruct free speech, expression, creativity and imagination for it leads to state of intellectual repression of literary freedom.

- Broadcasting is a means of communication and therefore a medium of speech and expression. Hence in a democratic policy, neither any private individual, institution or organization nor any government or government organization can claim exclusive right over it.
- If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who had indeed committed the crime, it amounts to undue interference with the “administration of justice” calling for proceedings for contempt of court against the media.
- The order to postpone publicity of judicial proceedings can be passed only when other alternative measures for warding off ill effect of media publicity such as change of venue or postponement of trial are not available. In passing such orders of postponement, Courts have to keep in mind the principle of proportionality and the test of necessity.
- There are three concepts which are fundamental in understanding the reach of freedom of speech and expression. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in.

Effect of Media Trial

The Researcher concludes that the Media trial has an effect on various segments of the society. And there is an urgent need to address the issue of Media Trial . The various instances of media Trial that have been dealt with by the Researcher in the relevant Chapters, substantiate the fact that the Media is transgressing its borders and entering into the judicial arena which, according to the Researcher is unconstitutional.

News Coverage

The researcher has concluded from the data that people still feel that the print media carries a more authentic version of the news rather than news channels on the electronic media. The researcher infers from the study conducted that having the

traditional advantage of being used since ages as a source of news, the newspapers are found a preferable source as against news channels.

The researcher also infers that media should desist from repetition of news stories frequently and more so when the news stories do not have much political, social or any other impact. Also, a continuous follow-up of news stories reveals new facts thus proving that the media is promptly working on the coverage of its news reports before presenting it to the audience.

On social media

While social media has spread drastically in almost all people in everyday life, there is still a limited class of society which prefers using traditional forms of communication. While the greater number of people are active users of social media, only a limited class has not made it a daily affair. The use of social media is done for almost all purposes apart from regular e-mailing and internet browsing, like finding information, keeping up with current affairs and social connectivity. However, despite news channels also switching to social media to use it as an interactive platform, the same gets a lukewarm response because a very limited number of people participate in online polls, opinion polls, tweeting and hashtagging the news reports. Thus, freedom of press is being exercised though in a limited manner.

- Paid news, media trials and sting operations

The researcher concludes that the nuisance of vices of Paid news, media trials and sting operations is so widespread that maximum number of citizens are now aware of the excessive use of freedom of press as exercised by media. Media trials, paid news, fake news and sting operations are mischievous news reports mostly to earn improved media rating, TRP numbers and put better competition against peers and hence calls for Media regulation.

- Media regulation

The researcher has concluded from data analysis that media should be regulated by an internal as well as an external regulator so that any mischiefs on part

of media can be detected at the earliest from either side. Internal media regulation exclusively will leave scope of mischiefs and internal (mis)management by media houses while external media regulation can suffocate the media by choking its very freedom of press. External regulation will limit the powers of media in order to report freely. Hence, a regulation at dual level, internal as well as external needs to be implemented. However, a very limited class of respondents opined that media should not be regulated at all.

Researcher, further concludes that freedom of press should not be made available only through judicial decisions but should also be specifically provided in the Constitution of India. As has been noticed, once freedom of press was provided, it has been misused time and again resulting in several vices. A probable measure wherein the freedom of press is provided in the Constitution itself along with strictures and specific restrictions against which it can be exercised by media may prove helpful in curbing cases of media trials, fake news, paid news and sting operations.

Conclusions drawn on the Hypothesis

On the basis of above discussions and inferences, researcher has drawn conclusions on the Hypothesis of this research work as under:

- Hypothesis no. 1: Are the existing laws adequate to tackle the impact of science and technology on freedom of speech and expression?

The said Hypothesis has been negated by the inference drawn in this research study.

- Hypothesis no. 2: Are the regulatory bodies of India like Press Council of India and News Broadcasting Standards Authority adequate to control the telecast through internet?

The said Hypothesis has been negated by the inference drawn in this research study.

- Hypothesis no. 3: Have the provisions of I.T. Act been misused by State machinery to curb, control and silence the political criticism?

The said Hypothesis has been negated by the inferences drawn in this research study.

- Hypothesis no. 4: Does the media carry impression that their rights are superior to rights of citizens of freedom of speech and expression?

The said Hypothesis has been affirmed by the inferences drawn in this research study.

6.2 Suggestions

On the basis of the Study conducted, the Researcher has to submit the following suggestions.

- **Unbiased and Fair Media**

Freedom of speech and expression is fundamental to an individual as to media. However, media should respect the said right and should not excessively indulge in utilizing the same. In all circumstances each form of media should give a clear and unbiased picture of society and world because its duties in long run are shaping the nation and the society.

- **Responsible Reporting**

Quality of news reporting should be improved from the core level. Education levels for those studying in journalism and mass communication should include indepth study of aspects of constitutional law, human rights, protection of life and liberty, law relating to defamation, contempt of court and media ethics and practices. After entering the field, such practices can be desisted only if they have been made to understand the repercussions of such practices in long run.

- Having competition from platforms like electronic and social media should not be a reason for print media to report news stories with flashier and saucier words in order to increase its readership. News reports should be checked and verified with authentic sources at dual levels so that wrong reports can be avoided to the maximum extent.

- Once a wrong party gets the political seat, it can take several decisions which may be against the nation and social welfare – all this only after media decided to bring forth a news story which was favoring a single party. Stories which are in nature of reporting the achievements of a single political party should be broadcasted separately and not as a news report and with the words “**For public information only**”
- While reporting events involving crisis situations, media must first study the crisis in depth, detect the root cause of problem and suggest constructive measures to deal with it.

- Media Trial

- A news story has the potential of making or destructing the life of any person and therefore media should curb on media trials until any case has been finally decided by the judiciary. The commencement of trial should be from the filing of FIR and from that moment, role of media should also be brought under direct control and supervision of Court to avoid media leaking loose ends before public.

Ombudsman

- A full time news ombudsman with vast powers to curb media violations must be planned and appointed.

Social Media and Fake News

- Free speech being a right of every individual as also of media, becomes almost a double-edged sword. If media needs to be able to healthily report all the events of political, national, social or of any other nature, it needs to have right of free speech in absence of which it will not be able to function to the best of its capabilities. On the other hand, it also needs to be responsible and extremely cautious with information it collects during the course of broadcasting news stories. Authenticity of all details must be verified before making a news story public because any harm, whether intentional or otherwise cannot be easily undone once a news story goes in public domain.

- Media has to only report the events and news stories from nation and world over. It should not attempt at creation of news where there is none and feeding it to public because only the major news stories are to be reported and not the cooked up/ fake or created ones.
- Likewise, the recent increase in case of fake news on social media also must be reduced because it is like taking action against void. Fake news multiplies on social media platforms but now users should verify the authenticity of any post and should not blindly forward the same or act violent on basis of it. Free speech is intended to spread a healthy, harmonious and cordial relation amongst the citizens and any other source of free speech should act in the same direction rather than the opposite one.
- Search engines should be so designed that pages of news stories with dubious character are filtered so that the same do not reach the public and can be spread further. For this purpose, only pages and websites with proper certification and reliable administrators should be presented as an end result.
- Social media is mainly accessed through apps like Facebook, Twitter, WhatsApp, Instagram, etc. Even newspapers and news channels have their own apps for mobile users. Such apps mainly give options of tweeting, posting, hashtagging, tagging, etc. If security levels of these are so enhanced that the tweets and hashtags with sensitive words get a dual-level check to verify their authenticity before they get spread, it can greatly curb spread of false information. Likewise, even users must consider it their responsibility to avoid spreading wrong information through use of search words.

Paid News

- Instances of paid news should be nullified because it is just one small step in direction of electing a wrong party to the power. “Paid news” should be declared as an electoral malpractice and same should be added by an amendment to The Representation of the People Act.

Sting Operations

- Sting operations must be carried on respecting the privacy rights and the information on basis of which a sting is carried out must be verified as also the dubious acts of the person on whom sting is to be performed. Sting operations must be carried out with utmost care and only as a last resort as they invade the privacy right of an individual. Where a sting operation is found to be false and fabricated the media company ought to be given stringent punitive punishment commensurate with the damage caused to the individual against whom the sting was planned.

Role of Media

- Electronic and news media should play positive role in presenting to general public as to what actually transpires during the course of the hearing and it should not be published in such a manner so as to get unnecessary publicity for its own paper or news channel.
- Media must play the role of a facilitator rather than tilting the scales in favor of either party to the case. So the power of media needs to be handled sensitively, sensibly and most importantly responsibly and demarcation line though thin and subtle needs to be clearly drawn especially in context of Contempt of Court Act and media trial.

Media Regulation

- Media regulation should not be exclusively either in external hands or from internally. Putting all power in external hands will merely gag the media's right to free press due to which it may fail in performance of its duties to the mark. On the other hand, a total internal regulation will lead to misuse of powers and an excessive use of freedom of speech. A dual level regulation which is partly in hands of an external authority and partly to be regulated at internal level will help in achieving the object of media regulation without gagging its freedom totally.

Net Neutrality

- Net neutrality should be encouraged and sustained throughout because putting a price tag to it will yet again be nothing but a deadlock on the right of free speech of citizens. Any platform being used by citizens for a healthy exchange of ideas and opinions, sharing views must be involuntarily neutral to any ideas of making a profit in lieu of providing an app to make oneself heard. To summarise, internet is a place for gaining knowledge and information, keeping oneself abreast of changing world, meeting people across the world, exchanging views and opinions on latest developments. It should remain available to everyone without making it a privilege of only those who can afford.
- Apart from existing legislations and news regulatory bodies, a separate legislation needs to be enacted which shall deal with cases pertaining to media trials, fake news, paid news and sting operations. Freedom of press must be respected but an over-indulgence of the same should also not go unchecked. The new legislation should have regulatory mechanism and powers in such a manner that cases not complying with reasonable restrictions and freely using/misusing media rights are punished. The new legislation cannot be a draconian law which punishes each and every case connected to media. Article 19(2) gives reasonable restrictions subject to which freedom under Article 19(1) must be exercised. The new legislation shall merely attempt to maintain the said practice and punish any malpractice.

After analyzing the gaps in present media laws, the researcher suggests a draft legislation on following lines:

The Media Regulatory Act

Preamble: Whereas it is expedient to curb and control media's over-indulgence in free speech resulting in media trials, sting operations, fake news and paid news by defining the said terms and stating scope and extent of the same and punishing the same.

1. Short Title, Extent and Applicability:

- (1) This Act may be called The Media Regulatory Act
- (2) It shall extend to the whole of India.
- (3) It shall extend to all matters related to media trials, sting operations, paid news and fake news.

2. Definitions:

In this Act, unless the context otherwise requires:

- (a) “Electronic media” means all sorts of electronic gadgets like televisions, smartphones, computers, laptops, mobile phones and tablets which maybe used for communicating;
- (b) “Fake news” means any piece of news information printed in print media or broadcasted on social or electronic media which does not have any verifiable and authenticate origin but has been spreading in public domain and knowledge merely due to being shared or forwarded by one to another;
- (c) “media trial” means broadcast of any news information on television or newsprint in a newspaper which gives or attempts to give a complete newsreport about pending litigation before any court in India in print media or broadcasted on social or electronic media which focuses on the probable future outcomes of any litigation pending before Court of any level in India merely on basis of parts of information and circumstantial evidence available to the media and without considering all aspects of the case in the entirety. Adjudication by media of any pending case shall be considered as “media trial”
- (d) “paid news” means any piece of news information printed in print media or broadcasted on social or electronic media which is in nature of giving an unbiased picture and listing major activities of any single entity including a political party, a politician, MLA or any other respectable person of society mainly for purpose of creating positive image of the said entity before the public at large;
- (e) “sting operation” means any undercover operational activity carried out by stealth by an authorized person against any person whose activities have been found dubious on earlier instances, in order to capture him carrying out the actual act of crime.
- (f) “social media” means all forms of online sources of communication accessed through electronic devices likes smartphones, computers, tablets and laptops which

are used for exchange of ideas, expressing views and opinions, sharing, posting and forwarding photos, videos, posts or tweets from an individual account to other individuals or to the world at large.

3. Constitution and Functions

A Media Regulatory Authority namely “National Media Commission” be constituted. The Commission shall consist of seven members which shall be as under:

- (i) A Chairman who is a retired Supreme Court Judge;
- (ii) Two members from information technology sector with expertise in latest technological aspects, electronic communicating devices and their operability, application building and updating.
- (iii) Two members from media sector with expertise in media ethics, news reporting, journalism, constitution of India, human rights.
- (iv) Two forensic experts.

4. Complaint mechanism:

The National Media Commission may act suomotu or on the complaint by any person or body against any media authority, channel or journalist, newspaper or news reporter if such media authority, channel, journalist, newspaper or news reporter is alleged to be reporting media trial, sting operation or fake news or indulging in paid news.

On receipt of such complaint, the Commission shall issue a Show Cause notice to the alleged media authority, channel, journalist, newspaper or news reporter seeking response as to why action should not be taken against them.

The said notice has to be responded within one month of receipt of the same;

On receipt of the notice, the alleged accused authority or person may through an authorized person remain present for hearing and responding to the complaint before the Commission;

The Commission shall hear both the sides and pronounce the order accordingly. If the complaint is proved to be without any substance and the person charged proves that his act was covered under reasonable restrictions as provided under Article 19(2), he shall be acquitted accordingly and cleared of all charges.

If the complaint is found genuine, the accused shall be punished with an imprisonment of six months and with a fine of Rs. 50000/-.

The order shall be appealable before the Supreme Court.

5. Functions of Committee

The Committee shall carry out the following functions:

- (i) Proactively or reactively inquire into violations of media laws and rules as applicable under present legislation or under any other legislation;
- (ii) By leave of the court, to intervene in court proceeding relating to media laws;
- (iii) Make recommendations about granting relief to the victims and their families;
- (iv) Review the safeguards provided under any legislation for protection and due implementation of media laws and recommending measures for their effective implementation;
- (v) To study treaties and other international instruments on media laws and make recommendations on basis of the same for their effective implementation;
- (vi) Undertake and promote research in the field of media laws;
- (vii) Such other function as it may consider necessary for protection of media laws

6. Power of Central Government to make rules. -

The Central Government may, by notification, make rules to carry out the provisions of this act.

The media as also the judiciary are the oxygen systems of a healthy democracy. While the judiciary decides cases and lays down precedents in cases involving a common man, media helps in showing the picture of the society. The duty of media

hence becomes manifold to create news stories which can have a positive effect rather than spreading the same information in a negative manner. Media's interference in judicial system by conducting trials in sensitive cases is against the constitutional right of fair trial of the accused and even amounts to subverting the Constitution. The media should restrict itself from seeking, creating and presenting news stories in the nature of media trials and thus take over the job of law enforcement agencies and judiciary for ensuring due punishment of criminals. If media representatives evolve a self-regulation based model for keeping a check on the activities, the same would prove more beneficial for media because professional freedom is not a privilege but a responsibility and media should strive for handling the same with due care. Being assigned the role of watchdogs and conscience-keepers of the society, it is duty of media to ensure that the right kind of decibel is raised appropriately and in measured scales on every issue. Journalism at its best can even have a leading role in the agenda-building process but this should not be confused with agenda setting process and propaganda. So, the researcher argues in favour of proper regulation of the media within the Constitutional contours of Article 19 (2).

As has been rightly said "People are sheep. TV is the shepherd." Let the shepherd not misguide the sheep. Let the sheep not go astray when the shepherd gets mischievous.

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QUESTIONNAIRE

The following questionnaire has been prepared for research on the topic "Freedom of Speech and Expression in respect of Social and Electronic Media." The researcher intends to study the awareness and exposure of media-related laws in the society as well as the emerging vices like paid news in broadcast media and provide his suggestions. The questionnaire includes open-ended as well as close-ended questions which may be filled up accordingly. (i.e. For open-ended questions, kindly give your personal opinion while for close-ended questions, kindly select one of the options given against the question). The information provided shall be used for research purpose only and details of the subject shall be kept confidential.

PERSONAL DETAILS:

- (a) Name: (c) Gender: M/F
(b) Age: (e) Profession:
(d) Qualification:

(A) Print Media:

1. Which newspapers do you prefer to read?
(a) English (c) Regional
(b) Hindi (d) Any
 2. Do newspapers have a more authentic version of facts than the news channels? Yes/No
 3. (a) Are you aware of any law/body governing print media?
Yes/No
(b) If yes, kindly mention the name/s.
-

(B) Electronic Media:

4. Which news channels do you prefer to watch?
(a) English (c) Regional
(b) Hindi (d) Any

5. Does a round-the-clock follow-up of any news story on electronic media help in finding out new facts?

Yes/No

6. (a) Are you aware of any law/body governing electronic media?

Yes/No

(b) If yes, kindly mention the name/s.

-

(C) Social Media:

7. Are you active user of social media?

Yes/No

8. Which purposes do you use social media for?

- (a) Leisure activity (c) Finding information
(b) Latest events/current affairs (d) All of the above
(e) Any other

9. Do you participate in online opinion polls, tweets, etc.?

Yes/No

10.(a) Are you aware of any law/body governing social media?

Yes/No

(b) If yes, kindly mention the name/s.

—

(D) Questions related to all 3 media forms:

11. Which form of media do you prefer for getting information about current affairs?

- (a) Print media (c) Electronic media
(b) Social media (d) All of the above
(e) None of the above

12. Which is the most appropriate form of media regulation?

- (a) By an external body (c) Both, external & internal regulation

(b) From internally (d) No regulation

13. (a) Are you aware of the term “paid news”?

Yes/No

(b) Kindly mention any one story in print/electronic media which according to you is in nature of “paid news”

14. (a) Are you aware of the term “media trial”?

Yes/No

(b) Kindly mention any one story in print/electronic media which according to you is in nature of “media trial”

15. (a) Are you aware of the term “sting operation”?

Yes/No

(b) Kindly mention any one story in print/electronic media which according to you is in nature of “sting operation”

(E) Personal experience of media exposure:

16. Have you ever participated in any of the following?

(a) Debate

(c) Opinion Poll

(b) Talk show

(d) All of the above

(e) None of the above

17. Kindly share your experience of participation. i.e. Topic of debate/talk show/opinion poll and whether you could fully express yourself or not.

(a) Topic: _____

(b) Whether you could express yourself fully: _____

(c) Any other details: _____

(F)Article 19(1)(a) of Constitution of India:

18.What should be the extent of protection given to freedom of press?

- (a) Specifically covered under Art.19(1)(a)
- (b) Impliedly covered through judicial decisions
- (c) Through both (a) and (b)
- (d) Neither (a) nor (b)

19.Should there be any additional restrictions other than those mentioned in Article 19(2) that limit the freedom of press?

- (a) Yes, more restrictions are needed
- (b) No, only those currently available are sufficient
- (c) No restrictions at all on freedom of press

A STUDY ON FREEDOM OF SPEECH AND EXPRESSION IN RESPECT OF SOCIAL AND ELECTRONIC MEDIA

SUMMARY

Media plays a major role in shaping the nation by way of broadcasting 24x7 news channels, science and technology channels, sports channels, etc. Amidst all these, as news channels are a major form of informing the news events, news stories from nation and the world, they have been termed as the fourth pillar of democracy. Though the Constitution of India did not specifically provide any rights to press, freedom of press was guaranteed time and again through consistent judicial decisions which specified that press had the same rights of free speech as any other citizen under the Constitution of India and the same were also subject to reasonable restrictions.

The Constitution of India provides freedom of speech and expression to all its citizens which is subject to reasonable restrictions namely in the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The said restrictions ensure that the freedom of speech and expression is not transgressed by the citizens in any manner but so utilized so as to bring out the best in them. The said freedom is nowhere specifically mentioned in the Constitution but through various landmark judgments freedom of press has been provided to press and media.

As the use of newly found social media kept increasing due to its unique concept of sharing live videos, photographs through social networking sites such as Facebook, Instagram, WhatsApp, Twitter, etc. the right of freedom of speech and expression found a new platform to stand on. Anyone and everyone could now use social media to make himself heard or to give his opinions and share his views with anyone else on a public platform. The widespread use of social network also came to be used by news channels. News channels created their websites which continuously

updated the news headlines through reports, photos and videos. Anyone on the go could stay abreast with the latest happenings through social media and even give his views on any issue, be it political, social, national or international.

However, social media came with its own vices which also spread its roots in electronic and print media. News channels which were originally the sole broadcasters of news stories and news coverages through their professional level journalists now faced competition not only from its peers but even from social media which helped in rapid news communication. Again, anyone could now report and

update news from his vicinity by taking photo or video and putting it in public domain for viewing, informing and spreading it ahead.

For this reason, media started indulging in sensationalisation of news by creating fake news, media trials, sting operations and paid news.

All such instances have raised doubts on the freedom of press which was to be utilized for healthy reporting of news events and news reports. However, it has now started getting misused and overstepped by indulging in such acts of media trials, sting operations, fake news and paid news. Again, as no present legislation defines either of the terms, the gravity of the same cannot be exactly determined.

Chapter One is the introductory chapter. It discusses the rationale of present study, object and hypothesis of present study as well as literature review alongwith how present study differs from previous studies conducted on the subject. The research was conducted on the basis of the following hypothesis:

- Are the existing laws adequate to tackle the impact of science and technology on freedom of speech and expression?
- Are the regulatory bodies of India like Press Council of India and News Broadcasting Standards Authority adequate to control the telecast through internet?
- Have the provisions of I.T. Act been misused by State machinery to curb, control and silence the political criticism?
- Does the media carry impression that their rights are superior to rights of citizens of freedom of speech and expression?

The researcher has used Maximum variation sampling which is a purposive sampling technique where subjects are selected to study varied perspectives in order to determine the exposure of media laws. Thus, questionnaires have been collected from various segments of society such as judges, advocates, law students and teachers as well as students from journalism field and company secretaries.

Chapter Two of present research deals with development of media starting from the earliest print media and its development in the world and in India followed by advent of electronic media and its spread through electronics like television sets and radios. The research also discussed the development of internet and how it formed the crux of the entire social media. Major platforms of social media such as Facebook, WhatsApp, Twitter, Instagram, etc. have been discussed as not only

individuals but even news channels use the said platforms for seeking opinions, tweets and views of everyone on the news stories posted by them.

Chapter Three of the research studies the national and international legislations as well as regulatory bodies pertaining to media in USA, UK and India. How the free speech is regulated in USA and UK have been discussed in this chapter. Likewise, as the Constitution of India provides freedom of speech and expression subject to reasonable restrictions and the same also apply to freedom of press, they have been discussed in the Chapter in detail. Also, regulatory bodies like Press Council of India, News Broadcasters Association, News Broadcasting Standards Authority, etc. regulate the functioning of newspapers and news channels.

Chapter Four deals with the judicial position of cases involving newspapers, TV channels and social media wherein it has been observed that news channels and newspapers have been specifically granted freedom of press subject to reasonable restrictions mentioned above. Where the media has been attempted to be stepped upon by tax authorities or by arbitrary increase in price of newspapers, Supreme Court has directed appropriate strictures to concerned authorities so that freedom of speech and expression remains undeterred. Likewise, if legislature has been found to be inconsistent or wrongly stepping over citizens' right of free speech, such provisions also have been struck down.

Chapter Five deals with non-doctrinal research which seeks to know how media laws are viewed by different sects of society and how far have they utilized their free speech right on media. Analysis have been drawn on basis of the response which show that media needs to be regulated at dual level, viz. internally as well as externally. Also, the research shows that the cases of media trial, fake news, paid news and sting operations are now known to one and all and hence need to be treated at the earliest.

In Chapter Six, the researcher has given conclusions and suggestions based on the entire study. Need is found for a separate legislation which relates to the recent vices of media rising from freedom of press combined with ever-developing science and technology. No legislation defines media trials, fake news, paid news or sting operations and hence when the cases thereof arise, the same are not aptly tried.

SYNOPSIS

A STUDY ON FREEDOM OF SPEECH & EXPRESSION WITH REFERENCE TO SOCIAL & ELECTRONIC MEDIA

The Constitution of India is the basic document of the nation. Amongst various other provisions that state the working of the executive, legislature and judiciary, it also sets down the rights, duties and freedoms available to every citizen and the restrictions thereupon. These rights were considered inevitable by the framers of Constitution in order to guarantee a proper living of all citizens of the nation. Article 19(1)(a) of the Constitution of India specifies that:

All citizens shall have the right to freedom of speech and expression.

Article 19(2) provides that:

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

A combined reading of both the provisions creates the result that all the citizens of the nation are entitled to freedom of speech and expression but only to the extent that it does not violate the restrictions which have been laid down on the said freedom. If any individual during the exercise of his freedom of speech and expression steps upon similar right of any other person, such an exercise will be violation under Article 19(2). Thus, Constitution has taken care that nobody can overuse his freedom at the cost of over-stepping on the same rights of another citizen.

Article 14 of the Constitution provides for “equality of law” and “equal protection of law”. Every citizen is equal in the eyes of law and there is no scope for discrimination on any ground. Hence, the freedom as provided under Article 19(1)(a) shall also be equally available to every citizen. The said freedom is immensely important and the same can be figured out considering that media which has been considered the “Fourth Pillar of Democracy” has also been equipped with the freedom of speech and expression meaning that even the major forms of media, namely the print media, electronic media as well as the recently evolving social media have been provided freedom of speech and expression while performing their duties. Though nowhere specifically provided for in the Constitution, media has been conferred with freedom of

speech and expression by the judiciary under Article 19(1)(a) as it has been conferred to every citizen. It is of utmost relevance to media because media expresses itself to the world at large. Its news stories, articles, editorials are read by one and all for updating themselves with the who's who of the world. Removing this right for media may result in a chaotic situation where journalists and editors are unable to produce news stories as and when they happen. The news channels cannot conduct interviews thus resulting in total unawareness for the general public regarding what's happening in the world and who is to be held accountable for the same. Decisions will be taken bureaucratically as nobody with an authority would be responsible to the public.

Media is the fourth estate in a democracy. It plays a major role in informing the public and thereby shape perceptions and through it the national agenda. Considering how the literacy levels are increasing across the world, each and every individual is in search of information relating to current affairs, political scenarios, scientific developments, art and culture, sports, finance, etc.

Due to continuous developments in science and technology, the media has developed modern manners of presenting its news stories. Gutenberg's invention of printing press in the 14th century has proved to be a boon to the world. The newspapers that can be printed in millions of copies everyday now would have been impossible otherwise. But gone are the days when print media alone was the sole pioneer of the entire media landscape. Today, even though newspapers have created a firm space amidst the people, the news carried through social and electronic media is equally welcomed by the public. The invention of internet and its easy accessibility through computers, smartphones, notebooks and other electronic devices has changed the way people get the news. E-papers, online news, opinion polls, online surveys, tweets and commenting have made news system not just a one-way communication from media houses to the public but an informal and prompt exchange of views and ideas in respect of current affairs or any political event. People have found a platform wherefrom they can express what they feel in respect of anything that is happening in the world.

Gone are the days when the major sources of communication, news and entertainment were just selective newspapers, All India Radio and Doordarshan. While newspapers and magazines were a form of print media which was the earliest form of media communication, it was taken over by electronic media which mainly included television and radio. Today, media

offers several other forms of communication which are faster, easier and more easily accessible than any of the earlier sources of communication like smartphones, laptops, tablets, etc. It would be impossible to imagine living sans the various forms of media that are available today.

But like everything that is in excess becomes unhealthy and inadvisable, even media can be held responsible for several flaws emerging out of the freedom of speech and expression that has been provided to it.

Due to 24x7 news channels, people get prompt report of latest happenings from across the world but simultaneously there are also instances of paid news, sting operations, media trials, etc. Likewise, there are entertainment and film channels, but the content of their programs also needs a check considering the vast audience of various age groups to which such programs are broadcast. In absence of such measures, the channels often take liberty to broadcast program content of any level without any restriction, thus sometimes offending the viewer groups like women and children. Even on social media which is the biggest platform used by every individual, many feel that they cannot express themselves completely while others use the same platform to abuse the rights of others, be it publicly or personally. Thus, it can as well be said that development of media has resulted in an increasing number of sources of media which again has proved both, a virtue and a vice.

Simultaneously, due to media convergence, there is a continuous process of churning out modern modes of presenting news which combine traditional ways of printing, broadcast, publishing news stories online, and so on. Considering these problems, the question arises if media needs to be regulated and to what extent should it be regulated? Also it is important to determine if the regulation has to be from within the media houses itself or should there be an external regulator independent and separate from all media houses?

Judiciary has time and again recognized the freedom of press. Even though neither the Constitution of India nor the legislators have anywhere specifically provided for the freedom of speech and expression as available to the press, the Indian judiciary has through its various landmark judgments specified that the freedom of speech and expression as available to the citizens of India is also available to the media houses. Likewise, just like the citizens' right is restricted by reasonable restrictions as mentioned under Article 19(2), the rights of media have also been curtailed by these reasonable restrictions.

- Chapter One deals with the introductory aspects of the research work. A brief introduction has been given about the various aspects of Article 19(1)(a) of the Constitution of India alongwith the scenario of media world mainly the print, social and electronic media. The hypothesis, the object and scope of study as well as limitations and delimitations, conceptualization of terms have been discussed. The research has been done by doctrinal and non-doctrinal methods. For doctrinal study, the researcher has referred to several books related to communication, mass communication and journalism, media and social media, Constitution of India, Freedom of Press, Freedom of Speech and Expression, bare acts of specific laws relating to media and has also referred to previous research works conducted on similar topic. For non-doctrinal research, the questionnaire method has been used and the researcher has collected data by collecting filled up questionnaires from several segments of society such as lawyers, students of mass communication and journalism, law students, teachers from mass communication and law faculties, company secretaries and chartered accountants. The research has been conducted with the object of:
 - finding if existing laws related to media in India are sufficient to deal with media trial
 - studying the existing laws governing the media in the light of advent of science & technology
 - studying the powers of regulatory bodies

Chapter Two deals with Development of Media. In this Chapter, the evolution of media has been discussed at length. Starting from the earliest form of media, namely the print media and how it evolved with invention of Gutenberg's printing press and then eventual growth of newspapers, magazines, periodicals, etc. across the world followed by invention of television, radio and other electronic devices which shifted the media sources from print media to electronic media have been discussed alongwith how growth of technology also brought related laws into existence. For e.g., first US copyright law was enacted in 1790 as several articles, books, fiction, etc. had started to come in existence due to technologic advancement in print media.

Finally, invention of computers followed by internet and its widespread use have been discussed alongwith how social media is transforming the media platform today as well as how all three forms of media – namely, print, social and electronic media are working simultaneously to provide a continuous supply of news and information to the entire world has been discussed.

Social media has given rise to new forms of communication like Facebook, Whatsapp, Snapchat, etc. They help in sharing photos, videos and every other kind of information. Today, they are a major form of communication hence the same have been discussed.

Widespread use of mobile phones also plays a major role in ever-increasing number of users on social media. Smartphones and data connections when merged together almost seclude a person from the physical world surrounding him entirely and keep him glued in a virtual world wherein he can express himself through photographs, tweets, comments, etc. Such is the impact of social media that if a person fails to express himself aptly on it, he tends to feel lack of his freedom to express. The Constitution of India under Article 19(1)(a) gives everyone a freedom of speech and expression but the framers might not have comprehended that this freedom will one day be used not only in physical world while dealing with other persons but also in a virtual world like that of social media wherein one's opinion spreads faster than it ever could in real world. Hence, the reasonable restrictions as provided under Article 19(2) become even more necessary to control the misuse of freedom of speech and expression. The landmark judgment of *Shreya Singhal vs. Union of India* set utmost standards of free speech and expression by striking down Sec. 66A of the Information Technology Act which set limits on free speech on the internet. This proves the vital importance of freedom of speech and expression and that even the judiciary is prepared to take over the legislature wherever it has wrongly implemented a law.

Also, various terminology of media like communication, mass communication, media, mass media, social media, new media and media convergence have been discussed to elaborately deal with the research work. As the print media is the earliest form of communication and also the base of major forms of communications available today, its evolution has also been included. A detailed timeline of how each form of media had developed in the world as well as in India have been given so that a year-wise development can be studied.

Chapter Three deals with the national and international legislations in respect of social and electronic media. The researcher has studied the legislations pertaining to print media, social media and electronic media which are available in USA, United Kingdom and India. The Chapter covers enactments as well as recommendatory bodies, regulatory framework, conventions and charters which have been held and implemented internationally and in India.

Following international Instruments, Conventions and Treaties have been discussed:

1 International Convention concerning the Use of Broadcasting in the Cause of Peace, 1936

2 U.N. Charter 1945

3 American Declaration of the Rights and Duties of Man 1948

4 Universal Declaration of Human Rights 1948

5 European Convention for Protection of Human Rights and Fundamental Freedoms 1953

6 International Convention of Civil and Political Rights, 1966

7 UNESCO Mass Media Declaration 1978

8 Charter for a Free Press (1987)

The researcher has studied statutory provisions relating to media in U.K. namely:

1 Malicious Communications Act 1988

2 Broadcasting Act 1990

3 Human Rights Act 1998

4 Communications Act 2003

5 Digital Economy Act 2010

6 Independent Television Commission Program Code

7 Ofcom Broadcasting Code

Existing regulatory framework related to print media, social media and electronic media has been studied.

1 Print Media

- Press Standards Board of Finance
- Press Complaints Commission
- Leveson Regulation Reforms
 - Royal Charter 2013
 - International Press Standards Organisation (IPSO)
 - Editors' Code of Practice
 - Press Recognition Panel
- Independent Monitor for the Press (IMPRESS)

2 Electronic Media

- Office of Communications (Ofcom)
- British Broadcasting Corporation (BBC)
- Broadcasting Standards Commission

3 Social Media

- Body of European Regulators for Electronic Communication

As all three forms of media are starkly different from each other, each of them requires a different mode of regulation. Again, as Indian laws are in the nature of those found in USA and UK hence researcher has studied the laws and regulatory bodies in USA and UK.

Following Acts and Regulatory bodies of USA have been studied:

1. Statutory Provisions

- Espionage Act 1917
- Sedition Act 1918
- Smith Act 1940
- Communications Decency Act 1996
- Telecommunications Act 1996
- Digital Millenium Copyright Act 1996
- Broadcast Decency Enforcement Act 2005
- Free Flow of Information Act 2013

2. Regulatory Framework

- Federal Communications Commission (FCC)
- Media Bureau
- International Bureau
- Fairness and Accuracy in Reporting (FAIR)
- Newseum Institute
- American Society of News Editors
- National Association of Broadcasters (NAB)
 - Internet Free Expression Alliance

The major Acts in India which provide for regulation or penalty in relation to media have been studied. These Acts are as under:

- Press and Registration of Books Act
- Indian Telegraph Act 1885
- Newspaper (Incitement to Offences) Act, 1908
- Indian Penal Code
 - The Cinematograph Act 1952
- The Drugs and Magic Remedies (Objectionable Advertisements) Act 1954

- The Young Persons (Harmful Publications) Act 1956
- The Copyright Act 1957
- Defence of India Act 1962
- The Parliamentary Proceedings (Protection of Publication) Act 1977
- The National Security Act 1980
- Indecent Representation of Women (Prohibition) Act 1986
- The Cable Television Networks (Regulation) Act and Rules 1995
- Information Technology Act 2000

Like USA and UK, India also has regulatory bodies to look over the functioning of all forms of media. These regulatory bodies are as under and the same have been studied in the research:

- The Press Council of India
- Indian Broadcasting Foundation
- Broadcasting Content Complaints Council (BCCC)
- Broadcast Audience Research Council (BARC)
- News Broadcasters Association (NBA)
- News Broadcasting Standards Authority (NBSA)
- Ministry of Communications and Information Technology
- Telecom Regulatory Authority of India (TRAI)
- Prasar Bharati

In addition to these bodies, several legislative attempts were made for enactment of new Bills and guidelines for a more indepth check over the media functioning. However, the said attempts were not successfully passed as Acts and implemented. The same are listed below:

- Communications Convergence Bill 2000
- Broadcasting Services Regulation Bill 2007
- Self-Regulation Guidelines for Broadcasting Sector 2008
- The Cable Television Networks (Regulation) Second Amendment Bill 2011
- The Press and Registration of Books and Publications Bill 2011
- Print and Electronic Media Standards Bill 2012
- Cinematograph Bill 2013

Chapter Four discusses the judicial approach of Hon'ble Supreme Court in respect of media. As the Constitution of India nowhere specifically provides for the media's right to freedom of speech and expression, the same has been provided through landmark judgments decided by Supreme Court of India wherein it has laid down the right of media to freedom of speech and expression. While the Court has laid down and reiterated this right through some cases and gone to the extent of striking off laws which hinder an individual's right to freedom of speech and expression, it has also laid down guidelines wherever the media has crossed this freedom beyond limit. Media has often been the subject matter of judicial decisions in the past decade. In its various decisions over a period of time, Supreme Court has at some places, detested the media wherever it has taken excessive liberty and laid down guidelines to be followed in future while at other places, supported media by going to the extent of striking down laws which seemed to be a restriction on the freedom of speech and expression. Some of the major case laws that have defined the freedom of speech and expression to media are discussed below:

- **Shreya Singhal vs. Union of India: AIR 2015 SC 1523**

The said judgment was a major one since the rise of social media as it gave a platform to millions of everyday social media users to express their views and opinions freely. After the rise of internet and social media, many people had started using the same to exchange their ideas of political views, current affairs, etc. The Information Technology Act, 2000 under Section 66A had laid down rigid criteria due to which law enforcing agencies often interpreted it in a narrow and limited manner. Again, the Section had used several terms like "offensive", "causing annoyance", "grossly menacing", etc. but nowhere were they defined which made them open to an unlimited number of interpretations as maybe desired by the law enforcers. Likewise, the Section also indirectly restricted political satire, caricatures and cartoons which were based on current affairs. Due to this, even a healthy expression of ideas by artists and cartoonists became getting restricted. The Court in its judgment held that Section 66A was vague, open-minded and undefined. It was unconstitutional, void and hindered free speech on social media. Also, it nowhere specifically provided as to what acts if performed on internet would amount to defamation. The Section had lacunae both for internet users as well as law enforcement agencies as neither the terms used were well-

defined nor the extent of speech within the scope of the Section was mentioned. Thus, the Section had a intimidating effect on free speech.

- **Aveek Sarkar and another v. State of W.B. and others. (AIR 2014 SC 1495)**

The Queen's Bench gave the Hicklin Test while deciding the case of Regina vs. Hicklin. As per the Test, in order to find out if any matter, i.e. literature, film, play, etc. is obscene or not, it shall be required to pass the Hicklin Test which stated that whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. If it was decided that the matter has such tendency, it shall be considered obscene irrespective of any other facts. Any publication could be considered as "obscene" solely based on isolated passages of a work considered out of context. Works could be considered as obscene by their possible influence on most susceptible readers such as children or weak-minded adults. The rule was considered severe as any piece of work could be entirely considered as obscene based on certain parts of it without considering its entirety. Later, in Roth vs. United States, it was held that sex and obscenity should not be considered as synonymous. The Court elaborated that only those sex-related materials which had the tendency of exciting lustful thoughts were found to be obscene and the same has to be judged from the viewpoint of an average person by applying contemporary community standards test. The Hicklin Test eventually gave away to the Community Standards Test which came to be accepted by several nations through their judgments of similar nature. What could be obscene to some persons might not be so for the society at large. Again, that may have been obscene at one point of time might not be so after some decades. Considering the various segments of society and how different individuals carry different tastes, the community standards came to be considered as the final test for deciding obscenity.

-**Ratan N Tata vs. Union of India (AIR 2014(Supp) 827)**

In present case, the income tax authorities during the years 2008-09 intercepted telephonic talks between one Ms. Nira Radia and several other people after seeking approval from Ministry of Home Affairs. The tax authorities had a strong suspicion that the said Ms. Nadia as well as other individuals namely politicians, corporates, lobbyists, bureaucrats and journalists with whom she had conversations were indulging in tax evasion, money laundering and restricted financial practices. Shri Tata who was one of the many individuals

whose conversation with Ms. Radia was intercepted and after the conversations were leaked to the media by an unknown source, he filed petition before Hon'ble Supreme Court of India to protect his right of privacy and declare the act of tax authorities as invasion of his right to privacy. According to Ratan Tata, his conversations with Ms. Radia were of private nature and the tapes which were in custody of media should be withdrawn from public. The leak of conversations had also exposed a scam pertaining to the 2G spectrum auction. Considering the petition, Supreme Court issued notice to restrain the unauthorized publication of intercepted tapes.

- **Mohammad Ajmal Mohammad Amir Kasab vs. State of Maharashtra (AIR 2012 SC 3565)**

In this case, it was held that any attempt to justify the conduct of the TV channels by citing the right to freedom of speech and expression would be totally wrong and unacceptable in such a situation. The freedom of expression, like all other freedoms under Article 19, is subject to reasonable restrictions. An action tending to violate another person's right to life guaranteed under Article 21 or putting the national security in jeopardy can never be justified by taking the plea of freedom of speech and expression. The Supreme Court came down heavily on news channels in this case, when it was discovered that in their blind run for high TRPs, they were telecasting live coverage of the terrorist attack on Mumbai without realizing that the same was also being watched by the terrorist groups and simultaneously next moves were being planned by them. All this when the Indian police forces were trying to bring the situation under control by trying to eliminate the terrorists. In the midst of these, several TV reporters were giving continuous reports to their TV channels which in turn were being shown nationally. However, it did not strike anyone that the same live coverage was helping terrorist groups sitting in Pakistan to plan their next move while the Indian police and army were trying to control the attack. Supreme Court held that freedom of speech and expression cannot be claimed by TV channels in such circumstances when several lives are at stake but without realizing the same, they continue with live coverage for higher TRPs.

- **Ram Lila Maidan Incident [AIR 2012 SC(Supp) 266]**

Article 19(1)(a) provides for freedom of speech and expression but it is subject to reasonable restrictions as provided under Article 19(2). An individual has all freedom to express himself because unless one can express himself freely, it would not be possible to

call nation democratic one. However, it must be ensured that freedom of speech and expression of one is not so freely exercised by anyone person that it curbs similar rights of others. For this reason, Article 19(2) provides for reasonable restrictions which must be kept in mind while using the freedom of speech and expression. In present case, teargas shells were fired on a peacefully sleeping crowd at night hours. The crowd had collected as a part of dharna against corruption and was led by Baba Ramdev despite the prior permission given for the same being cancelled. It was a matter of dispute whether a sleeping crowd posed any danger to the peace of the city in such circumstances.

Some other major judgments discussed are as below:

- **Rajat Prasad vs. CBI (AIR 2014 SC (Supp) 1236)**
- **S. Narayan, Editor-in-Chief, Hindustan vs. Hon'ble High Court of Allahabad through Registrar General: (2011 AIR SCW 5761)**
- **S. Khushboo v. Kanniammal (AIR 2010 SC 3196)**
- **Destruction of Public and Private Properties vs. State of A.P. (AIR 2009 SC 2266)**
- **Ajay Goswami vs. Union of India: (AIR 2007 SC 493)**
- **R. Rajagopal v. State of T.N. and others (AIR 1995 SC 264)**
- **Samaresh Bose vs. Amal Mitra (AIR 1986 SC 967)**
- **Sakal Papers P. Ltd. Vs. Union of India: (AIR 1962 SC 305)**
- **Indian Express Newspapers Bombay P. Ltd. Vs. Union of India (AIR 1986 SC 515)**

Chapter Five includes the study and analysis of questionnaire in order to extract information pertaining to usage and awareness of media laws in various groups of society. The study being a non-doctrinal research, questionnaire method has been used and the same was passed to lawyers, judges, law students, journalism students, company secretaries and general public. Responses from them were collected and the data has been analysed in this Chapter. Questions were asked about knowledge of media laws, judgments pertaining to media-related cases and whether freedom of speech and expression as enshrined under Article 19(1)(a) of the Constitution alongwith its reasonable restrictions under Article 19(2) needs to be modified in any manner by imposing more restrictions or not.

Chapter Six deals with suggestions and conclusions based on the research work. The same have been made after a thorough and extensive research carried through doctrinal and non-doctrinal studies.

The studies on similar subjects conducted in recent years that are presently available on “shodhganga” mostly focus upon the following and how the present research differs from each of the study is discussed below:

- (i) Freedom of speech and expression in respect of Right to Information Act, role of judiciary for the protection of Right to Information in India and its impact on people in society, namely the voters, consumers, prisoners, etc., RTI Act in its national and international perspective. [*Mehta K. -“Freedom of Speech and Expression”(2016)*]

The present research does not involve study of the RTI Act. It focuses on how freedom of speech and expression affects the modern day forms of evolving media, (i.e. print, social and electronic media). It discusses the national and international legislations as well as regulatory bodies which keep the check on media so that freedom of press is available to them but simultaneously the reasonable restrictions under which they have to exercise the said freedom are also taken care of.

- (ii) Evolution and historical perspective of freedom of speech and expression in India and international legal regimes of the said freedom in nations like England, USA, Australia, constitutional and legislative measures as well as international treaties, covenants, etc. that emphasize providing the said freedom to all people across the world. Judicial response to the freedom of speech and expression in India and rights encompassed within this freedom. [*Walia J., “Expanding horizons of freedom of speech and expression and the judicial response” (2016)*]

The present research has been carried on in respect of laws relating to regulation of print, social and electronic media in USA, UK and India as well as to find out the awareness about paid media and media trials.

- (iii) Relation between mass media, democracy and elections, exit polls and opinion polls and the accuracy of their surveys, paid news syndrome and elections in the light of increasing number of news channels. *[Kumar N., “Role of Indian Media: Covering General Elections”(2015)]*

The abovementioned research deals with how media covers general elections, exit polls, opinion polls, etc. The present study however has been carried out in context of print, social and electronic media and how modern technologies have resulted in newer challenges and need to regulate media. Focus is also on paid media, sting operations and media trials.

- (iv) Article 19(1)(a) with special reference to electronic media and how far reasonable restrictions affect the functioning of electronic media. The laws and proposed bills directly or indirectly regulating electronic media have also been discussed. Finally, freedom of electronic media in relation to responsible journalism has been analysed. *[Arora M., “Role of law as a regulator for electronic media: A socio-legal study”(2015)]*

The abovementioned research focuses only on electronic media and its regulations. The present research deals with all three forms of media, viz. print, electronic and social media because today, we see media convergence, or a combination of all three forms of media in use together.

- (v) Problems posed by social media like hate speech, identity theft, copyright infringement, etc. and the laws and authorities governing social media, issues of extra territorial jurisdiction in light of social media offences as well as laws regulating social media in countries of USA, U.K. and India. Finally, international bodies governing the internet have been explained alongwith critical issues and proposed models. *[Maurya A., “Regulation of social media in cyber space: A critical study of regulatory mechanism with special reference to India”(2015)]*

In the above research, the researcher has worked on the hypothesis that social media regulatory mechanism in India is more subversive and ineffective and has failed to address the challenging issues of new communications mediums as witnessed in various incidences of social media mischief. The present research has been carried out on hypothesis that the current laws are inadequate to control and regulate the media.

- (vi) Perceptions of adult citizens and communicators in political communication through mass media as well as flaws visible in political communication and manners of removing them. *[Trivedi B., “Political Communication: A Comparative study of mass media”(2015)]*

The researcher has studied the perceptions of adult citizens and communicators in political communication through mass media as well as flaws visible in political communication and manners of removing them. Present research however focuses on freedom of speech and expression, reasonable restrictions thereupon in USA, UK and India and how far public is aware of media syndromes like paid news, media trials, etc.

- (vii) Areas like state control over electronic media, license and content regulations, constitutional aspects and present control over electronic media as well as existing legal framework of electronic media. **[Iqbal A., “Legal Control over Electronic Media in India”(2014)]**

The present research differs because the landmark judgment of Shreya Singhal vs. Union of India was delivered in the year 2015. The said judgment and its implications on use of media have been analysed in the present study.

- (viii) History of right to privacy and freedom of press, comparative analysis of right to privacy and freedom of press in U.K., USA and India, concept of Investigative Journalism and protection of privacy, balancing of contempt proceedings between media freedom and privacy in subjudice matters and role of Press Council of India in light of the above. **[Gifty, “Right to Privacy and Freedom of Press – Conflicts and Challenges”(2014)]**

The above research deals in-depth with media and individual’s right to privacy. It has not covered areas like media trials and paid media.

- (ix) Areas like political communication and political mobilization, press and political mobilization in India alongwith case study on Gandhi and comparative analysis on the role of press in colonial and independent India and how mass media affects general public. **[Anand N., “Role of the press in political mobilization: A comparative analysis of colonial and independent India”(2014)]**

The present research is a study of legislations pertaining to freedom of speech and expression in USA, UK and India and how far they successfully or otherwise have been able to regulate the print, social and electronic media.

- (x) Gandhian concept of journalism, opportunities and challenges to Gandhian model of journalism. **[Kumar S., “Gandhi’s practice of media ethics and its relevance in India”(2013)]**

The present research has not covered Gandhian concept of journalism. It deals with print, social and electronic media and laws regulating them in USA, UK and India.

- (xi) History, constitution, procedures of Press Council of India and problems and issues faced by the PCI alongwith suggestions. Researcher has tried to study whether the Council has succeeded or failed in performing its functions. *[Paul S. "The Press Council – An experiment in guarding free speech"(2012)]*

The said research has covered only print media. Present research studies all three forms of media prevailing today viz. print, social and electronic media and its regulatory bodies in USA, UK and India.
