

**A LEGAL STUDY OF MEDIA IN INDIA WITH
REFERENCE TO ELECTRONIC TECHNOLOGY
VIS-A-VIS MEDIA TRIAL**

**Summary of
Thesis**

**SUBMITTED TO THE
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
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SUMMARY

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A LEGAL STUDY OF MEDIA IN INDIA WITH REFERENCE TO ELETRONIC TECHNOLOGY VIS-À-VIS MEDIA TRIAL

INTRODUCTION

Media is considered as one of the pillars of the society the Legislature, Executive and Judiciary being the other. While Legislature prepares the law for the society and the Executive takes steps for implementing them, the third stepping stone is the Judiciary, which has to ensure legality of all action and decisions. The fourth estate i.e. the Media has to operate within the frame work of theses statutes and Constitutional provision to act in public and national interest.

This is indicator of the fact that nobody is above law, when the Constitution of India guaranteed freedom of expression and speech to its citizens, it ensured that the freedom was not absolute and any expression, by way of words, speech or visual medium, did not violate any statutory provisions enacted by legislature and executed by the executive. If the media, electronic or print, exceeded its jurisdiction, the courts came forward to ensure that violation of Fundamental rights by media does not go unchecked.

Freedom of media, which is an integral part of Freedom of Speech and Expression, is essential in a Democratic Society. Communication is one of the most important features of life. Right to communicate is essence of freedom of speech and expression. Right to Communication is built out of specific right to be informed, right to privacy and right to participate in the public Communicative System. One of the judicial derivatives of Article 19(1) (a) is Freedom of Press which includes Electronic Media (e -Media) also. The term Media includes print media, audio visual media, internet, blogs, mobile, software publishing and Mass Media.

The framers of the Constitution had shown great statesmanship and farsightedness. The conclusion of the debate Dr. B.R.Ambedker, Chairman, Constitution Drafting Committee, said *“I feel that the Constitution is workable, it is flexible and it is strong enough to hold the country together both in peace time in wartime. Indeed if I so, If things go wrong under the new Constitution the reason will not be that we had a bad Constitution, what we will have to say is that man was vile.”*

The Media has been greatest proponent of Freedom of Information, Freedom of Speech and Expression. However, the Media has also been one of the worst violators of privacy rights through investigative journalism. The Constitution of India ensured that the fundamental right is guaranteed as matter of legal obligation rather than as Political concession. There are basic human right and have been interpreted as Civil, Political, Economic, Social and Cultural rights. The prefatory words that adore the Indian Constitution the preamble explicitly give due prominence to the concept of liberty of thought and expression among other liberties.

The preamble text recognized the importance of liberty as been the most Fundamental Human Rights as word Liberty comes after justice and before equality in Preamble and, it appears to be in cons with the twin principle of John Rawls. Article 19(1) (a) of the Indian Constitution provides the freedom of speech and expression .The Freedom of Media can be located under this Article. *In Romesh Thaper V. State of Madras AIR 1950 SCR 594*, Apex court of India held that this freedom include the freedom of Media there publications and circulations. *In LIC V. Manubhai Shah (1992) 3 SCC637*, the Supreme Court reiterated that the freedom of speech and expression (19 (1) (a)) must be broadly constituted to include the freedom to circulate one's views my word of mouth or in writing or through audio visual media. This includes the right to propagate one's views through the print or other media. The court said – “freedom to air one's view is the lifeline of any democratic institutions and any attempt to stifled are suffocate or gag this rights would sound a death knell to democracy and would held user in autocracy or dictatorship.

Medial trial, being a popular phrase in the late 20th century and early 21st century to describe the impact of print, audio and visual coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a Court of Law. The increasing frequency of 'Media Trial' in criminal case is a danger to a free, fair and Constitutional Judicial process. The Judiciary has to great responsibility to protect an individual from an unwarranted Media Trial which leads to the violations of Human Right and lowering the reputation.

The Law Commission of India in its 200th report aptly said: The subject of 'Trial by Media or prejudice due to Pre Trial' publications by the media is closely linked with Art-19(1) (a) which guarantees the Fundamental rights of freedom of speech and expression and the extent to which that right can be reasonably restricted under Art 19 (2) by law for the purpose of Contempt of court and for maintaining the due process to protect liberty. The basic issue about balancing the freedom of speech and expression on the one hand and undue interference with Administration of Justice within the frame work of the Contempt of Court Act 1971, as permitted by Art-19 (2).

That should be done without unduly restricting the rights of suspect/accused under Art-21 of the Constitution of India for a fair trial. The right to a fair trial is at the heart of the Indian Criminal Justice System. It encompasses several other rights including the to be presumed innocent until proven guilty, The right not be compelled to be a witness against himself, the right to a public trial, the right to legal representation, the right to speedy trial, the right to be present during trial and examine witness etc. In *Jahira Habbiullah Sheikh V. State of Gujarat, (2004) 4 SCC158* the Supreme Court explained that a fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fares trial means a trial in which bias or prejudices for against the accused the witness or the cause which is being tried is eliminated. The prime purpose of the free media guarantee is regarded as creating a fourth institution outside the government as an additional check on three official branches. The contemporary media has gone through tremendous changes in terms of content, style and approach and the journalistic scenario which is now not restricted to simply the printed letter, has widened its base by including the medium of broadcasting, telecasting and new media. Now a day's sensationalisation of news has become the measure of success in the journalistic field.

The Media specially the electronic Media with the power of visuals at its command - which can make deep impact on the mind of the viewers, has lost the balance that was being seen created in the pre- liberalization years in India. Liberalization has brought in the curse of consumerism to the people who have been getting indoctrinated in the art of consuming and in the process getting consumed at the hands of the promoters and sellers. Journalism has become an industry in the modern days, and Commercialization of the press has been increasingly found in every aspect.

STATEMENT OF THE PROBLEM

"I should rather have a completely free press, with although dangers involved in the wrong use of that freedom, than a suppressed are regulated press."

Pt. Jawaharlal Lal Nehru

Press and media perform the role of communicator, and as communicator, it has to inform and not to misinform, disinform or non-inform the people on issues on which they have to take decisions. It has to educate, motivate, persuade and entertain. It has to appeal to reason, to aesthetic sense and values, and not to emotions, it may laud or criticize but has to be objective.

The question whether a separate provision to be made for freedom of press was extensively debated in the constituent Assembly in the back draw of first amendment to the

constitution of the U.S.A. and it was decided that there is no need for separate provision because the guarantee of freedom of speech enshrined in Article 19 (1) (a) is wide enough to include the press.

This is evinced from the following statement of Dr. B.R. Ambedker –

“The press is merely another way of stating and individual or a citizen. The press has no special right which are not to be given or which or not to be exercise by the citizen in his individual capacity. The editor or the manager is all citizens and therefore on they choose to write in newspapers, they are merely exercising their right of expression and in May judgment therefore no special mention is necessary of the freedom of this press at all.”

The boundaries of societies having widened to embrace all corners of the world, and the problems facing the society having multiplied and assumed complexities, media is the only agency on which everybody, wherever he may be, is increasingly dependent, to furnish information, to guide him in his day to day affairs, and to plan his future. This reliance on media, transcends all barriers whether of region or religion, race or language, political or economic system and social or cultural development. As a Communicator, media has become a leveller and uniformer.

It is no longer possible to shut out the light of truth from any section of the society. Media can act as a dispeller of the darkness of ignorance, as an enemy of indoctrination and fanaticism, as an eye opener for the bookish, the tradionalist and the fundamentalist, as a liberator of the mental and intellectual slaves, and as the propeller and motivator of the inert. Media can thus usher in an age of enlightenment, and release the forces of reason, rationalism and creativity, and also help establish peace, harmony and brotherhood in the world, and to achieve progress and prosperity for all.

But the problem today is that how should we look at our media as the fourth estate, an integral element of a democratic order which needs to be guaranteed autonomy from official regulation because it serves a public good ? Or as a business like any other, albeit one which is powerful, affects policy and shapes public discourse? Unfortunately, our inability to simultaneously address both these facets of the press and media in a situation of rapid technological changes and greater connectivity seriously impairs the way we debate issues of regulation and control.

Another apprehension relates to the impact of these new developments are journalistic values and ethics.

In the last couple of decades we have witnessed the slow vanishing of the professional editor, increasingly being replaced by the owner-editor or editor-manager. News and views have become more difficult to distinguish even as news becomes increasingly focused on the spectacular. With the media becoming more a business than a profession (far less a cause), and with the bottom line of profits determining all, is the media in danger of losing its credibility? Today we are losing old fashioned values like truth-telling, freedom and independence, justice, humanness and contributing to social good, or playing a critical, adversarial and watchdog function, being a vehicle for public education and helping foster debate on agendas for social transformation? It is the distinction that helped the press and media claim special Constitutional protection, effectively merging the right to freedom of expression with the freedom of the press?

There is another problem as to what are the implications of the Commercialization and Commodification of the press and media? With advertisement revenues accounting for a disproportionate share of media earnings, and advertisements creeping into all sections of the newspapers, what happens to news coverage and editorials? Equally, with media owners having commercial interest in other sectors, does the coverage and slanting of news change? Few desire increased governmental control, far less the pressure to mouth official views, but have we adequately evolved the rules and norms for a free-market media?

There are other concerns. What constitutes worthwhile news? What is covered and what not, how and where? Why is it that fashion shows get covered, farmer suicides are not? Spectacle is foregrounded, processes are ignored.

What sense are we to make of the new genre of sting journalism, the use of spy cams and the like treading the fluid boundary between exposes in public interest and violating laws of privacy? All these raise difficult questions about ethics and propriety, private interests and public good, even ways in which we imagine the practice of democratic politics.

It is no longer possible to look at a fast changing sector in old ways. Will our press and media show the ability to be flexible and adapt? And will our regulators be able to move out of a tendency to exercise greater control? The shape our media takes is far too important to be left to only owner-entrepreneurs or state functionaries or we, as citizens, too need to get involved?

OBJECTIVES OF THE STUDY

The objective of the work was to find out and analyse:

- To define the Conceptual Importance and new dimension of media and its emerging trends.
- To study of how to improve New Media Management, Information and Communication Technology.
- To study the various aspect of the Freedom of Press and Media Law in global prospect.
- To analyse of the Media Trial, Sting Operation and its Social, Ethical impact.
- To review the Constitutional provisions and other provision regarding media law in context of right to speech and expression with reference to media trial.
- To analyse the National policies on newsprint right to Speech and Expression for the mass media affecting the Freedom of Media.

RESEARCH METHODOLOGY

The study has been carried out in a very objective systematic and unbiased manner. All the primary as well as secondary documentary sources have been utilized to make the study up to date, orderly and scientific. Various reports, articles, judicial decisions, national policy have been taken as important research tool. The Hypotheses have been tested on the basis of legislative provisions and policies made by the governments.

A critical analysis has been be made to evaluate the recent trends of Judiciary and government policies in context to Freedom Press and Media law among masses and social groups.

The research was pursued by consulted various institutional libraries, which has enriched the existing press and media law about the right to speech and expression and it has also discovered some unexplored aspects related to freedom of media and press in the welfare society of the biggest democracy like India.

HYPOTHESIS:

Hypothesis of this thesis is that

- I. 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.*

POSITION (TESTING) OF HYPOTHESES

Following is the summarized position of hypotheses:

The Hypothesis –I stand proved and it was established that after analyses and introspection of origin, concept of human right. The human rights are inalienable and vested in human being, state only recognized it. The basic idea of human rights - Freedom of Speech and Expression is as old as the Human Civilization. The Expression through speech is one of the basic guarantees provided by civil society

Hypothesis-II and III stands proved and it was established proved after making a comparative analysis and examination of Media Convergence , advent of New Information Communication Technology as well as media laws of other countries would give us valuable information regarding media regulation, that's shown, new comprehensive law should be enact for batter result. It is needless to mention that media is called the fourth pillar of democracy and derives all its rights from the wider interpretation of Article 19 (1) (a) of Constitution, which talks about freedom of speech and expression. Thus, press freedom is not a gift from the government, it's guaranteed by Constitution. But , Recently this freedom of press has been in controversy for reasons like 'Paid News', for twisting facts, for invasion of privacy and so on and so forth.

Hypotheses- IV and V stands proved and it were established that, the Judiciary and the Media share a common bond and play a complimentary role to each other: man is the centre of their universe. While the media explores, discovers, and reveals the achievements and follies of man, the judiciary deals with the legal problems created by him. Both the judiciary and the media are engaged in the same task: to discover the truth, to uphold the democratic values and to deal with Social, Political and Economic problems. The Media, in fact, has been called the handmaiden of justice, the watchdog of society; the judiciary, the dispenser of justice and the catalyst for social reforms. Thus, both are essential for the progress of a civil society. The Indian judiciary immensely contributed substantially in developing and expanding the freedom of speech and expression of individual as well as media.

Hypothesis -VI stand proved and it was established that the Sting Operations violate the privacy right. Today, it is being witnessed that the over- inquisitive media, which is a product of over- Commercialization, is severely encroaching the individual's "Right to Privacy" by crossing the boundaries of its freedom. A Citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. No one can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical.

Hypothesis - VII stand proved and it was established that Media trial is antithesis of fair trial. There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which out rightly hold the suspect or the accused guilty even before such an order has been passed by the court. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. 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."¹

CHAPTERIZATION OF THE THESIS

Chapter-I : Introduction

¹ *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158

This chapter deals with introductory part of research i.e. freedom of speech and expression and its dimension relating to media trial. In the starting of this chapter the concept of media freedom has been discussed. The various definitions and meaning of the terms “Media”, Information Communication Technology (ICT), sting operation and “Media Trial” have been discussed under the domestic law, and under International law. The issues which have been discussed throughout the study have been highlighted in this introductory chapter. This chapter briefly describes the need for undertaking the present study, statement of problem, research methodology, and objectives of study.

Chapter-II : Concept and Origin

a. Historical background of law

(1.) Pre Independent era

(2.) Post Independent era

b. Facets of Media law

A short Concept, origin and history of Media Laws in India and transition from print media to electronic media is given at the outset. The chapter provides that the historical background and facets of media laws in India. In this chapter discussed that electronic media is different from the print media. The electronic media is fast proliferating. The chapter deals with the genesis of electronic media laws. The chapter also discussed the impact of a court order and significant historical developments mentioned in the chapter.

Chapter-III : Media law –National and International Perspective

A. Media Law on National Perspective

(1.) Constitutional framework.

(2.) Statutory Framework.

(3.) Government Policies and Programme

B. Media Law on International Perspective

(1.) U.N.O.

(2.) Other Countries

. The chapter deals with the varieties International, National Laws relating to media including electronic Media Laws, print media laws, Telecommunication Laws, as well as broadcasting laws in India. In this chapter the regulatory laws on media in other nations including the United Kingdom, United States and European Union, etc are mentioned. The Cable Television Act, The Prasar Bharathi Act and The Telecom Regulatory Authority of India Act are the main statutory aspects media. The Constitution lays down certain restrictions and certain freedoms. The most important part relevant to it is the freedom of speech and expression and its derivative. The Supreme Court Order caused framing of the new laws on Broadcasting. Several years took separate laws on the media. The basis of the law is the seventh schedule and the old Telegraph laws. The proposed regulations in the media governments were independent BRAI (Broadcasting Authority of India).The Bill of first BRAI (Broadcasting Authority of India) died in young. The second effort on BRAI was in the form of Broadcasting Services Regulation Bill, 2007. That also did not see any light. Then the 'regulator' like the IBF (Indian Broadcasting Foundation), the Electronic Media Monitoring Centre (hereinafter referred as EMMC) of the State, and self regulation by the (NBA), the News Broadcasting Standards Disputes Redressal Authority, and the advertisement standard council of India (ASCI), came to existence. EMMC was a state department with no power to make regulations .In the meanwhile TRAI came with the addressable system and digitalisation.

The internet is using for the purpose of electronic media and the digital media comparing to analog media. The Information Technology Act plays a significant role in electronic media like cyber offences, cyber jurisdiction, cyber punishment and cyber notice. This affects the Internet Protocol Television (IPTV). After the introduction of the digital television the television may be viewed from computer to telephones and everything may come within cyber laws. The proposed Media Convergence Bill is to replace all the existing regulatory Mechanism relating to telegraph laws, Information Technology laws and Media laws covering both the Telecommunication and the Broadcasting laws.

Chapter-IV : Media, e Media and its Convergence: Media Trial

a. Media Trial and Human right

b. Media and Sting Operation

c. New Electronic System and its Implication

In India Electronic Media is a part of the Mass Media. The Mass Media law in India is divided to the Print media, the Broadcasting Media and Telecommunication Laws. The emergence of the need for multiple voices in India became a necessity. The basic legal system on present day control in India was started on this basis. The Media Laws applicable to the Mass Media were applied to the Electronic Media. Later the special features of Media Laws in the area were identified. Electronic Media as a part of public utility services were noticed as a part of it.

The journalism has got new dimension due to the introduction of the New Media. The 'programmes', T R P and 'advertisements' in the Media became are fact others to be regulated. This investigate is to find out how far the present state control is effective in the Electronic Media as well as aspect of Media Trial and Sting Operation.

Chapter-V : Implication of Commercialization and Commodification of Press and Media on the Welfare Society

The Implication of Commercialization and Commodification of press and media on the welfare society are discussed in this chapter. The role of the media in welfare society are also discussed in this chapter

Chapter-VI : Judicial Response towards Media and Media Trial

a. In general

b. On Media Trial

This chapter deals with judicial response regarding various aspect of freedom of speech and expression. The chapter analyse court observation relating to Media Trial, Sting Operation and issues on new electronic media in India.

Chapter-VII : Conclusion and Suggestions

The thesis is done in order to find out Conclusion and Suggestions over the media laws with reference to New Technology and Media Trial in India. The work concludes with a finding that the effective remedy is framing a code relating to the new media. The Code may be to formulate an independent body in the name of Media Communication Commission of India. As Justice Markandey Katju has pointed out the Media shall be given freedom at the same time the state should have control. The law must keep pace with the technology. In spite of the fact that there are laws regarding the Media they are not effective upon the Electronic Media. The existing laws for control over electronic media in India are not sufficient for the regulation. People involved in the Electronic Media may have to approach different departments or ministries in order to obtain licenses. At the same time the penalty is very little comparing to the money involved in the Electronic Media. A new law is to be made in the area. Since it is ever growing new law shall be in the form of an Electronic Media Code containing Broadcasting, the Telecommunication and Internet. The research has given Model of New law based upon the concerned court order, the existing statutes, need of the people and philosophy of the subject, as a Suggestion / Recommendation along with other Suggestion in the area.

CONCLUSION

- Analysis of Indian Law, the European Conventions and International law revealed that the term Sting Operation and Media Trial is not concretely defined so a working definition has been drawn on the basis of dictionary meaning. Media Trial means Trial by Media is a phrase popular in the late 20th century and early 21st century to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. It is seen that a media freedom is indispensable in democracy but right to fair trial is also the corner stone of Indian Criminal Justice System. The Freedom of Media is the freedom of people as they should be informed of public matters. It is thus needless to emphasise that a free and a healthy press is indispensable to the functioning of democracy.
- A comparative analysis is of favour of Protection of media freedom as well as right to privacy.

- Analysis of various judgement of Indian Apex court shows that these are some Parliamentary step taken by judiciary, though providing guide line for regulation of media freedom as well as individual rights but are not suffice. Therefore is an urgent need to enact a comprehensive legislation that's deal with new emerging technological and philosophical development infield of Media.

- The following key gaps and hindrances to the practical efficacy of the of regulation over media and protection of freedom and rights of individuals in India have been identified as follows:

- (a) The first and most important problem is with regard to strike balance between Fair Trial and Media Trial.

- (b) The Trial by Media is currently arbitrary and unpredictable to Criminal Justice System.

- (c) It is difficult to define the jurisdiction over new Information Communication Technology Media.

Suggestion

1. This is a need for a self-regulatory as well as statutory regulatory authority with powers to regulate coverage of objectionable material, therefore it is suggested that rule regulation must be frame in this regard.
2. The regulations can be introduced to ensure Independence of government-owned Media.
3. The legislative or Constitutional amendments necessary to the law on Contempt of Court to ensure Freedom of the Press.
4. The need for comprehensive guidelines on reporting of *sub-judice* matters.
5. The statutory body have powers to adjudicate complaints of false sting operations. And also a specific statutory provision for treating false sting operations as a punishable offence.

6. The Right to Privacy law introduced or existing framework of media laws is rightfully amended to include specific guidelines governing disclosure of private information by the media.
7. The Statutory Authority monitors and regulates the propagation of paid news.
8. The comprehensive, independent competent authority should be introduced may name as Media Communication Commission for regulation of media and Convergence of Media.
9. It is also suggested that the ethical code should be provided with certain duty and responsibilities of Media personnel.
10. For the Media Accountability is better served, the existing self-regulation mechanisms require strengthening and uniform and comprehensive Media Law should be introduced across all types of Media.
11. There must be provision for regular training for Media personnel particularly journalists for avoid human rights violations of common men's particularly right of privacy and fair trial .
12. For uniform curricular of media personnel i.e. Journalists print and electronic both, the Press Council of India is need to be strengthened .This regulatory authority must work in the line of Bar Council of India or Medical Council of India to frame rules.
13. Analyses of various national, international law and policies relating to media and information communication technology as well as concept of speech and expression enshrined in Constitution of India, following Amendments has been made for balance in media and individual freedoms:
 1. The Media Communication Convergence Bill has been drafted and implemented to regulate the Indian media.
 2. The need of hour that after sixty five years, time is ripe to review and amend some of the Fundamental Rights, particularly those Fundamental Rights which have been judicially deduced, i.e. Art.19 (1) (a), 19(2) and Art.21.