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

Thesis

SUBMITTED TO THE
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
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Ashok Kumar

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VIDYA VIHAR, RAEBARELI ROAD
LUCKNOW-226 025

2015

DEDICATED TO

“My Reverend Grand father, Mother

&

All of them who laid the foundation of my Value Education”

DECLARATION

I hereby declare that the research work embodied in this Ph.D. thesis entitled "***A Legal Study of media in India with reference to electronic technology vis-a –vis media trial***" has been carried out by me under the supervision of **Prof. (Dr.) Priti Saxena**, Head & Dean, Department of Human Rights, School for Legal Studies, Babasaheb Bhimrao Ambedkar University (A Central University) Lucknow. This research work is an original work and it has not been previously submitted in part or full for any other degree or diploma in this University or any other Indian or foreign University. All the sources used have been duly acknowledged.

(Ashok Kumar)
Research Scholar
Department of Human Rights
School for Legal Studies
Babasaheb Bhimrao Ambedkar University
(A Central University) Vidya Vihar
Rae Bareli Road, Lucknow-226 025

Date……/……/2015
Place: Vidya Vihar, Lucknow

BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
LUCKNOW
प्रज्ञा शील करुणा
ESTABLISHED 1996

Babasaheb Bhimrao Ambedkar University
(A Central University)
Vidya Vihar, Rae Bareli Road, Lucknow-226 025

Letter No…….
Date……..

CERTIFICATE

Under Rule 6.2 (ii) of The Doctor of Philosophy (Ph.D.) Regulation, 1999 as amended in 2008, this is to certify that the thesis entitled **"*A Legal Study of media in India with reference to electronic technology vis-a-vis media trial*"** submitted by **Mr. Ashok Kumar** is an original work and has not been previously submitted in part or full for any other degree or diploma in this or any other University. The Candidate has completed the research work for the full period prescribed and that the thesis embodies the results of his investigation conducted during the period he worked as Ph.D. research scholar. The thesis submitted to Babasaheb Bhimrao Ambedkar University (A Central University) Lucknow is in fulfillment of the requirements fit for submission and evaluation for award of the degree of **Doctor of Philosophy in Law (Ph.D. in Law)** in Department of Human Rights, School for Legal Studies.

(Prof. (Dr.) Priti Saxena)
Supervisor
Dean, School for Legal Studies
Head, Department of Human Rights

Date……/……/2015
Place: Vidya Vihar, Lucknow

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Vidya Vihar, Lucknow **(Ashok Kumar)**

(U.P.) India

PREFACE

Media is a social instrument that is powerful enough to mould a society, to develop and destruct it. It is a force that could be put to much constructive use in the right hands. The Media has gone digital viewers and listeners. The Electronic Technology bringing audio, video and text is getting more sophisticated as the internet is becoming accessible to more and more people and changing ever foster.

In recent years, technological innovation has again changed the face of Media. The Cable televisions, satellites, fibre optic technologies and electronic media have developed, which have created an explosion in media products and formats. The Electronic Media is defined as a device that is used to store or record electronic information on a electronic device. The electronic media can be expected to be a potent influence on individual expression and democratic values. As explained the quality of electronic communication media and regulate over media is less probable in era of wide spreading of electronic communication than earlier time. The new media are more likely to be a force that will undermine state regulation. In a country with as robust and multi-faceted a freedom of expression as India, media plays a very significant role in balancing interests of public and exercise its powers. 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 is guaranteed by Indian Constitution.

These days, the electronic media as well as print media is involved in investigating journalism out of proportion .There is little harm in it, but it does require self restrain and special checks and balances. It has to be within its circumscribed limits which if over stepped, then it is likely to affect the Individual's liberty. During pending investigation, Trial is highlighted in Media, on the basis of material placed by one side before it and reporter go on reporting the same unilateral story and visually covers it by hammering the incident whole day. Readers/viewers start believing the story as true even without listing to the explanation of the other side. The fundamental principle of Criminal Jurisprudence are (a) Everyone is presumed to be innocent unless proved guilty,(b) None should be condemned unheard and (c)

Accused cannot be compelled to be a witness against himself and disclose his defence at the outset.

Recently this freedom of press has been in controversy for reasons like sting operation, Media Trial and 'paid news', for twisting facts, for invasion of privacy and so on and so forth. Interestingly, from the perspective of many Indian laws, the Indian news media is already perhaps the most regulated amongst the advanced democracies. According to the freedom of the press 2011 study, India ranks 79th and is categorised as 'partly free'. Any further regulation of the media would effectively undermine individual liberties that are so essential to a democracy.

My research thesis entitled, **A Legal Study of Media Law in India With reference to Electronic Technology vis-à-vis Media Trial,** explore and introduces the concept of Media Law with regard to electronic technology and Media Trial in India .The subject matter of the thesis in complicated and technical, for that reason the concept, philosophies, media (information technology) convergence are discussed in chapter first. Chapter Second of thesis provides a conceptual and historical context of discussion and traces the origins of Media electronic communication law from past to present era of information revolution. Chapter third is exclusively devoted to Constitutional dimension of electronic technology and media trial. It discusses some aspects of control over media and communication. This Chapter also explores the international, regional and other countries provisions relating to electronic media and media laws. The Chapter fourth and fifth explore and discuss the commercialization, commoditization and convergence of Media law. Chapter sixth undertake the judicial response regarding freedom of media and its dimension.

Finally, in Chapter Seventh conclusion and suggestions are made for creating balance between freedom of media and individual as well as new emerging electronic technologies.

Ashok Kumar

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APPENDIX – A: MODEL LAW ON MEDIA REGULATION AND CONVERGENCE

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Abbreviation

AD	Amino Domini
AFP	Agence France Press
AINCE	All India Newspaper Editors's Conference Code
AIR	All India Radio
AIR	All India Reporter
AIR	All India Radio
ANSA	Agenzie National Slampa Association of Italy
AP	Associated Press of America
ASCI	the advertisement standard council of India
ATS	anti-terrorism squad
BC	Before Christ
BPFA	Beijing Platform for Action
BRAI	Broadcasting Regulatory Authority of India
BRAI	Broadcasting Authority of India
BSNL	Bharat Sanchar Nigam Limited
C A D	Constituent Assembly Debate
C J	Chief Justice
CAS	Conditional Access Systems
CBFC	Central Board for Film Certification
CCI	Communications Commission of India
CCITT	International Telephone and Telegraph consultative committee
CCTV	Close Circuit Tele vision
CD	Compact Disc
CEPT	European Conference on Postal and telecommunication Administrations
CFBC	Boards of Film Certification
CIC	Crime Investigation Cell
CMM	Council for Mass Media
CNN-IBN	Cable News Network - Indian Broadcasting Network
CPC	Code of Civil Procedure
Cr P C	Code of Criminal Procedure

D o T	Department of telecommunication
DAE	Department of Atomic Energy
DAVP	Directorate of Audio Visual Publication
DD	Door Darshan
DPAWG	Deutsche Press Agentur of West Germany
ECHR	European Convention on Human Rights
ECHR	European Convention on Human Rights
ECT	Electronic Communication Technology
EMMC	Electronic Media Monitoring Centre
ERNET	Education and Research Network
FBI	Federal Bureau of Investigation
FM	Frequency Modulation
GII	Global Information Infrastructure
GMMP	Global Media Monitoring Project
HTTP	Hypertext Transfer Protocol
I T	Information Technology
IBF	Indian Broadcasting Foundation
ICANN	Internet Corporation for Assigned Names and Numbers
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	Internationals commission of Jurists
ICT	Information Communication Technology
IP	Internet Protocol
IPC	Indian Penal Code
IPTV	Internet Protocol Television
ITU	International Telecommunication Union
LIC	Life Insurance Corporation of India
MCCI	Media Communication Commission of India
MNC	Multi National Company
MPLAD	Member of Parliament Local Area Development Scheme
MTNL	Mahanagar Telephone Nigam Ltd.
MTNL	United Press of India
NBA	the News Broadcasting Standards Disputes Redressal Authority

NC	Non-Cognizable
NCRWC	National Commission to Review the Working the Constitution
NCW	National Commission for Women
NDTV	New Delhi Television Limited
NHRC	National Commission for Human Rights
NICNET	Network for the National Informatics Centre
NSA	National Security Advisor
OAS	Organization of American States
PIN	Personal Identification Number
PNB	Press News Bureau
PTI	Press Trust of India
PUCL	Peoples Union for Civil Liberty
ROM	Read Only Memory
RPC	Ranbir Penal Code
SC	Supreme Court
SIM	Subscriber Identification Module
SITE	Satellite Instructional Television Experiment
USA	United State of America
UK	United Kingdom
ICT	Information Communication Technology
SITE	Satellite Instructional Television Experiment
SNS	Social Networking Service / Social Networking Site
SPI	Sensitive Personal Information
TDSAT	Telecom Disputes Settlement and Appellate Tribunal
TN	Tamil Nadu
TRAI	Telecom Regulatory Authority of India
TRAI	Telecom regulatory authority of India
TRP	Television Rating Point
TV	Tele Vision
UN	United Nation
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UOI	Union of India
UPI	the United Press International

VNR	video news releases
VSNL	Videsh Sanchar Nigam Limited
WACC	World Association for Christian Communication
WSIS	World Summit on the Information Society
Www	World Wide Web

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CHAPTER-I

INTRODUCTION

Chapter-I : Introduction

1.1 INTRODUCTION

The Media is the fourth limb of a democratic system, the legislature, executive and judiciary being the other three 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 Constitution al provision to act in public and national interest.

This is the 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. It is the responsibility of judges to recognize and give effect to freedom of media.

Communication is one of the most important features of life. Right to communicate is the 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 Art.19(1) (a) is freedom of press. The term media includes print media, audio visual media, internet, blogs, mobile, software publishing and mass media.

The media has been greatest proponent of freedom of information, freedom of expression and freedom of speech. However, the media has also been one of the worst violators of privacy rights through investigative journalism.

In recent times, media has variously contributed to the development of the society. As the watchdog on government, as the champion of vulnerable section of society, as a whistle-Blower against the perpetrator and above all as a frontier in underpinning and publishing

the information of public interest, media's role is par excellence and 'above and beyond' apparition.

Today, it seems that during the course of reporting and making revolution on any issue, media fails to observe sensible control which it is supposed to have and command particularly in the society which asserts and claim to the guided by the jurisprudence of rule of law.

In this backdrop, the need of the hour is to create and ambiance of democratic culture and make stringent provisions to checked unnecessarily interference not only in people's rights to privacy but also in sub judice Court's proceeding. It is a fact that democracies depend on citizens having reliable, accurate facts put in meaningful contacts.

The framers of the Constitution had shown great statesmanship and farsightedness. The conclusion of the debate Dr. B.R.Ambedker, Chairman of Drafting Committee, said *"I feel that the Constitution is work able, 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 basic idea of freedom of speech and expression is as old as the human Civilization. In India, before independence there was no Constitution al or statutory guarantee of individual and media freedom. At the most some English common law freedom could be claimed by the press as was observed, by the Privy Council-the apex Court for India then-in the following words:

> '*The freedom of the journalist as an ordinary part of the freedom of the subject and to whatever length the subject may go, so also may the journalist, but apart from statutory law, his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as and no wider than, that of any other subject.'*

The press which is an integral part of freedom of speech and expression has a role to play in providing a forum for free political discussions for the proper functioning of the processes of a popular government. Being a powerful Media of Mass Communication it should be free to play role in the process of building a strong viable society of India. Denial of the right to freedom of press to citizens would necessarily undermine the power to influence public opinion and would run counter to the principle of democracy itself.

The basic philosophy of the media was laid down by the black stone's concept of freedom of press in 1769 and enunciated the following principles:

1- Liberty of the press is essential to the state.

2- No previous restraints should be placed on publication.

3- That does not mean there is the freedom for doing what is prohibited by law.

4- Every free men has the undoubted right to lay what sentiment he places before public but if he publishes what is improper, mischievous are illegal he must take the consequence of his own temerity (recklessness).

The Media should not be only informative in nature but people friendly in every possible way. The media have been covering extensively crime scenarios or suspect or accused of a particular crime alarmingly. It is aptly said by Law Commission of India that there appears to be very little restrain in the media in so for as the Administration of Criminal Justice is concerned. According to opinion of various learned thinkers on the subject.The freedom of expression has four social purpose to serve are :

1- It helps an individual to attain self fulfillment.

2- It assists in the discovery of truth.

3- It strengthen the capacity of an individual in participating in decision – making.

4- It provides mechanism by which is would be possible to maintain a reasonable balance between society and social change.

The former Prime Minister of Malaysia Mr. Mahathir Mohamed has divided the basic philosophy in relation to the concept of press role and freedom in four types they are :-The authoritarian, The Communists, The Libertarian, The Social Responsibility model.

Realizing the role of freedom of speech in a functional democracy, the framers made it as an enforceable fundamental Right under part III of the Constitution. The Indian Constitution adopts by and large the traditional Common law approach. It neither specifically mentions press nor its privileges or obligations. The Constitution however, only recognizes the individual right to speech and expression in Art

19(1)(a) subject to reasonable restrictions on the grounds specified in Art 19(2). The Freedom of the press is derived from the right to free speech, which in turn is related to the public right to information and hence both these elements are co extensive. Freedom of Press means the rights of all citizens to speak publishes and expresses their views. The Freedoms of expression also involve the right of access to media space[1]. Eminent jurist Thomas I. Emersion observes that freedom to expression in it first, right to read, listen and see and to otherwise receive communication and second, right to obtain information.

Secretary, Ministry of Information & Broadcasting V. Cricket Association of Bengal,[2] Supreme Court said that the freedom of speech and expression also includes not only the right to inform and to entertain and also the right to be educated, informed and entertained.

In **Judge Transfer case**[3] the Court through Justice P.N. Bhagwati recognized right to know under the freedom of speech and expression. He observed that the concept of an open government was the direct emanation, from the right to know which was implicit in the right of free speech and expression guaranteed under Art 19(1) (a).Thereafter the Supreme Court attempted to ensure Constitution al status of specific rights linked together in the freedom of speech and expression. It includes in it, the right to seek, receive and impart information and ideas and right to know and in last, right to have an access to source of information.

French declaration of 1789 Article -11 says "Free communication of thought and opinions is one of the most precious rights of man."[4]

Universal Declaration of Human Rights (UDHR) 1948, in 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR) Art 19, guaranteeing freedom of opinion and expression, clearly states that these rights include the right to seek and receive information.

- Article -3 States that everyone has right to life and security of person.
- Article – 19 of the Universal Declaration of Human Rights provide that - "*Everyone has the right to freedom of opinion and expression, this right includes*

[1] Media space are "electronic setting in which group of people can work together , even when they are not present in same place and time.In media space ,people can create real time visual and acoustic environment that span physically separate areas.,Marilyn M.Mantei,et al.,Expereinces in the Use of a Media Space , University of Toronto , Ontariro,1991.
[2] 1995 (2) SCC 161
[3] S.P. Gupta V Union of India, AIR 1982 SC 149
[4] See , also The Rights of Child - 1989 – Article- 30,The Preamble of the Convention on International Rights of Corrections – 1962, and The European Convention for the Protection of Human Rights and fundamental Freedoms, 1950 declare in Article- 10 (1), the same rights has to freedom of expression, on the lines of Article – 19 of Universal declaration. But Article – 10 (2) deals with the restriction

freedom to hold opinions without interference and to seek receive and impart information and ideas through any media and regardless of frontiers."

- Article- 12 deals with the person's privacy rights and reads "No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attack upon his owner and reputation.

The International Covenant on Civil and Political Right (ICCPR)

In 1966, the International Covenant on Civil and Political Right (ICCPR) was adopted by the UN General Assembly and India is also the signatory of this covenant. Under Art 19, guarantees the right to freedom of opinion and expression in very similar terms:

(1.) Everyone shall have the right to freedom of opinion.

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

The Madrid Principles on the Relationship between the Media and Judicial Independents – 1994

A group of 40 distinguished Legal experts and Media representatives, convened by the Internationals commission of Jurists (ICJ), at its center for though independents of Judge and Lawyers, and Spanish committee of UNICEF, met in Madrid, Spain between 18-20, January 1994.

The importance of the freedom of press in parliamentary democracy was time and again recognized, stated, re-stated and confirm by the superior Court despite the fact that Article -19 (1) (a) does not contain any specific enumerations of this freedom. Unlike American Constitution, Article -19 (1) (a) of Indian Constitution does not expressly mention the liberty of press but it is settled law that the right to freedom of speech and expression in Article – 19 (1) (a) includes the liberty of press.

In England this freedom existed, as Lord Massfield has defined the liberty of press as consisting in printing without previous license, subject consequence of Law.

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[5], apex Court of India held that this freedom include the freedom of Ideas there publications and circulations. In **LIC V. Manubhai Shah[6]**, 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 stiffed are suffocate or gag this rights would sound a death knell to democracy and would held user in autocracy or dictatorship*.

As people need food, shelter and health care for their physical survival, they need communication for their social welfare. Moreover for their human dignity peoples need factor that are intrinsic to genuine democracy; reason, reasonability, mutual respect, freedom of expression and freedom of conscience all of which mediated by communication a prerequisite of democracy, therefore, is the democratization of communication which in turn requires empowerment of individuals.

Michael Torber[7] (1994) holds that the endeavor equality and justice for all is based on the Democratization of Communication. He has laid down six principles. They are -

- The principle of Human dignity (Human rights)
- The principle of freedom
- The principle of truth telling
- The principle of justice
- The principle of peace
- The principle of participation

[5] AIR 1950 SCR 594
[6] (1992) 3 SCC637
[7]Michael Torber,was born and educated in Switzerland.He gained his Ph.D. in Mass Communication.Edited a Book Communication Ethics and Universal Values. Ed.by Michael Torber , Clifford G.Christians, SAGE Publications,ISBN 9780761905851

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 Constitution al 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 pretrial' 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 content 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**[8], 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. Fair trial means a trial in which bias or prejudices for against the accused the witness or the cause which is being tried is eliminated.

However, sensationalized news stories circulated by the media have steadily gnawed at the guarantees of right to a fair trial and posed a grave threat to the presumption of innocence. What is mare, the pervasive influence of the press is increasingly proving to be detrimental to impartial decision making process of the judicially. Such news stories cannot easily be defended under the auspices of freedom of

[8] (2004)4 SCC 158

expression. Therefore in a system of free media, it is not only the interest of the issuers of news which require protection but also the consumers of news.

The Freedom of the media is indeed an integral part of the freedom of expression and is an essential requisite of a democratic set up. The Indian Constitution has granted this freedom by way of Fundamental Rights.[9] The media, which is obligated to respect the rights of individuals, is also obligated to work within the framework of legal principles and statutes.[10]These principles/statutes have been framed by way of minimum standards and do not intend to detract from higher standards of protection to the freedom of expression.[11]

Today widely proliferated print and electronic media is operating as a most effective watchdog of all democratic systems of governance world over. Its far reaching effect is wonderful. With addition of new media to news media, such as internet, blog writing etc the field of media is now open to anyone. It generated millions of citizen journalists. Thanks to information technology, the freedom of speech and expression is really available to everyone who can use it. For an author the need of publisher is inevitable and that in fact dictated the freedom of expression. Without printing a book or article, any author can publish his views and invite comments from viewers on it. The technology also made watching media possible and effective.

Growing volumes of law in tune with advancing technology accommodated the media law too. Though media persons are subject to general legal regulation, the 'media law' is emerging, because of its peculiar specialization. However the media's spread

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[9] See objectives of Press Council Act, 1978. An Act to establish a Press Council for the purpose of preserving the freedom of the Press and of maintaining and improving the standards of newspapers and news agencies in India

[10] Section 14, Press Council Act, 1978(Deals with Power to Censure), Section 14(1) Where, on receipt of a complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or working journalist has committed any professional misconduct, the Council may, after giving the newspaper, or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided by regulations made under this Act and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist, as the case may be .

Provided that the Council may not take cognizance of a complaint if in the opinion of the Chairman, there is no sufficient ground for holding an inquiry.

(2) If the Council is of the opinion that it is necessary or expedient in public interest so to do, it may require any newspaper to publish therein in such manner as the Council thinks fit, any particulars relating to any inquiry under this section against a newspaper or news agency, an editor or a journalist working therein, including the name of such newspaper, news agency, editor or journalist.

(3) Nothing in sub-section (1) shall be deemed to empower the Council to hold an inquiry into any matter in respect of which any proceeding is pending in a court of law.

(4) The decision of the Council under sub-section (I), or sub-section (2), as the case be, shall be final and shall not be questioned in a court of law.

[11] G.N.Ray,Tabloidization and page 3 Syndrome: Unethical Practices in Media,Media Law Review,Published by NALSAR University of Law,Vol 1MLR 2010 P.1

being beyond boundaries of any nation, the media law assumed international proposition. Because of same reason it also became difficult to control, really making it a 'Freedom'. It is very interesting to note that technology has come to the aid of 'expression freedom' generating unlimited space for building opinion to impact the decision makers wherever they are.

Constitutional Framework: tracings the Freedom of Media

Prior to the advent of the present Constitution, there was no Constitution al or statutory enunciation of the freedom of speech of the subjects or the liberty of the Press. Even in the famous Proclamation of Queen Victoria made in 1858 after the British power was firmly established in India, there was no reference to the freedom of speech or the liberty of the Press, although it was announced that "none be in any wise favored, none molested or disquieted by reason of their Religious Faith or Observances; but that all shall alike enjoy the equal and impartial protection of the law…"[12] In **Arnold V. King Emperor**[13] which was a case of an appeal by the editor of a newspaper against his conviction for criminal libel under section 499 of the Indian Penal Code, Lord Shaw of Dunfermline in delivering the judgment of the Privy Council observed that "The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject."

The Indian Constitution in the Preamble explicitly give due prominence to the concept of liberty of thought and expression among other liberties.[14] Article 19 (1)(a) of the Indian Constitution provides for the freedom of speech and expression. The freedom of the media can be located under this article.

[12] M.S.M. Sharma v. Sri Krishna Sinha and Ors.AIR1959SC395
[13] (1914) L.R. 41 I.A. 149
[14] The Preambular text recognizes the importance of liberty as being the most fundamental human right as the word 'liberty' comes after 'Justice' and before ' equality' in the Preamble. And, it appears to be in consonance with the twin principles of John Rawls.

In Romesh Thapar V. State of Madras[15], it was held that the freedom includes the freedom of ideas, their publication and circulation. It was stated in Hamdard Dawakhana v. Union of India[16] that the right includes the right to acquire and impart ideas and information about matters of common interest. The Supreme Court of India, **in Life Insurance Corporation of India V. Manubhai D Shah**[17] observed that the "freedom of speech and expression" in Article 19(1)(a) means the right to express one's convictions and opinions freely, by word of mouth, writing, printing, pictures or electronic media or in any other manner. Being only a right flowing from the freedom of speech and expression, the liberty of the Press in India stands on no higher footing than the freedom of speech and expression of a citizen and that no privilege attaches to the Press as such,that is to say, as distinct from the freedom of the citizen.[18] Similar provisions can be found in other Constitution al and international documents. Article 11 of the **French Declaration** of 1789 says: "Free Communication of thoughts and opinions is one of the most precious rights of man. Every citizen, may therefore, freely speak, write or publish subject to responsibility for the abuse of this liberty in cases contemplated by law." Article 19 of the **Universal Declaration of Human Rights, 1948** also provides that "Everyone has the right to freedom of opinion and expression"

Unlike the U S Constitution, there is no separate provision providing for the above freedom. However, the Supreme Court in a score of cases has held that there was no need to explicitly mention these rights and freedoms.[19]In this context, it becomes pertinent to refer to the dictum of Justice Brandies:

> "…the final end of the state was to make free to develop their faculties and that in its governance the deliberative forces should prevail over the arbitrary."[20]

The rights provided under Article 19 are, however, not absolute. They are subject to certain reasonable restrictions. There are two kinds of the abridgment of freedom of speech known to Constitution al jurisprudence: prohibitions ratione personae, and

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[15] 1950 SCR 594

[16] 1960 (2) SCR 671

[17] (1992 (3) SCC 637

[18] Ibid

[19] See, Express Newspaper v. Union of India, (1959)SCR 12; Bennett and Coleman v. Union of India, AIR1973 SC 106; Indian Express Newspaper v. Union of India, (1985)1SCC 641. Also see, Durga Das Basu,Law of the Press, (2002)Wadhwa, Nagpur

[20] Erwin Chemerinsky, Constitutional Law, 923(2006), Aspen Publishers

prohibitions ratione materiae.[21] The Universal Declaration of Human Rights, 1948, also recognises certain rights which should be taken note of. Article 10 deals with the right of an accused "in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him".

Article 11 of the Universal Declaration deals with the right to be presumed innocent and reads thus:

> "Article 11 (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has all the guarantees necessary for his defence.
>
> (2) No one shall be held guilty of any penal offence on account any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that is applicable at the time the penal offence is committed."

Article 12 deals with the person's privacy rights and reads thus:

> "*Article 12: No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to protection of the law against such interference and attacks."*

Free speech and Expression is perhaps one of the most important and useful Rights available in our Constitution. Freedom of expression incorporated in the Indian Constitution in Article 19(1) remains an important facilitator for widespread engagement of the media within a democratic atmosphere. It is using this freedom that media is able to function. Media is regarded as one of the pillars of democracy. The freedom of press is regarded as "the mother of all liberties in a democratic society.[22]

[21] See, D K Sen, A Comparative Study of Indian Constitution, Vol.2,(1966), Orient Longmans, New Delhi
[22] In re Harijai Singh, AIR 1997 SC 73

Trial by media

Trial by media[23] is a phrase made 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. In every democratic country there is a heated debate between those who support a free press which is largely uncensored and those who place a higher priority on an individual's right to privacy and fair trial.[24]

The violation of rights is not confined to cases where violence is at the root of violation of human rights. Violation has many dimensions. And, one such dimension allegedly finds expression in media trial which in this era of globalization has become one such issue that needs to be discussed, debated, and deliberated upon. Those who support 'media trial' argue that it leads to protection of the rights of the affected persons, and it helps in the justice delivery system. Those opposed to it hold it responsible for the infringement of people's right, and other vices that emerge out of media trial. However, the emerging debate is, in fact, a debate about rights, rights of the affected people as well as the rights of media persons.[25]The manifestations of rights[26] are apparently in conflict that finds expression in the form of arguments and counter-arguments that form the crux of the present debate. It is noticeable that with the emergence of the notion of state, the rights and duties no longer had the same colour that they had prior to the coming into existence of the State. Some of the basics rights of the people changed in that they acquired a new content and meaning. The entire landscape of rights and societal needs developed a new dimension.

In a modern state, the rule of law and the role of law are the twin factors that play an important part in the lives of people. While law recognizes certain rights and liberties, it, at the same time, casts certain obligations and puts limitations upon the exercise of those rights. According to Immanuel Kant, "Law is the ensemble of conditions whereby the will of each can co-exist with the will of others, according to a universal law of liberty."[27] Law

[23] Trial by media' is a recently coined term and is used to denote a facet of 'media activism.
[24] Trial By Media-The Jessica Lal Case , available at: http://ssrn.com/abstract=1003644
[25] Furqan Ahmad,Human Rights Perspective of Media Trial, Asia Law Quarterly,2009, vol.1No.1

[26] Hohfeld says, "…the term "rights" tends to be used indiscriminately to cover what in a given case may be a privilege, a power, or immunity, rather than a right in the strictest sense..." See, Wesley Newcomb Hohfeld, "Some Fundamental Legal Conceptions As Applied in Judicial Reasoning", 23 Yale L. J. 16
[27] Del Vecchio, Philosophy of Law, 103(1953), The Catholic University of American Press, Washington, DC.

itself, said Kant, is concerned with the external practical relations of one person to another. These relations, to be ordered at all, involve the ordering of …the arbitrariness of each man on others, in the light of the concept of freedom. Kant thus proceeded to combine the a priori concept of freedom and [arbitrariness]: "law is the sum total of the condition under which the arbitrariness of one is compatible with the arbitrariness of others according to the general law of freedom."[28]

Therefore, while one is free to express his desires and effectuate his will and exercise his rights, it is also incumbent upon him to abide by the restrictions laid down by law. The classical principle of liberty holds that the law is justified to in interfering with conduct when those conduct threatens the liberty of other persons.[29] No right or liberty can be absolute, howsoever important it may be. Law simply regulates the lives of people to ensure a society where a person can enjoy his freedoms without undue interference. Hobbes says:[30]

> "The use of law, which are but rules is not to bind the people from all voluntary actions; but to direct and keep them in such a motion as not to hurt themselves by their own impetuous desires, rashness, or indiscretion, as hedges are set, not to stop the traveller, but to keep them in the way."

in this context, it serves some purpose to realise that persons who are engaged in 'media trial' should understand that their recognised freedom is not boundless and they need act within reasonable restrictions to ascertain non-interference with the rights of common man who are equally entitled to some of the rights, recognised by law. One of the flip sides of media trial is the way it affects the dignity and liberty of an individual in its blind pursuit to hog the limelight. And, in this context it becomes relevant to remember that the Preamble to the Universal Declaration of Human Rights talks about a human family where all the members thereof have inherent dignity along with equal and inalienable rights. These two factors form the 'foundation of freedom, justice and peace in the world'. The Expression 'Human Family' connotes an order where the enjoyment of certain inalienable rights is not bound by any boundaries, where persons live a life with dignity. And only in such an order, freedom abounds, justice reigns and peace prevails. The Preamble also

[28] Julius Stone, Human Law and Human Justice, 84-85(2004), Universal Law Publishing Co. Pvt. Ltd

[29] NE Simmonds, Central Issues in Jurisprudence: Justice, Law and Rights, 48(2003), Eastern Book Company, Lucknow.

[30] Thomas Hobbes, Leviathan, 239-240(1991), Cambridge University Press.

takes note of and reminds the mankind of the consequences that follow if the human rights are disregarded.[31]It envisages a world where people 'shall enjoy freedom of speech and belief, and freedom from fear and want'. It emphasises the need to protect the human rights by the rule of law if 'man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression'. However, many a time, 'Media Activism' inadvertently or advertantly denudes people of their liberty and violates their dignity in its zeal to be over-active without being aware of the awaiting consequences. This is a dangerous sign. However, there is no denying the fact that role of media has been pivotal in some cases.[32]

The **Information Communication Technology (ICT)**, particularly satellite television channels with free flow of information and entertainment constrained the Print media. The advent of communication satellites have brought about a change in the broadcasting scenario in world including India.

The electronic communication encompasses telecommunication, broadcasting and information technology, leading to a **Global Information Infrastructure[33] (GII)** which is capable of carrying any type of information, be it text data, voice or video. All information is now broadly defined to embrace voice in telephony, text in fax and newspaper, images in video and television broadcasting and data in computer.[34] The broadcast of sound/video/text/data all into one stream has become a reality. The transmission system can also be a number of delivery media like satellite cable etc. Several types of services can be provided over a common link. Therefore broadcaster has become an information provider.[35] The concept of global information infrastructure has been evolved with broadcast becoming a component of the overall scheme. Satellite communication technology is a tremendous force for change and innovation. Immense developments have taken place since the

[31] UDHR, 1948 The preamble says: "…disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of the mankind…."
[32] Ibid,
[33] The Global Information Infrastructure is the developing communications framework intended to eventually connect networks world wide.The Internet is considered the de facto Global Information Infrastructure right now. However the GII to evolve as envisioned either the internet or its successor deals with challenging issues such as security, prevacy, right to information, etc.
[34] Vijayanand. K & Anand Sagar.K. Information and CommunicationTechnology: An Indian Perspective

[35] Dr. H.O. Srivastava Directorate General All India Radio New- Delhi.Broadcasting For Developing Countries in the New Millennium

first satellite telephone call till today's global coverage of the Olympics with more than 3 billion viewers. 60% of all overseas communications is satellite based.[36]

The electronic communication technology includes the medium of broadcast, narrowcast, podcast and webcast through electronic technology. The words electronic media covers only the electronically operated media; it includes radio, television, and internet. The term electronics was not common while the basic law relating to electronic was made in India.

In Ministry of Information and Broadcasting v Bengal Cricket Association, [37] The Court held that "The Indian Telegraph Act, 1885 is totally inadequate to govern an important medium like the radio and television, i.e., broadcasting media. The Act was intended for an altogether different purpose when it was enacted. This is the result of the law in this country not keeping pace with the technological advances in the field of information and communications. While all the leading democratic countries have enacted laws specifically governing the broadcasting media, the law in this country has stood still, rooted in the Telegraph Act of 1885. Except Section 4(1) and the definition of telegraph, no other provision of the Act is shown to have any relevance to broadcasting media. It is, therefore, imperative that the parliament makes a law placing the broadcasting media in the hands of a public/statutory corporate or the corporations, as the case may be. This is necessary to safeguard the interests of public and the interests of law as also to avoid uncertainty, confusion and consequent litigation."National Telecom Policy – 2012 has recommended about the changes in the regulator along with the introduction of new technology.[38]

[36] Wilbur Schramm, Mass Media and Development

[37] AIR 1995 SC 1235

[38] National Telecom Policy – 2012 (NTP - 2012) Preamble says that: the Telecommunication has emerged as a key driver of economic and social development in an increasingly knowledge intensive global scenario, in which India needs to play a leadership role. National Telecom Policy-2012 is designed to ensure that India plays this role effectively and transforms the socio-economic scenario through accelerated equitable and inclusive economic growth by laying special emphasis on providing affordable and quality telecommunication services in rural and remote areas. Thrust of this policy is to underscore the imperative that sustained adoption of technology would offer viable options in overcoming developmental challenges in education, health, employment generation, financial inclusion and much else. NTP-2012 is an initiative to create policy framework to address these issues and to touch lives of all citizens and transform India. By formulating a clear policy regime, NTP-2012 endeavors to create an investor friendly environment for attracting additional investments in the sector apart from generating manifold employment opportunities in various segments of the sector. Availability of affordable and effective communications for the citizens is at the core of the vision and goal of the National Telecom Policy – 2012.avalable at http://www.trai.gov.in last visited on 15.05.2013

As for as regulation is concern, the VII the Schedule of the Constitution of India empowers the Central Government to make laws on the electronic media The Union List Item No: 31 says that the laws on posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication are to be made by the Union . Item No: 32 says that the Property of the Union and the revenue there from, but as regards property situated in a State subject to legislation by the State. It is subject laws made by the parliament.

The statutory regulation over the broadcast sector, which was widespread until the emergence of satellite television in the 1990s, can be traced to the130 year old Indian Telegraph Act of 1885. The Act states that the Central Government has the exclusive privilege of establishing, maintaining and working telegraphs within India.[39] The Act and its subsequent amendments define telegraph broadly to include most modern communication devices irrespective of their underlying technology.[40] In **The Kerala State Electricity v Livisha Etc. S C**[41], Court held that the term 'Telegraph' includes the term telephone, television, and radio, wireless, mobile and video equipment. Indian Telegraph Act of 1885 authorizes the Central Government to take temporary possession of a telegraph in cases involving public emergencies or public safety.[42]

The Indian law does not explicitly define 'telecommunications service' and 'broadcasting service', although the Telecom Regulatory Authority of India Act, 1997, defines communication service in Sec 2(1) (k) as: "Service of any description (including electronic mail, voice mail, data services, audio-.text services, video.-text services, radio paging, and cellular mobile telephones services, which is made available to users by means of an transmission or reception of signals, writing, images, and sounds or intelligence of any nature, by wire, radio, visual or any other electronic means but shall not include broadcasting services.''

[39] Section 4(1) the Indian Telegraph Act of 1885

[40] The Indian Telegraph Act of 1885 says that ".any appliance, instrument, material, or apparatus used or capable of use for transmission 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"

[41] Appeal (civil) 289 of 2006

[42] Indian Telegraph Act of 1885 , Section 5(2) enables the government to lawfully intercept telegraph messages on certain grounds. These include India's sovereignty and integrity, state security, friendly relations with foreign states, public order, and preventing the commission of an offence.

The Electronic technology and media law jurisprudence has three dimensional, first – freedom of speech and expression relating to media, second – Law relating to information and communication technology and third print and broadcasting media.

The Regulatory system over the media in India through various scattered laws and contemporary regulatory system is more or less a commercial practice or administrative procedure.

The role of law in directing social change is indeed on test in the matter of broadcasting law. There is no definite model to follow it has to be evolved perhaps, through trial and error. If the Fundamentals are clear the state is willing to play its rightful role as an umpire and guardian of public interest.[43] The regulations over the media are effected mainly based upon executive decisions rather than legislations, due to the absence of a comprehensive legislation relating to electronic media all the decisions are taken exclusively by the cabinet or the executive authority. This has created variety of legal issues. The question of jurisdiction for enforcement of laws, issues relating to media freedom , privacy, conflict of the basic approach of law towards the issues, creation of new variety of rights and duties relating to the media content as well as the technological problems.[44]

The regulating mechanism of the media is thus a very difficult task of the state. It requires the balancing of the interests of the society in the morals values and legal aspects of the freedom for speech and expression and other rights of person the media journalist[45].

The advent of new technology, the complex transitions in the socio-economic scenario caused by the globalization and the complicated legal ethical values are the contributing

[43] N.R.Madhava Menon; 'Who Controls the Air Waves 'Voices Vol-III No.3 1995(p28)

[44] Shiv Cable TV System v The State of Rajasthan And Others. AIR 1993 Raj 197. The petitioners are cable-operators who have installed TV Equipments commonly known as Disc (Dish) Antenna, to receive signals from ASIASAT (Star TV, BBC, ZEE TV, PRIMA, SPORTS, ATN etc.) and are further transmitting these signals as well as the pre-recorded cassettes through cable system to the TV viewers in their houses, who are their subscribers. These petitioners are transmitting the programme of competent authority under the Indian Telegraph Act, 1985

[45] the media laws include Indecent Representation of Women (Prohibition) Act, 1986, The Press and Registration of Books Act, 1867, The Dramatic Performances Act, 1876, The Indian Telegraph Act, 1898, The (Indian) Post Office Act,1898, The Police (Incitement of Disaffection) Act, 1922, Official Secrets Act, 1923, The Emblems and Names (Prevention of Improper Use)Act, 1950, Representation of the People Act, 1951, The Delivery of Books and Newspapers (Public Libraries)Act, 1954, The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (No. 21 of 1954), The Working Journalists and Other Newspaper Employees(Conditions of Service) and Miscellaneous Provisions Act, 1955, The Prize Competitions Act, 1955, The Young Persons (Harmful Publications) Act, 1956, The Copyright Act, 1957, Children Act, 1960, Atomic Energy Act, 1962, Customs Act, 1962, The Unlawful Activities (Prevention) Act,1967, The Civil Defence Act, 1968, The Contempt of Courts Act,1971, The Press Council Act,1978, National Security Act,1980 and Right to Information Act,2005. Available at http:// presscouncil.nic.in/norms.htm

factors in the media law issues. In India, there is a statutory vacuum in media law ; especially with relation to the broadcasting system. In **Secretary , Ministry of Information And Broadcasting Government Of India And Others Vs Cricket Association of Bengal and Others** [46]Supreme Court observed that "It is absolutely essential, in the interests of public, in the interests of the freedom of speech and expression guaranteed by Article 19(1) (a) and with a view to avoid confusion, uncertainty and consequent litigation that Parliament steps in soon to fill the void by enacting a law or laws, as the case may be, governing the broadcasting media.

The Ministry of Information and Broadcasting is a branch of the Government of India is the apex body for formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films in India. The Ministry is responsible for the administration of Prasar bharathi the broadcasting arm of the Indian Government. The electronic media in India is not regulated by the law relating to the electronics. The developed countries have established a separate branch for electronic media including private and public. In India both the television and radio are still controlled by telegraph laws. Basically the term telegraph is different from the word electronics. The Supreme Court of India has said that laws are to be made instead of using old telegraph laws. The present need to passing of separate code for the Electronic Media is the only solution. A unified regulatory system needs consideration of all the related factors.

1.2 STATEMENT OF THE PROBLEM

"I should rather have a completely free press, with although dangers involve 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.

[46] AIR 1995 SC 1235

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 or public education and helping foster debate on agendas for social transformation? It is the distinction that helped the press and media claim special Constitution al 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 fore grounded, 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?

1.3 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.

1.4 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.

1.5 **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.*

1.6 CHAPTERIZATION OF THE THESIS

Chapter-I : Introduction

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 Operations 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 described 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 –a. International perspective

b. National perspective

(1.) Constitutional Framework.

(2.) Statutory Framework.

(3.) Government Policies and Programme

. 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 EMMC (Electronic Media Monitoring Centre) 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- 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. Electronic communication 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 on Freedom of 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, and need of the people and philosophy of the subject, as a Suggestion / Recommendation along with other Suggestion in the area.

CHAPTER-II

Concept, origin
And Historical Background

CHAPTER II

CONCEPTUAL FRAMEWORK, HISTORICAL AND EMERGING DIMENSIONS: MEDIA LAW

2.1 **CONCEPTUAL FRAMEWORK**

2.1.1 Concept and origin

2.2.1 Theories of Media

2.3. Historical background of law

2.3.1 Pre Independence Era

2.3.2 Post Independence Era

2.4**. Facets of media law**

2.1.1 CONCEPT

Media in India consist of several different types of Communications media: television, radio, cinema, newspapers, magazines, and Internet-based Web sites. The Indian media was initiated since the late 18th century with print media started in 1780, radio broadcasting initiated in 1927, and the screening of Auguste and Louis Lumière moving pictures in Bombay initiated during the July 1895 is among the oldest and largest media of the world. Indian media private media in particular has been "free and independent" throughout most of its history. The period of emergency (1975–1977), declared by Prime Minister Indira Gandhi, was the brief period when India's media was faced with potential government retribution. McLuhan split media history into four periods: the tribal age, the literate age, the print age, and the electronic age. Throughout the structure of their distinctive methods of communication (e.g., oral, written, printed,

electronic), different media arouse patterns in the brain that are distinctive to each and every particular form of Communication.[1]

Press is usually meant all the media of mass communication although the printed media, as the oldest, is treated as the exemplar in most discussions. Free press usually means the right to publish, a right to confidentiality of sources, and a right to access. Constitutional law is concerned with the relationship of individual to society, so it's only a small step to see the significance of the press as adjuster or mediator of relationships with all the important social institutions of society - family, religion, economy, polity, law, and leisure. Freedom of speech is the concept of the inherent human right to voice one's opinion publicly without fear of censorship or punishment. "Speech" is not limited to public speaking and is generally taken to include other forms of expression that is the political right to communicate one's opinions and ideas via speech. The term freedom of expression is sometimes used synonymously, but includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used. In practice, the right to freedom of speech is not absolute in any country and the right is commonly subject to limitations, as with libel, slander, obscenity and incitement to commit a crime.

2.2.1 Theories of Media

Historically, the press first functioned from the top down, as house organs of the few who directed the opinions of the common people.

The Authoritarian theory

In English common law, the press always belonged to the King. This is called the authoritarian theory of the press.

The Libertarian theory

The Libertarian theory rests on a concept of negative liberty, "freedom from", or more precisely "freedom from external constraint. With the demise of monarchy, the press came to adopt a role as partner in the search for truth, a kind of free marketplace for ideas and opinions, devoid of government control. This is the type of press that was desired by the founding fathers for the United States. It's called the libertarian theory of the press. The

[1] McLuhan, M.; Fiore Q.; Agel J. (1996). The medium is the massage: an inventory of effects. San Francisco: Hard Wired. ISBN 978-1888869026 at P.235

libertarian theory of the press is that information is knowledge, and knowledge is power. It enables people to realize their potential, and since news is about people making the news, the press reminds us that society has not grown to an entity of greater importance than the people comprising it. Whether or not we regard free press as a natural or inalienable right depends upon how much we assume that people desire to know the truth, and will be set free by it. Perhaps the greatest spokesperson for these ideas was the English poet John Milton (1608-74) who said that people should have unlimited access to the ideas and thoughts of others in order to exercise their talent at reasoning between right and wrong. Milton also said that truth had an unique power of survival when allowed to assert itself freely and openly.

The Social Responsibility Theory

In recent years, with media mega-mergers, some say the press has fallen back into the hands of a few, no more than three people control the broadcast media (radio and television). Not only do monopolies invite government intrusion, but they make it harder for the press to be a free marketplace of ideas. The best that can be accomplished are guarantees of equal time, and a professional sense of obligation to responsibly see that all sides are fairly presented in objective journalism. This is part of the social responsibility theory of the press. Libertarian theory and social responsibility theory are not incompatible." Social responsibility theory rests on a concept of positive liberty, "freedom for", or freedom to achieve goals by any ethical means necessary. Social responsibility theory adds to or corrects for things that the founding fathers neglected to consider with freedom of the press. Liberalism is a political philosophy that change is for the better, especially rational change toward rational ends, like the perfectibility of human nature and society. Liberalism is egalitarian both to people and to ideas. Evil is seen as arising out of ignorance and lack of information. Libertarianism is a philosophy of limited government and individualism which emphasizes if a thing is not harmful to another, and then no authority should restrict it. Libertarian philosophy holds that it is not the business of anyone to tell what they should believe or not believe. Both philosophies are behind the notion of a free marketplace of ideas.

The Utilitarian Right Theory

The utilitarian right Theory is somewhat different from a natural or inalienable right. Under a natural rights conception, freedom of the press involves the right to read or listen,

with nothing preventing someone from throwing away the book or turning off the TV. Under a utilitarian conception, freedom of the press involves not just a right, but a duty, to read, listen, and think.

Concepts of press freedom

The concept of press freedom is too complex to sum up simply. However, freedom of the press should be characterized by independence from internal or external factors and all other elements, which might make journalists hesitant in carrying out their media work.

Press freedom is freedom from all compulsions throughout the processes of press activities. The overall meaning of freedom in the media is that all processes of press activities should be conducted freely. This includes establishing a press Company, gathering news, writing articles, editing news, publishing and distributing.

Function of Freedom of speech and expression

The following function of Freedom of speech and expression in democracy:

(1) Educational function (to advance knowledge and potential for self-fulfillment)

(2) Safety valve function (to speak openly without fear of government reprisal)

(3) Truth-seeking function (to determine truth thru debate and adversity)

(4) Social obligation function (to learn what is important to say)

The Freedom of the press is the freedom of communication and expression through vehicles including various electronic media and published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other legal protections. This philosophy is usually accompanied by legislation ensuring various degrees of freedom of scientific research (known as scientific freedom), publishing, press and printing the depth to which these laws are entrenched in a country's legal system can go as far down as its constitution. The concept of freedom of speech is often covered by the same laws as freedom of the press, thereby giving equal treatment to spoken and published expression.

The notion of freedom of expression is intimately linked to political debate and the concept of democracy. The norms on limiting freedom of expression mean that public debate may not be completely suppressed even in times of emergency.[2] One of the most notable proponents of the link between freedom of speech and democracy is Alexander Meikle john argues that the concept of democracy is that of self-government by the people. For such a system to work an informed electorate is necessary. In order to be appropriately knowledgeable, there must be no constraints on the free flow of information and ideas. Media democracy is a set of ideas advocating reforming the mass media, strengthening public service broadcasting, and developing and participating in alternative media and citizen journalism. The stated purpose for doing so is to create a mass media system that informs and empowers all members of society, and enhances democratic values. The freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects: the right to seek information and ideas; the right to receive information and ideas; the right to impart information and ideas.[3]

Trial by Media is another 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

The advent of new technology create path to Information and Communication Technologies (ICT) - internet, web, and social media - are fast becoming a comprehensive repository and soon an archive of (most) human knowledge. With access to ICT, an individual can become informed on everything from healthcare issues to civic problems to legal concerns. One hundred years ago, people were discussing the need for basic literacy and its impact on the human condition. Today, we should be discussing digital literacy and access in the same way. Digital literacy can be seen as a basic human right. Individuals can impact society, react, and reach out with the aid of technology. ICT is a powerful tool for encouraging, teaching, and protecting the human rights.

[2] Brett, Sebastian (1999). Limits to tolerance: freedom of expression and the public debate in Chile. Human Rights Watch p. 25, ISBN 978-1-56432-192-3

[3] Andrew Puddephatt, Freedom of Expression, The essentials of Human Rights, Hodder Arnold, 2005, p.128

THE CONCEPT OF CYBERSPACE

The cyberspace[4] was new term, first coined by William Gibson in the 1984 sci-fi novel Neuromancer, and it has since come to mean any non-physical terrain created by online computer systems. It's the impression that what one is experiencing is real, as real as talking to somebody face-to-face, doing library research, or window shopping. It doesn't require virtual reality or tactile sensation, and at a minimum, only consequences that are real. People can get married in cyberspace, obtain college degrees, and order things that are delivered to their door.

The freedom of the press is an important concept in considering the role of the media in all aspects of the society. It is a necessary condition for the media to be effective in carrying out their functions. The right to press freedom warrants the media the right to determine the form which their programme will assume, as well as the appropriate form of reporting . Article 19 of UDHR guarantees press freedom[5], but, the concept of press freedom is controversial because it is unclear to ascertain the meaning of press freedom in terms of „freedom from what and freedom for whom?

History of Media and Its Law in India

Prior to the advent of the present Constitution, there was no Constitution al or statutory enunciation of the freedom of speech of the subjects or the liberty of the Press. Even in the famous Proclamation of Queen Victoria made in 1858 after the British power was firmly established in India, there was no reference to the freedom of speech or the liberty of the Press, although it was announced that "none be in any wise favoured, none molested or disquieted by reason of their Religious Faith or Observances; but that all shall alike enjoy the equal and impartial protection of the law…"[6] In Arnold v. King Emperor[7]which was a case of an appeal by the editor of a newspaper against his conviction for criminal libel under section 499 of the Indian Penal Code, Lord Shaw of Dunfermline in delivering the judgment of the Privy Council observed that "The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his

[4] The term cyberspace is used to describe the virtual worlds of computers, networks of computers and shareing information i.e. sending Email.
[5] UDHR, it states that „Everyone has the right to freedom of opinion...to seek, receive and impart information and ideas through any media and regardless of frontiers .
[6]M.S.M. Sharma v.Sri Krishna Sinha and Ors., AIR1959SC395
[7] (1914) L.R. 41 I.A. 149

privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject."The prefatory words that adore the Indian Constitution in the Preamble explicitly give due prominence to the concept of liberty of thought and expression among other liberties.[8]

Unlike the U S Constitution, there is no separate provision providing for the above freedom. However, the Supreme Court in a score of cases has held that there was no needto explicitly mention these rights and freedoms.[9]In this context, it becomes pertinent to refer to the dictum of Justice Brandies: "…the final end of the state was to make free to develop their faculties and that in its governance the deliberative forces should prevail over the arbitrary."[10]The rights provided under Article 19 are, however, not absolute. They are subject to certain reasonable restrictions. There are two kinds of the abridgment of freedom of speech known to Constitution al jurisprudence: prohibitions ratione personae, and prohibitions ratione materiae.[11]

2.3.1 Pre Independence Era

History of the media pre- independence

When Europeans write on the history of the media they refer to the Actadiurna of the Roman Empire as closely akin to the newspaper of today. In India the Rock Edicts of Emperor Ashok (c.273-236 BC) engraved on the rocks contain in abundance measures adopted and regulations issued by him. This is not very different from the news content of modern media. In that era when Ashok, the Great, used this technology for communicating his message throughout his vast empire, we do not find any reference to restrictions on communication imposed by law[12].

However, the Arthashastra, written originally in the reign of Chandragupta Maurya (c. 324-300 BC),by Kautilya mentions punishment for spreading false rumours. The

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[8] the preambular text recognizes importance of liberty as being the most fundamental human right as the word 'liberty' comes after 'Justice' and before ' equality' in the preamble. And, it appears to be in consonance with the twin principles of John Rawls

9 See, Express Newspaperv. Union of India, (1959)SCR 12; Bennett and Colemanv. Union of India, AIR 1973 SC 106; Indian Express Newspaperv. Union of India, (1985)1SCC 641. Also see, Durga Das Basu, Law of the Press, (2002) Wadhwa Nagpur.

[10] Erwin Chemerinsky, Constitutional Law, 923(2006), Aspen Publishers

[11] See, D K Sen, A Comparative Study of Indian Constitution, Vol.2,(1966), Orient Longmans, New Delhi.

[12] K. M. Shrivastava ; Media Laws: A Historical Perspective(2009)

Arthashastra and the Rock Edicts also speak of spies and reporters. Uzbek scholar Al-Biruni (973-1049 AD) in his book Kitabu' Hind[13] (1030AD) wrote: The Hindus are not in the habit of writing on hides, like the Greeks in ancient times. Socrates, on being asked why he did not compose books, gave this reply, "I do not transfer knowledge from the living hearts of men to the dead hides of sheep. The Hindus have in the south of their country a slender tree like the date and coconut palm, bearing edible fruits and leaves of the length of one yard, and as broad as three fingers one put beside the other. They call these leaves tar and write on them. They bind a book of these leaves together by a cord on which they are arranged, the cord going through all the leaves by a hole in the middle of each. In Central and Northern India people use the bark of the tuz tree one kind of which is used as a cover for bows. It is called bhurja. They take a piece one yard long and as broad as outstretched fingers of the hand, or somewhat less, and prepare it in various ways. They oil and polish it so as to make it hard and smooth, and then they write on it.The proper order of the single leaves is marked by numbers. The whole book is wrapped up in a piece of cloth and fastened between two tablets of the same size.

The first Mughul Emperor Zahirud-din Muhammad Babur Padshah Gazi writes[14] about announcement of vows before his all-important battle with Rana Sanga, "I sent for scribes (munshilar) and ordered them to write for their newsletters (akhbar) the farman concerning two important acts that I have done. Sheikh Zain wrote the farman with his own elegance (inshahi bila) and fine letter (insha) was sent to all my dominions." This farman is dated 20 of Jumada I, 933 AH (26 February 1527). Akhbar is the word used for newspapers today in Hindi and Urdu languages and Babur mentions it in such a way as if it is something routine . It was meant to communicate an official announcement by Babur that a tax would be waived on all Muslims if he won the battle and he himself had given up drinking and banned liquor in his dominions. However, there is no reference to any regulation on akhbar. The earliest mention of pre-typographic newspapers is to be found in a contemporary historical work (Muntakhals-ul-Lubab by Khafi Khan)[15]ofthe later Mughul times. Colonel James Toad (1782-1835) sent hundreds of original manuscript newspapers of the Court of Aurangzeb, sixth of the Mughuls to the Royal Asiatic Society

[13] Al-Biruni, an abridged edition of translation by Dr Edward C. Sackau, edited for National Book Trust New Delhi by Q. Ahmad (1988:58).

[14] Babur Nama, translated from the original Turki text of Zahirud-dinMuhammad Babur Padshah Gazi by Annette Suannah Beveridge. Publishedby translator in 1922, reprinted by Orient Book Reprint Corporation, New Delhi, 1979.

[15] Author himself styles Muntakhabu-l hubab Muhammad Shahi, is frequentlycalled Tarikh-i Khkfi Khan. It is a highly esteemed history, commencing withthe Invasion of Babar, A.D. 1519, and concluding with the fourteenth year of the reign of Muhammad Shah.

in London. The size of the seventeenth-century papers, written in different hands, was 8 inches by 4½inches.'[16]These were considerably free and could report even personal affairs of the emperor. We have no record of any law governing these newspapers. Perhaps, there was neither pre-censorship nor licensing, both being Western institutions. It was sheer accident, however, that brought printing press to India on 6 September 1556. Granting a request from Emperor of Abyssinia the King of Portugal dispatched in 1556 a printing press and technicians via the Caperoute. But the patriarch accompanying the press halted en route at Goa from where his onward journey to Abyssinia was first delayed and later abandoned. He died on 22 December 1562. The press, intended for missionary work in Abyssinia never left Goa, instead, it printed literature for Abyssinia from Goa.[17]

However, there was no press regulation until the British East India Company started ruling a part of India after the Battle of Plassey in 1757.William Bolts, an ex-employee of the British East India Company attempted to start the first newspaper in India in 1766 but was deported. Later a collection of papers on the affairs of India "particularly respecting the state of Bengal and its dependencies" was published in 1773 by J. Almon, London as "Considerations on Indian Affairs" in two volumes with maps and survey reports. In this publication he has been identified as former Judge of the Mayor's Court of Calcutta.

The typographic media began in India with James Augustus Hicky's Bengal Gazette or Calcutta General Advertiser, the first issue of which came out of the press on 29 January 1780. When Hickey started to unmask Warren Hasting and East India Company's ruling clique (the 'Nabobs') there was no law, which could restrict him. Hicky's Gazette put on record "the strictly private arrangement by which Mrs. Imhoff became the wife of the first governor-general in India". Hicky's courage gave birth to the first government order against freedom of the press. "Fort William, November 14, 1780. Public notice is given that a weekly newspaper called the Bengal Gazette or Calcutta General Adviser, printed by J. A. Hicky, has lately been found to contain several improper paragraphs tending to vilify private characters and to disturb the peace of the settlement. It is no longer permitted to be circulated through the channel of the General Post Office". Libel suits resulting in heavy fines and imprisonments ultimately crushed Hicky. He had to sell his press and pass

[16] Shrivastava, K.M. (1977) Press Laws in India: Warren Hastings to MetcalfeIndian Press (Journal of Indian and Eastern Newspaper Society), Vol. IV No.8August 1977.

[17] Early Printing In India, Printing Times, Vol 17 No 1, WAPC Special, February1993, p. 28.

rest of his life in poverty. When newspapers in India were published by only Europeans expulsion of the editor (printer) was ultimate penalty. The Supreme Court of Judicature upheld this power. Every foreigner was required to obtain a licence for his residence in the territories of the Company and if any one incurred the displeasure of the officials by writing or publishing something which was not palatable to them, the licence was cancelled. William Duane (1760-1835), American journalist, born near Lake Champlain, N.Y., of Irish parentage. He learned the printer's trade in Ireland and in 1787 went to Calcutta, where he edited the Indian World. On December 27, 1794 Duane was invited by Acting Governor-General Sir John Shore (1746-1794) for breakfast and when he reached there he was handcuffed and after detention for three days deported to England on an armed ship 'Indiaman'. On his arrival in England he was set free without a word of apology or explanation. His Calcutta property worth 50,000 dollars was confiscated and his paper banned forever.[18]

These were stories from Calcutta Madras was no different. The first news paper in Madras, The Madras Courier (October 1785) also had trouble with the authorities. Pre-censorship was first introduced in Madras (now Chennai) as in 1795. Madras Gazette agreed to submit all general orders of the Government for scrutiny by the Military Secretary before their publication. In May 1799 Marquis of Wellesley[19]legalized this system by issuing the regulation for the control of newspapers. According to these the censor was instructed to prevent publication of matter relating to the following subjects: "Public credit and revenues or the finances of East India Company, military operations and intelligence, conduct of government officers, private scandal or libel of individuals, probability of war and peace between the East India Company and any of the Indian powers, information useful to the enemy and the observations likely to excite alarm or commotion." The penalty for infringement of the law was deportation, as till then the mischief of running a newspaper was confined to Europeans. This punishment was in fact legalised what was done arbitrarily to William Duane. It appears that growing importance of the Fourth Estate in England and the desire of missionaries to start newspapers in India ultimately led to abolition of pre-censorship in 1818 by Lord Hastings as missionaries of Serampore started the first Indian language journal Samachar Darpan on23 May 1818. It became bilingual carrying news in Bengali and English in parallel columns in 1829.Like

[18] Shankdhar, B.M. (1977) William Duane: a restless crusader Indian Press(Journal of Indian and Eastern Newspaper Society), Vol. IV No. 10 October1977

[19] Wellesley, Richard Colley, Marquess of (1760-1842), the East IndiaCompany's governor general of India, 1797-1805.

censorship, licensing was also a European institution to control the press. It was introduced in Bengal in 1823 through Adam's regulations. The East India Company also issued instruction that no servant of the company should have any connection with a newspaper. This decision was the result of an incident in Bombay (now Mumbai) where a member of the Council of the Governor owned a newspaper. Licensing regulations were replaced by Metcalfe' Act[20] which was applicable to entire territory of the East India Company and required that the printer and publisher of every newspaper declare the location of the premises of its publication. Licensing was, however, re introduced in 1857 by Lord Canning and was applied to all kinds of publications. This was the year when Indians fought their war of independence against the East India Company after which the British Crown took over the territories of the Company. In 1860 Indian Penal Code was passed as a general law but laid down offences which any writer, editor or publisher must avoid - the offences of defamation and obscenity. The next important event in the field of media laws was the enactment of the Press and Registration of Books Act (25 of1867). This Act is still in force, of course with amendments from time to time. The object of this Act was to provide for the regulation of the printing presses and of periodical containing news, for the preservation of copies of books and for the registration of books. It contains rules for the registration of books. It contains rules for the making of declaration by the keepers of presses and publishers of newspapers (part II); rules regulations for the delivery of books (Part III); penalties (Part IV); registration of book (Part V). Part VI of this Act gave powers to the government to make rules and to exempt books or newspapers from the provisions of this Act. The Act 55 of 1955 added Part VA to provide for appointment of Registrar of Newspapers.

The role of the press during the Wahabi Conspiracy of 1869-70 led to the amendment of the Indian Penal Code (27 of 1870) to incorporate a section on sedition (124-A). This dealt with a person who "excites or attempts to excite feeling of disaffection to the government established by law in British India." It came handy to send many freedom fighters to jail for their writings in newspapers. Some of them were deported to Burma or Andamans and kept in prison there. Some of them were deported to Andamans[21] between 1908 to 1910

[20] In 1830, Sir Charles Metcalfe, as a member of governor-general's council,said: "I think on the present occasion that it will be infinitely better to allowanything to be said that can be said, than to furnish a new source ofdiscontent, by crushing the expression of public opinion. I have, for my ownpart, always advocated the liberty of the press, believing its benefits tooutweigh its mischief: and I continue to have the same opinion." CharlesTheophilus Metcalfe, 1st Baron Metcalfe (1785 - 1846), was the second sonof Thomas Theophilus Metcalfe, then a major in the Bengal army, whoafterwards became a director of the British East India Company, and was created a baronet in 1802.

[21] Unsung Heroes of Freedom Struggle in Andamans, Who's Who, Compiled and edited by Rashida Iqbal for Directorate of Education and Culture, Andaman & Nicobar adminstration, Port Blair (1998) p.88,109.

for contributing to or editing Swarajya, Inquilab and Yugantar. They were Govind Ram-Hotilal Verma (age 20years) and Hari Ram (age 22) in 1908- Ram Charan Lal (age 24) in 1909and Ladha Ram (age 21) and Nandgopal (age25) in 1910. There were more celebrated cases of sedition for writing in newspapers against political heavyweights like Lokmanya Bal Gangadhar Tilak and Mahatma Gandhi. Shortly after wards, the restrictions imposed by the East India Company prior to 1841 returned to the government officers, though in a milder tone.

In 1875, the government passed orders that no officer in the service of the government should be permitted without previous sanction to become the proprietor of any periodical or to edit or manage a periodical. Officers were advised to remain within the limits of 'temperate and reasonable' discussion. No document or information should be revealed to the press, which they might come to posses in their official capacity. In cases where doubts, may arise as to whether any engagements of officers with the press were consistent with the discharge of their duties to the government, the decision to that effect would lie with the government. For the purpose of ascertaining the character of any intended public dramatic performance the Dramatic Performances Act (19 of 1876) was passed as it was suspected that such performances may provoke people against the Government. When the Indian language press became very bold the Vernacular Press Act 1878 was introduced. It was comprehensive and rigorous, aimed at" better control" of the language press. It empowered any magistrate of a district or a commissioner of police in a presidency town to call upon the printer and publisher of a newspaper to enter into a bond undertaking not to publish certain kind of material, to demand security, and to forfeit, if it was thought fit, such presses and confiscate any printed matter as it deemed objectionable. No printer or publisher against whom such action had been taken could have recourse to a Court of law. It was particularly meant to crush Amrit Bazar Patrika, which was bilingual before this Act. But the smart owner foiled this attempt by turning it into an English language paper overnight. The main role in persuading Lord Lytton for the Vernacular Press Act was played by Sir Ashley Eden (1831-1887), the then Lieutenant Governor of Bengal. He was in a fit to crush the Amrita Bazar Patrika. Sir Ashley called the editor of the Amrita Bazar Patrika, Babu Shishir Kumar, and offered: "Let us three, I, you and Kristo Das, govern the province. Kriso Das has agreed to conduct his paper according to my direction... You will have to do the same thing. I shall contribute to your paper as I do to the Hindoo Patriot. And when you write an article criticizing the government you will have to submit the

manuscript to me before publication. In return the government will subscribe to a considerable number of your paper and I shall consult you as I consult Kristo Das in carrying on the administration of province." Babu Shishir Kumar thanked him and quietly remarked, "Your Honor, there ought to be at least one honest journalist in the land". Sir Ashley himself remarked, "If there had been only one week's delay on the part of the proprietors to convert the Patrika into English we would have dealt a deadly blow at it by demanding a heavy bail-bond from them."When Gladstone[22] who had criticized the Vernacular Press Act, became the prime minister and Lord Ripon the governor-general, and even before the retirement of Sir Ashley Eden the repeal of Vernacular Press Act had become a foregone conclusion. The repealing bill was passed without discussion, on December 7, 1881.In India telegraph was introduced in 1851 and was very useful to East India Company during 1857. However, the Indian Telegraph Act was passed in1885. The Government had exclusive privilege under this Act in respect of telegraph and power to grant licenses. The definition of telegraph in this Act is very wide as it later covered all other means of communication depending on electromagnetic waves, thus including tele-printer, telephone, fax, radio and television. It provides for interception of messages and takeover of licensed establishments by the Government in any public emergency or in the interest of public safety. Lord Dufferin succeeded Lord Ripon in 1884, The Amrita Bazar Patrika published certain facts about the administration of Bhopal and commented adversely on the conduct of Sir Lepel Griffin (1838-1908), the agent to the governor general for Central India. Sir Lepel appealed to the government for action. The proposal was turned down on the ground that legal proceedings would draw greater publicity to the matter under dispute. In1889, during Lord Lansdowne's regime, The Amrita Bazar Patrika published what was purported to be a confidential Foreign Office document. It said that the Maharaja of Kashmir was deposed not because he resignedor oppressed his people, but because Gilgit was wanted for strategic purposes by the British government. No action was taken against The Amrita Bazar Patrika, but the Indian Official Secrets Act modeled on a similar Act of the British Parliament, was passed on October 17, 1889. It provided a penalty of imprisonment for one to two years and/or a fine according to the nature of the offence. Section 19 of the Sea Customs Act 1878 gave power to the central government of prohibit or restrict the importation or exportation of goods In to or out of India. Section 5 of the Telegraph Act 1885 gave power to the central government or provincial

[22] William Ewart Gladstone (1809-1898) was a British Liberal Party statesman

governments of an official specially authorized by the government to take possession of licensed telegraphs and to order interception of telegraphic messages which include as per section 3 (1) of the Act telephone messages also. Section 25 of the Indian Post Office Act 1898 confers power on an officer of the post office to intercept during transmission by post goods which have been notified under section19 of the Sea Customs Act or the import or export of which is otherwise prohibited. Section 26 of the Post Office Act provides power of interception of postal articles on the same lines as section 5 of the Telegraph Act. Thus by the turn of the century the government had wide ranging powers to intercept anything anywhere along all the possible channels. With Swadeshi Movement and partition of Bengal the opposition of the Government reached its zenith, both in the press and the public. In June1908 the government passed the Newspaper (Incitement to Offences) Act, which gave power to local authorities to take judicial action against the editor of any newspaper, which indulges in writings calculated to incite rebellion. Nine prosecutions were instituted under this Act and as a result seven presses were confiscated. Then came the Press Act of 1910, which empowered the government to demand security from any newspaper, a provision similar to what existed in the Vernacular Press Act. British Parliament passed the Copyright Act in 1911. Similar provisions came to India by Indian Copyright Act, 1914 (3 of 1914). It was replaced by a comprehensive legislation only in 1957 by the new Copyright Act (14of 1957).In 1918 Government passed the Cinematograph Act (2 of 1918), which was replaced by the Cinematograph Act, 1952 (37 of 1952).In 1921, the government appointed a committee, with Sir Tej Bahadur Sapru(1875-1949) as chairman, to look into the then existing press laws. The committee unanimously recommended the repeal of the Newspaper (Incitement of Offences) Act 1908 and the India Press Act 1910.[23]In regard to the Press and Registration of Books Act, the committee recommended that the name of the editor should be inscribed on every issue of the newspaper and the editor should be subjected to the same liabilities as the printer and publisher as regards criminal and civic responsibility, that a person registering under this Act should be a major, that the term of imprisonment in part IV of the Act should be reduced from two years to six months, and that provision should be made for delivery to government of copies of newspapers printed in British India. The committee advocated the retention of powers to seize and confiscated seditious leaflets and literature. It recommended that the ancillary powers of preventing importation and postal transmission

[23] Most of the witnesses examined by the committee expressed the view that Press Act had not been applied with equal severity to English-owned and Indian-owned newspapers

of such literature should be retained. The requisite amendments were carried out by the Press Law (Repeal and Amendment) Act of 1922 (14 of 1922).In 1922, on the request of the Chamber of Princes, the Princes Protection Bill was introduced in the Legislative Assembly. The Assembly rejected the bill. But the Governor-General, invoking treaty obligations and exercising his special powers under section 67B of the Government of India Act 1919, certified the Bill which became the Indian States (Protection against Disaffection) Act 1922. This Act provided punishment of imprisonment up to 5 years for any person editing, printing or publishing any document which brings into hatred or contempt or excites disaffection towards any prince or chief of a state in India, or the government or administration established in any such state. For material of this nature, the powers of forfeiture under sections 99-A to 99-C of the Criminal Procedure Code and of postal interception under sections 27-B to 27-D of the Indian Post Offices Act were made applicable. In 1923 the Official Secrets Act was passed in order to update and consolidate the existing provisions of Indian Official Secrets Act of 1889,along the lines of the British Acts of 1911 and 1920. The earlier Act was repealed. Section 5 of this Act, which affects the Press, deals with "official secrets" and relates to "wrongful communication of information."To meet the situation posed by the civil disobedience movement of 1930, the government promulgated the Indian Press Ordinance to provide for" better control of the press". This revived the stringent provisions of the repealed Press Act of 1910. Some 130 newspapers had to deposit securities, nine refused to do so and suspended publications. In 1931, the Indian Press (Emergency Powers) Act was passed. The operative clause of section 4(1) of this Act reads as follows: "Words, signs or visible representations which(a) incite to or encourage or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence or (b) directly or indirectly express approval or admiration of any such offence of any person, real or fictitious, who has committed or is alleged or represented to have committed such offence." Under the, original sub-section (3) of section 1 the Act was to remain in force for one year only and ;the government were given the power to extend this period by another year. The operation of the Act was extended from time to time and ultimately sub-section (3) of section was repealed by the Criminal Law (amendment) Act 1935 making this a part of permanent law of the land . In 1932 the Foreign Relations Act was passed with the object of providing against the publication of statements likely to prejudice the maintenance of friendly relations between the British government and the governments of certain foreign states. The powers of forfeiture under sections 99A-99Gof the Criminal Procedure Code and the

postal interception under sections27B-27D of the Indian Post Offices Act were extended by section 3 of this Act to documents containing matter defamatory of such ruler or his consort of son or principal minister of a state outside but adjoining India. Indian States (Protection) Act was passed in 1934 to protect the administrations of states in India, which were under the suzerainty of the British crown from activities, which tended to subvert or excite disaffection towards or to obstruct such administration. Section 3 of this Act extended to Press Emergency Act Powers 1931 to protect these states. The Government of India Act was passed in 1935. In 1937 autonomous popular governments came to power in eight of the eleven provinces. They could do without using any special legislation against the press until they resigned in October 1939.

The first recorded discussion of dissemination of news in India can be traced back to Kautilya's 'Arthashastra'. The Muslim rulers reinforced Kautilya's system by appointing 'Waqaya Navis' (events reporter) in every 'Suba' capital. The 'Waqaya Navis' sent its reports to the Centre through 'Harkaras' (messengers). The Emperor on receiving these 'news-sheets' from the state capitals, shared the non-confidential ones with his Courtiers. Important events were recorded for posterity. For the common people, news was circulated by proclamations, accompanied by beat of drums or through word of mouth. The 'news-sheets' however, could not be called newspapers kin the strict sense of the term

The Indian press is more than two centuries old. It was in the 16th century that Christian missionaries first brought the printing press to India. India's first newspaper as well as the first printed weekly appeared on January 29, 1780 when james Augustus Hicky brought out the first issue of the 'Bengal Gazette or Calcutta General Advertiser'-two page, 12 inches by eight- at 'Serampore. The paper depended on the support of the English trading community of Calcutta, which was opposed to the East India Company. The paper strongly upheld the liberty of the Press. Hicky's demand fpr the liberty of the Press was: "The subject should have full liberty to declare his principles and opinions, and every act which tends to coerce that liberty is tyrannical and injurious to the community."[24] India's second newspaper. 'the India Gazette' was established in November 1780 and managed to get free postal circulation from the government. This infuriated Hicky who scathingly lashed the printers and promoters of 'the India Gazette'.

[24]. Justice V.R. Krishan Iyer and Dr. Vinod Sethi : Essays on Press Freedom, 1996, p. 27; also Mrs. Margarita Barns : The Indian Press : A History of the Growth of Public Opinion in India, 1940, p. 49.

The first attempt to start a newspaper in India, in fact, was made 14 years before Hicky, by William Bolts, auther of 'Consideration on Indian Affairs'. In September 1766, he pasted a paper on the Council Hall's door in Calcutta, which reads as follows:

"To the public Mr. Bolts takes this method of informing the people that the want of a printing press in this city being of great disadvantage in business and making extremely difficult to communicate such intelligence to the community, as is of the utmost importance to every British subject, he is ready to give the best encouragement to any person or persons who are versed in the business of printing to manage a press the types and utensils of which can produce. In the meantime, he begs leave to inform the public that having in manuscript many things to communicate, which most intimately concern every individual, any person who may be induced by curiosity or other more laudable motives, will, be permitted at Mr. Bolts' house to read or take copies of the same. A person will give due attendance at the hours from 10 to 12 any morning."

His efforts, however, had a premature demise when the Bengal Government asked him "to quit Bengal and proceed to Madras on the first ship that sails from the Presidency…"[25] In February 1784 were published the Calcutta Gazette and Oriental Advertiser. In 1785 appeared the 'Bengal Journal' and the 'Oriental Magazine' and the 'Calcutta Amusement', the first monthly publication. The 'Calcutta Chronicle' commenced in 1786.

Richard Johnsten, in 1785, started the 'Madras Courier'. In 1793, Boyd came out with 'Hirkaru'. Two years later appeared the 'Madras Gazette'.The first English newspaper in Bombay (Mumbai), 'Bombay Herald', appeared in 1789. In 1790, Luke Ashburner began the 'Bombay Courier' and in 1791 appeared the 'Bombay Gazette'.

After 1790, there was a spurt in newspapers. The 'Asiatic Mirror' was founded in 1794, the 'Indian World', the 'Calcutta Courier' and the 'Bengal Harkaru' in 1795 and the 'Telegraph' and 'Oriental Star' in 1798.In 1789, Governor General Wellesley came to India and was enraged by an article in the Asiatic Mirror. In May 1790, he issued his "notorious Regulations" for the control of the Press in India. The main points are as follows:

1. Every printer of a newspaper to print his name at the bottom of the paper.

[25] Proceedings of the Select Committee of the Council of Fort William, April 18, 1767.

2. Every editor and proprietor of a newspaper to deliver his name and place of abode to the Secretary to the Government.
3. No paper to be published on Sunday.
4. No paper to be published at all, until it shall have been previously inspected by the Secretary to the Government.
5. The penalty for offending against any of the above regulations to be immediate embarkation for Europe.[26]

During Lord Minto's time, in 1811, the proprietors of all printing presses and their dependencies in Calcutta were instructed to affix the names of the printers to all papers published by them.The 'Bengal Gazette' of 1816 was a landmark in the history of the Press in India. For the first time, a paper was brought out by an Indian Gangadhar Bhattacharjee, a votary of Raja Ram Mohan Roy's liberal ideas.

In 1818, the Department of Censor of Newspapers was abolished by Warren Hastings, who laid down certain restrictions on editors. Newspapers were not allowed to publish matters relating to :

1. Animadversions of the measures and proceedings of the Honourable Court of Directors or other public authorities in England connected with the Government of India, or disquisitions on political transactions of the local administration or offensive remarks leveled at public conduct of the members of the Council, of Judges of the Supreme Court or the Lord Bishop of Calcutta.
2. Discussions having a tendency to create alarm or suspicion among the native population of any intended interferences with their religious opinions or observations.
3. The re-publication from English or other newspapers of passages coming under any of the above heads otherwise calculated to affect the British power or regulation in India.
4. Private scandals and personal attacks on individuals tending to excite discussion in society.

[26]. Justice V. R. Krishn Iyer, Dr. Vinod Sethi : Essays on Press Freedom, p. 28; also Hemendra Prasad Ghosh : Press and Press Law in India, 1930.

These regulations were signed by John Adam, Chief Secretary to the Government on August 10, 1818.[27] Soon after, Raja Ram Mohan Roy started the 'Sambad Kaumudi' (the date of its commencemen is debatable) and the 'Mirat-ul-Akhbar'. He thus, started the first Indian language newspapers (in Bengali and Persian). In 1920 he published the English Brahmanical Magazine in Calcutta. He used these to spread his reformistic ideas. On the prospects of 'Mirat-ul-Akhbar' he wrote : "….my only object is that I may lay before the public such articles of intelligence as may increase their experience and tend to their improvement, and that I may communicate to the Rulers a knowledge of the real situation of their subjects, and make the subjects acquainted with the established laws and customs of their Rules : That the Rulers may more rapidly find an opportunity of granting relief to the people, and the people may be put in possession of the means of obtaining protection and redress from their Rulers".[28]

James Silk Buckingham started the 'Calcutta Journal' in 1818. But having invited the wrath of the Government, his licence was cancelled and he was asked to leave India.

In 1823, an Ordinance was issued by then Governor General introducing licensing of the Press under which a licence was required for all matters to be printed. Similar regulations were made in 1825 and 1827.

Lord William Charles Metcalfe, hailed as the liberator of the Indian Press, along with Macaulay, played an important role in the freedom of the Press. In 1835 he introduced the Act XL of 1835 which repealed many earlier Acts imposing restrictions, and was applicable to the whole of the territory of the East India Company. It required the printer and publishers of every newspaper to declare the location of the premises of its publication, failing which a penalty of Rs. 5,000 and imprisonment of two years could be imposed.

Lord Canning's Act of 1857 reintroduced licensing which applied to all kinds of publication including books in all languages. The Act gave the Government discretionary power to grant and revoke licences. This was rightly called the Gagging Act[29]. In 1860, the Indian Penal Code was passed, which laid down offences that writers, editors or publishers

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[27] The Government Gazette, October 21, 1819, Home Public Original Consultations, August 28, 1818, No. 9; also Hemendra Prasad Ghosh : Press and Press Laws in India, p. 213; Justice V.R. Krishana Iyer, Dr. Vinod Sethi : Essays on Press Freedom, 1996, p. 30).

[28] B.B. Majumdar : History of Indian Social and Political Ideas, p 2-3; also Justice V.R. Krishana Iyer, Dr. Vinod Sethi : Essays on Press Freedom, p.31

[29] Nadig Krishna Murthy : Indian Journalism, 1966, p. 2-3

are liable to commit. These offences are those of obscenity and defamation. Various amendments to the IPC introduced other offences like sedition, promoting enmity between classes, imputations or assertions prejudicial to national integration and outraging religious feelings.

After 1857, periodical jouranalism had a consistent growth along with newspapers. Some of the well-known English periodicals included G.A. Natesan's 'Indian Review', Sachidanand Sinha's 'Hindustan Review', Ramanand Chatterjee's 'Modern Review' and Tej Bahadur Sapru's 'Twentieth Century'. Some of the politically-oriented magazines of the pre-Independence era were Bal Gangadhar Tilak's 'Kesari' and 'Mahratta', Annie Besant's 'Commonweal', Abul Kalam Azad's 'Al Hilal', Mahatma Gandhi's 'Young India' and 'Harijan', Lala Lajpat Rai's 'People', Natarajan's 'Indian Social Reformer', and Balkrishan Bhat's 'Hindu Pradeep'.

Bharatendu Harishchandra contributed immensely to Hindi journalism. Mahabir Prasad Dwivedi revolutionised it by standardising the language with the development of 'Khariboli' prose in his monthly 'Saraswati'. He even introduced book reviews and short stories.

Other important journals in the vernacular languages were 'Dig darshan' and 'Gnyan Prakash' in Marathi, 'Anandniketan' and 'Kalhi' in Tamil, 'Biswin Sadi' and 'Shama' in Urdu, 'Asha' and 'Samaj' in Oriya and 'Krisha Patrika', 'Andhra Prapha', 'Andhra Patrika' and 'Andhra Jyoti' in Telugu.

The rudiments of news agencies in India can be traced back to March 1866, when Reuters sent a representative to India to cover business developments in India. In the first decade of the 20th century, K.C. Roy, an Indian journalist, decided to establish an Indian news agency. Along with two other British Journalists, Roy founded the Associated Press of India (API). But soon, Roy broke away and formed the Press News Bureau (PNB).In 1919; both API and PNB were acquired by Reuters, who then enjoyed a monopoly over distribution of news across the country. In the 1930s however, S. Sadanand set up the Free Press of India (FPI). But owing to financial crunch, it had to be shut down, and from its remnants emerged the United Press of India (UPI) in 1933.

Introduction of the tele printer by Reuters in 1937 further facilitated the dissemination of news, bringing down subscription rates and making news available to small newspapers as well.

2.3.2 Post Independence Era

In April 1946 popular governments returned to power in the states and a popular Interim Government came to power at the Centre in September 1939. On 30 September 1946 the wide powers for the control of the press, which were available under the Defence of India Rules, came to an end. To meet the grave communal situation the central and provincial governments promulgated ordinances during 1946-47 to be replaced in due course by emergency legislations. The provisions affecting the press related to imposition of censorship, control of publications, import, possession or conveyance of documents of objectionable nature .Before Independence, the Interim Government appointed the Press Laws Enquiry Committee in March 1947 to examine the press laws. The Committee gave its report on 22 May 1948 after Independence and partition of India. Ganga Nath, Mohan Lal Saxena, Tushar Kanti Ghosh, Diwan Chaman Lall, Mohd. Ismail Khan, Sri Narayan Mehta, S.A. Brelvi, Kasturi Srinivasan and G. V.Bedekar signed the report. It recommended some minor amendments in the Press and Registration of Books Act; repeal of the Indian States (Protection Against Disaffection) Act 1922, and the Indian Press (Emergency Powers) Act 1931; modifications of Section 124-A of the Indian Penal Code and exclusion by explanation of the application of Section 153-A of the Advocacy of Peaceful Change of the Socio-economic order; and exclusion of Section 144 of the Criminal Procedure Code from application to the press.

The Committee also recommended the repeal of the Foreign Relations Act and recommended another more comprehensive legislation to take its place in the changing circumstances. It suggested amendment of the Telegraph Act and the Post Office Act to provide for review by responsible ministers of the government of the actions and orders of subordinate officers. It suggested that all action taken against the press in the exercise of the emergency powers should be preceded by consultation between the provincial governments and the Press Advisory Committee or similar body.

After the report of this committee the Act of 1931 was replaced by Press (Objectionable Matter) Act 1951. However, the mood was so much for freedom of press that it was allowed to lapse in February 1956 and was repealed in 1957. The Indian Constitution gives every citizen fundamental right to freedom of speech and expression and the Courts have interpreted that it includes freedom of the press. On 23 September 1952 the Government of India appointed a Press Commission to enquire into the state of the press and to indicate the lines of its development in the future. Its recommendations resulted in

establishment of the Press Council and a law to regulate working conditions of journalists, which provides for appointment of a Wage Board periodically. Major setback to the freedom of press in India was when Emergency was imposed in June 1975 and censorship was introduced. However, after the defeat of the then ruling party in 1977 General Elections it has not been possible for anybody to follow the example. Press Council advised the Government not to put curbs on the press even in disturbed areas like Jammu and Kashmir. This policy appears to be better than the curbs on the press by Government. Liberal ethos reinforced after 1977 has affected broadcasting as well. While demand for autonomous corporation to control All India Radio and Doordarshan was accepted and finally Prasar Bharti, an autonomous corporation came into existence from 15 September 1997 after the notification of the Prasar Bharti Act. It has not been possible to come up with a regulator for broadcasting content despite several bills that came to Parliament over the years and private satellite and cable channels are in field day enjoying more freedom than in any other part of the world. Though the Government has not allowed news on private radio outfits yet, freedom of print and television channels make India one of the most liberal countries in the world as far as the freedom of media goes. Right to Information Act 2005[30] has been implemented and this has further extended freedom of media in India.

After independence in 1947, the Indian and Eastern Newspaper Society bought over the Indian interests of Reuters and formed the Press Trust of India (PTI).[31]

In 1959, PTI stopped depending solely on Reuters for foreign news and made arrangements with Agence France Presse (AFP), the United Press International (UPI) and some other small news agencies.

In 1958, the United Press of India shut down and PTI was left as the only big news agency in India. Feeling the need for a competitive news agency, B.C.Roy, the then Chief Minister of West Bengal, took the initiative and came out with the United News of India on March 21, 1961, which has a wide network all over India. For world news it collaborates with several foreign news agencies including the Associated Press of America

[30] On 15 June 2005, President APJ Abdul Kalam gave his assent to the national Right to Information Act 2005. With presidential assent, the Central Government and State Governments had 120 days to implement the provisions of the Act in its entirety. The Act formally came into force on 12October 2005

[31] February 1, 1949, PTI entered into an agreement for purchase of Reuters news and sale of Indian news to the British agency.

(AP), Deutsche Press Agentur of West Germany (DPA), Agenzie National Slampa Associata of Italy (ANSA) and Tass of Russia.

Besides UNI and PTI were Hindusdtan Samachar and Samachar Bharti, Hindustan Samachar was India's first multilingual agency, set up in 1948 by S.S. Apte.

The Press however suffered a lot due to the Gagging Act which also came be criticesed in official circles. The Act provided for *inter alia*:

1. Keepers of printing presses shall make a declaration before a Magistrate.
2. The printer and the publisher shall make a declaration with a precise description of the premises where the printing of publication is conducted.
3. The printer shall deliver, free of expense, to the Government, two copies of each issue of the newspaper, failing which he shall pay a fine of Rs. 2,000 or in default, undergo imprisonment for six months.[32]

In 1867 was passed the Press and Registration of Books Act (XXV of 1867). This was a regulatory law[33], which enabled the Government to regulate printing presses and newspapers by a system of registration and to preserve copies of book and other matter printed in India.

In 1878, the Venacular Press Act was passed for punishing and suppressing seditious writings in newspapers published in India languages. It was repealed on January 19, 1888 On the occasion of the repeal of the Act, Lord Ripon said, "I do not wish to detain the Council by any observations of my own, nor do I think, I am any way called upon to review the reasons or motives for which this Act was originally introduced. All I desire to say is that it will always be a great satisfaction to me that I should have been, during the time I held the office of Viceroy that the Act was removed from the Indian Statute Book.[34]" In 1898, both the IPC and the Criminal Procedure Code were amended. The Newspapers (Incitement to Offences) Act was passed in 1908. It empowered a magistrate to seize a Press if a newspaper printed by it published matter which incited murder or any other act of violence or an offence under the Explosive Substances Act.

This was followed by the Indian Press Act of 1910 which was directed against offences involving violence and sedition.

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[32]. Vinod Sethi : Laws, Press and Advertiser's Handbook, 1994.
[33] Taramati v. ADM, AIR 1964 Guj 278 (280)

[34] Hemendra Prasad Ghosh :Press and Press Laws in India, 1930, p.30

The Criminal Law Amendment Act, 1913 and the Defence of India Regulations were promulgated on the outbreak of the First World War in 1914. The Newspapers (Incitement to Offences) Act, 1908 and the Indian Press Act, 1910 were repealed in 1922 and provisions of these Acts were incorporated in the Press and Registration of Books Act, Sea Customs Act and the Post Office Act, by subsequent amendments.

The official Secrets Act of 1923 was aimed at maintaining the security of the State against leakage of secret information and sabotage.

The Indian Press (Emergency) Power Act 1931, made it obligatory for the Press to furnish security at the call of the Executive. This was replaced by the Press (Objectionable matter) Act, 1951, which also replaced the States (Protection against Disaffection) Act, 1922, the Indian States (protection) Act, 1934 and the Foreign Relations Act, 1932. This Act was repealed in 1957.

The Newspaper (Price and Page) Act, 1956 was annulled by the Supreme Court in 1962 in **Sakal papers v. Union of India,**[35]The apex Court held that the freedom of the Press could be interfered with by the Government indirectly by enacting laws which did not directly impose any restriction on that freedom on the ground of security of State or the like.

The Act was framed to prevent unfair competition among newspaper through price-cutting. Empowered by this Act, the Central Government issued the Daily Newspapers (Price and Page) Order, 1960, whereby the number of pages published by a newspaper was made to depend upon the price charged to the readers, so that a newspaper could not increase the volume of its publication without raising its price. The Government vindicated its stand by saying that such a regulation was essential to protect the smaller newspapers from unfair competition with bigger newspapers. Moreover, it wanted to prevent concentration of ownership in the hands of a few commercial groups of newspapers. The Supreme Court turned down the contentions of Government and observed as follows:

(a) The fixation of a minimum price of the number of pages which a newspaper is entitled to publish would deter a class or section of its readers from purchasing such newspaper (because of the higher price) and thus curtail its circulation;

[35] AIR 1962 SC 305

(b) Limiting the number of subscribers of a newspaper is an infringement of the freedom of the Press, guaranteed by Article 19 (1)(a), even though it is effected through a schedule of rates;

(c) The volume of circulation of a newspaper cannot be curtailed for the purpose of protecting or promoting smaller newspapers or for suppressing unfair practices by other newspapers or for prevention of monopolies.

In 1966, a Press Council was constituted under the Press Council Act, 1965, to preserve the freedom of the Press and to maintain and improve the standards of newspapers in India. This Act was repealed with the promulgation of the Publication of Objectionable Matter Ordinance, 1975. This became the Prevention of Publication of Objectionable Matter Act in 1976. Simultaneously were passed the Press Council (Repeal) Act, 1976 and the Parliamentary Proceedings (Protection of Publication) Repeal Act, 1976.

The Prevention of Publication of Objectionable Matter Act was repeated in 1977 and the Parliamentary Proceedings (Protection of Publication) Act, 1977 was passed. This was given a stronger foundation by the insertion of Article 361 A in the Constitution by the 44th Amendment in 1978. The Pres Council Act, 1978 was enacted; re-establishing the Press Council. The chapter on broadcasting began in India in 1926 when the Indian Broadcasting Company came into being. The Government gave it license to set up broadcasting stations. On July 23, 1927, the first station was opened in Mumbai and on August 26 of the same year, the second radio station opened in Calcutta.

However, due to acute pecuniary problems, the Indian Broadcasting Company went into liquidation in 1930. The morale of the public, who had been excited about broadcasting and had bought their own radio-sets, went down. They appealed to the Government to salvage the situation. In 1931, the Government took over and renamed it as the Indian Broad-casting Service. Later, in 1936, it developed into the All India Radio[36].Government broadcasting was not a *vox populi*. The masses could not identify with alien programmes and much of the news lost credibility. But with the coming of Independence, the entire scenario changed. The first 20 years saw a 40-fold increase in the number of radio sets. The historic speech by Jawaharlal Nehru, the 'Tryst with Destiny' at midnight on August 14-15, 1947 was broadcasted all over the nation. Few months later,

[36] Mass Media in India ,2009, Ministry of Boardcasting and information ,Government of India

Nehru's voice was heard again by a stunned audience-"The light has gone out of our lives. Bapu is no more".

In 1952, the National Programme of Music was started by the All India Radio. The inaugural programme comprised a 'surbahar' and a sitar recital by Pt. Ravi Shanker, who was then an AIR staff member. In 1955 began the Sardar Patel memorial lectures. The 'Vividh Bharati' came into being in 1957, which provided light music programmers. The early sixties saw a massive growth in rural broadcasting. By 1965, all stations of All India Radio began special programmes for the rural population. At present, the All India Radio has the largest network, reaching around 110 million homes. With the advent of the television, the radio took a backseat. But the coming of the FM (frequency modulation) has revived the radio.

In 1956, New Delhi hosted the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), a significant outcome of which was UNESCO's decision to make a grant of $ 20,000 to India to set up a 'pilot project' to study the use of television in the country. The United States too, rendered help for the project and on September 15, 1959, the then President Rajendra Prasad, inaugurated the first experimental TV centre in India.

Initially, the TV programmes were of 60 minutes duration and were telecast twice a week. Twenty community viewing centers were established in the middle and lower income group areas of New and Old Delhi and about 200 people watched these programmes at each centre. From June 1, 1965, the duration of the programs over Doordarshan was increased to four days a week and by August 15, 1965 a daily service of duration commenced. In 1967, Doordarshan began catering to the rural viewers with special programmes for them.

The seventies saw a spurt of RV stations all over India. In 1975-76, under the Satellite Instructional Television Experiment (SITE), India used the ATS-6, a very sophisticated and powerful satellite to beam instructional programmers in four languages to 2,400 villages across seven states on agriculture, health and primary education.

Doordarshan was delinked from All India Radio in April 1976 and established as a separate department. The Varghese Committee had recommended a single National Broadcast Trust under which should function, both Akashvani and Doordarshan. As a result, the Prasar Bharati (Broadcasting Corporation of India) Bill was introduced in Lok

Sabha in 1779. It became the Prasar Bharati (Broadcasting Corporation of India) Ac, 1990 and was enforced *vide* the Amendment Ordinance of 1997. However, just after eight months, in May 1998, it lapsed and now a fresh legislation is under contemplation. In March 2000, the Minister of State for Information and Broadcasting, Aun Jaitley, said that the draft for the Broadcasting Bill was ready. He said that there was a Presidential assent on an enabling clause introduced in the Telecom Regulatory Authority of India Act which says that not only telecom, but other related issues can also be brought under that law.Jaitley pounted out that the question now is whether to have a separate Broadcast Bill or merge it with the Information Technology Bill and the telecom laws so that there is synergy. He also said that the Cable TV Networks (Regulation) Act, 1995 will be repealed and merged with the proposed Broadcast Bill.

Cable TV had come to India as a result of the Iran-Iraq war in the early '90s, when people wanted to watch the war over CNN and BBC[37]. Private network operators fully cabled urban India without any sanction of law, as there was no law in existence to regulate such activities. In 1995, the Cable Networks Act was hurriedly enacted for this purpose.

The Associated Chambers of Commerce and Industry has mooted a proposal for converting The Indian Telegraph Act to Indian Tele-Carriers Act. Assocham Telecommunications Committee Chairman P.K. Sandal said, "The Act should remove all barriers either at one stroke or stipulate a time-frame entry of any carrier into any sector except where the regulator body lays down conditions to promote convergence and help different services and networks to work together besides intensifying competition."

Arun Jaitley said that the group which had been formed to study the impact of knowledge convergence had changed the basic definition of 'broadcast'. The new definition provides an enabling provision to enable the Government to keep updating it with changes in technology.

India's first encounter with the Cinema took place on July 7, 1896, when a representative of the Lumiere Brothers for the first time showed films at Watson's Hotel in Mumbai. Soon thereafter, Harishchandra Sawe Bhatvadekar in Mumbai and Hiralal Sen in Calcutta got movie cameras and began making films. Bhatvadekar made films on

[37] Britsh Broadcasting Corporation

wrestling matches and Sen on theatrical performances. None of their films have survived. Meanwhile, in 1902, J.F. Madan began showing indigenous cinema in Calcutta.

The first feature film in India was shown in 1913, 17 years after the Lumiere show. It was 'Harishchandra' produced by Dhundiraj Govind, better known as Dadasaheb Phalke. Phalke, the father of Indian Cinema, established the genre of mythological film in India. Though he died a poor man, till 1920, Phalke dominated the Indian cine world. By the mid-twenties, India became a prolific producer of films with Dhiren Ganguly and Debaki Bose in Bengal and Chandulal Shah (Gunasundari) and Himanshu Rai (Light of Asia) in Mumbai.Ardeshir Irani produced India's first sound film—'Alam-Ara' in 1931.[38]

The eminent personalities dominating the field in those days were Prometheus Barua in Bengal, Shantaram in Maharashtra and K. Subramanyam in Tamil Nadu.

New Theatres in Calcutta, Bombay Talkies in Mumbai, Prabhat Films in Pune and Pancholi Studios in Lahore (Pakistan) came into being. Regional cinema began in the South. Soon, Sulochana, Devika Rani and Durga Khote became the favoutities of the masses. In commercial cinema, Raj Kapoor, Guru Dutt and Bimal Roy became great successes, not only in India but also in the then USSR and Eastern Europe as well. Among less commercial films, K.A Abbas earned distinction with his 'Dharti ke Lal'.

Important milestones in Indian cinema were the found3ing of the Calcutta Film Society in 1947,-India's first International Film Festival in 1952, contact with famous film personalities from abroad Jean Renior from France, Frank Capra from Hollywood and V.I. Pudovkin from the then USSR, emergence of documentary cinema with Dr. Pati, Paul Zil and the Films Division of the Government of India. Satyajit Ray (Pather Panchali, 1955), Ritwik Ghatak and Mrinal Sen were among the prominent names.

With the growth of cinema in India, a need was felt to regulate the exhibition of films including their certification and licensing. As such, the Act dealt with two separate issues- examination and certification of films for public exhibition and regulation of cinemas including their licensing. In the Seventh Schedule of the Constitution, while, "Sanctioning of cinematograph films for exhibition" comes under entry 60 of the Union List, "Cinemas, subject to the provisions of entry 60 of List I" comes under entry 33 of the State List. There was no clear demarcation in the Act as to which provisions should be the

[38] Mass Media in India ,2009, Government of India

concern of the Central Government and which of the state. The Act was amended in 1949 to introduce “A” and “U” certificates and centralize censorship.

The Cinematograph Act, 1952 (37 of 1952), which came into force on July 28, 1952, separates the provisions relating to the sanctioning of films for exhibition (a Union subject) from the provisions relating to licensing and regulation of cinemas (a state subject). This Act was amended in 1953,1957,1959,1960,1973,1981 and 1984. The Central Board of Film Certification (commonly referred as Censor Board) is Censorship Body under the Ministry of information and Broadcasting, Government of India[39].

2.4 FACETS OF MEDIA LAW

Indian Media consist various types of information, communication and broadcasting media: India also has a strong music and film industry. India has more than 70,000 newspapers and over 690 satellite channels (more than 80 are news channels) and is the biggest newspaper market in the world - over 100 million copies sold each day[40].Indian media was active since the late 18th century with print media started in 1780, radio broadcasting initiated in 1927, and the screening of Auguste and Louis Lumière moving pictures in Bombay initiated during the July of 1895. It is among the oldest and largest media of the world. Media in India has been free and independent throughout most of its history, even before establishment of Indian empire by Ashoka the Great on the foundation of righteousness, openness, morality and spirituality. The period of emergency (1975–1977), declared by Prime Minister Indira Gandhi, was the brief period when India's media was faced with potential government retribution.

The first printing press arrived in India on 6th September 1556 & was installed at the college of St.Paul in Goa**.** The first major newspaper in India—The Bengal Gazette—was started in 1780 under the British Raj by James Augustus Hickey, Other newspapers such as The India Gazette, The Calcutta Gazette, The Madras Courier (1785), The Bombay Herald (1789) etc. soon followed. These newspapers carried news of the areas under the British rule.

[39] www.cbfcindia.gov.in,visited on 5th may2015
[40] "Why are India's media under fire?". BBC News. 12 January 2012.avalable at www.bbc.com/news/world/asia/india, visited on 5th may2015

The Bombay Sam char, founded in 1822 and printed in Gujarati is the oldest newspaper in Asia still in print.[41] The Times of India was founded in 1838 as The Bombay Times and Journal of Commerce by Bennett, Coleman and Company, a colonial enterprise now owned by an Indian conglomerate. The Times Group publishes The Economic Times,[42] Navbharat Times (Hindi language), and the Maharashtra Times (Marathi language).

The Radio broadcasting was initiated in 1927 but became state responsibility only in 1930.In 1937 it was given the name All India Radio and since 1957 it has been called Akashvani. Limited duration of television programming began in 1959, and complete broadcasting followed in 1965. The Ministry of Information and Broadcasting owned and maintained the audio-visual apparatus—including the television channel Doordarshan—in the country prior to the economic reforms of 1991. The Government of India played a significant role in using the audio-visual media for increasing mass education in India's rural swathes. Projected television screens provided engaging education in India's villages by the 1990s. In 1997, an autonomous body was established in the name of Prasar Bharti to take care of the public service broadcasting under the Prasar Bharti Act. All India Radio and Doordarshan, which earlier were working as media units under the Ministry of I&B became constituents of the body.On 16 November 2006, the Government of India released the community radio policy which allowed agricultural centre, educational institutions and civil society organisations to apply for community based FM broadcasting license. Community Radio is allowed 100 Watt Effective Radiated Power (herein after referred as ERP) with a maximum tower height of 30 meters. The license is valid for five years and one organisation can only get one license, which is non-transferable and to be used for community development purposes.

As for as Information technology and Communications in India, the Indian Government acquired ES EVM computers from the Soviet Union, which were used in large companies and research laboratories. Tata Consultancy Services – established in 1968 by the Tata Group were the country's largest software producers during the 1960s. The 'microchip revolution' of the 1980s had convinced both Indira Gandhi and her successor Rajiv Gandhi that electronics and telecommunications were vital to India's growth and development. Mahanagar Telephone Nigam Ltd. (herein after refered as

[41] "One night in Mumbai" National Post, 15 March 2011, Available at www.nationalpost.com,visited on 24 December 2011

[42] launched in India 1961,

MTNL) underwent technological improvements. Between 1986–1987, the Indian government embarked upon the creation of three wide-area computer networking schemes: INDONET (intended to serve the IBM mainframes in India), NICNET (network for the National Informatics Centre), and the academic research oriented Education and Research Network (herein after refered as ERNET).

The timeline on the role of the state in the development of media in India for more than a century,[43]that divides the timeline into three 'ages'. The Age of Formulation, which starts with the Indian Telegraph Act in 1885 and ends with the Report of the Sub-Committee on Communication, National Planning Committee in 1948.State of Modern Mass Media: After Independence, the Indian media had evolved, realigned and reinvented itself to a large extent, and now-a-days we can see a clear division between commercial and aesthetic expressions of our Media Giants, sometimes arbitrary. Modern mass communication media is poles apart relative to any aesthetic feeling: vulgarity and arrogance nullify any hypothesis of meaning. Aesthetics is the more powerful answer to violence of modern mass communication. Today's mass communication media seems to escape every determination, exposing its message to all possible variants, it finishes to abolish it. Goal of mass communication is always the unbiased dissipation of any content, and the World Wide Web is no exception, and surely is the most efficient media tool. It's also very interesting to observe how the old media are becoming more and more permeable to blogs. This phenomenon is not due to a fascination in more democratic information sources. On the contrary - the pressure is rising due to the growth of the eyes' (cameras and new digital devices) that are watching the same events that mainstream media are reporting to us: the possibility of being uncovered are too many and broadcast journalists are forced to tell the truth (or at least a plausible version of it). As a consequence, blogs have become the major source of news and information about many global affairs. We also have to consider that bloggers are often the only real journalists, as they (at their own risk) provide independent news in countries where the mainstream media is censored, biased or under control.

This time in the history of Indian media is critical: it's overwhelming in the quick and dramatic changes over the last few years. Today's vastly changed media scenario calls for a recasting of the role of media in promoting pro-social change. The media scenario in the

[43] Bagchi , Jeebesh ,Sarai Reader 2001 'A Chronicle of Media and the State'.

country has definitely changed in the past few decades, or it can be said from the pre to the post independence epoch to an entirely new facade now, in both- favorable and adverse facets.

In India, media freedom has been a controversial issue, on one side right to information and freedom of expression is provided on other side media regulations and Press laws are ready to curb the media freedom. The party and government are attempting to act as a media watch dog in fast changing world of open communication.[44] Since newspapers began as a journal (record of current events), the profession involved in the making of newspapers began to be called journalism. In the yellow journalism era of the 19th century, many newspapers in the United States relied on sensational stories that were meant to anger or excite the public, rather than to inform. The restrained style of reporting that relies on fact checking and accuracy regained popularity around World War II. Criticism of journalism is varied and sometimes vehement. Credibility is questioned because of anonymous sources; errors in facts, spelling, and grammar; real or perceived bias; and scandals involving plagiarism and fabrication.

By the late 1990s, the availability of news via 24-hour television channels and then the Internet posed an ongoing challenge to the business model of most newspapers in developing countries. Paid circulation has declined, while advertising revenue — which makes up the bulk of most newspapers' income — has been shifting from print to the new media, resulting in a general decline in profits. Many newspapers around the world launched online editions in an attempt to follow or stay ahead of their audience.

However, in the rest of the world, cheaper printing and distribution, increased literacy, the growing middle class and other factors have more than compensated for the emergence of electronic media and newspapers continue to grow.[45] At issue is whether the newspaper industry faces a cyclical trough, or whether new technology has rendered obsolete newspapers in their traditional format.

The media in India is one of the freest in the world in terms of legal constraints. Freedom of expression incorporated in her Constitution in Article 19(1) (a) remains an important facilitator for widespread engagement within a democratic atmosphere. As beautifully remarked by the first Prime Minister of independent India Pt. Jawaharlal Nehru –

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[44] http://www.merinews.com/article/changing-face-of-indian-media/15790451.shtml ,visited on 21 may 2013

[45] N. Ram, Newspaper futures: India and the world, 15 August 2007, The Hindu,available at http://www.hinduonnet.com/af/india60/stories/2007, visited on 21 may 2013

"*I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press*." But that great man could not foresee the danger involved in the 'administration of justice' which is the very essence of the natural justice and the rule of law or rather he would not have expected the press to get involved into something which is beyond its limit and ethics too. To realize the vision of Mr. Nehru, the media has been provided with many freedoms and immunities so that this fourth pillar of democracy stands tall and strong. But what Lord Atkin relates with power is also well placed with the notion of liberty. Liberty does corrupt into license and is prone to be abused. Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy[46]. It has to be remembered that freedom of expression is not absolute, unlimited or unfettered and in all circumstances, as giving on an unrestricted freedom of the speech and expression, would amount to uncontrolled license. Media has now reincarnated itself into a 'public Court' (Janta Adalat) and has tarted interfering into Court proceedings. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt'. Now, what we observe is media trial where the media itself does a separate investigation, builds a public opinion against the accused even before the Court takes cognizance of the case. By this way, it prejudices the public and sometimes even judges and as a result the accused, that should be assumed innocent, is presumed as a criminal leaving all his rights and liberty redressed. 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. Unfortunately, rules designed to regulate journalistic conduct are inadequate to prevent the encroachment of civil rights.

History of Trial by media

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. In the

[46] Express Newspapers Vs. U.O.I.,(1997) 1 SCC 133. See also re:Harijai Singh and re:Vijayakumar,AIR 1997 SC 73 wherein the Supreme Court of India has observed that the freedom of press is regarded as "the mother of all liberties in a democratic society".

United Kingdom there is a heated debate between those who support a free press which is largely uncensored and those who place a higher priority on an individual's right to privacy and right to a fair trial. During high publicity Court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that regardless of the result of the trial the accused will not be able to live the rest of their life without intense public scrutiny. The counter-argument is that the mob mentality exists independently of the media which merely voices the opinions which the public already has. There are different reasons why the media attention is particularly intense surrounding a legal case: the first is that the crime itself is in some way sensational, by being horrific or involving children; the second is that it involves a celebrity either as victim or accused. Although a recently coined phrase, the idea that popular media can have a strong influence on the legal process goes back certainly to the advent of the printing press and probably much further. This is not including the use of a state controlled press to criminalize political opponents, but in its commonly understood meaning covers all occasions where the reputation of a person has been drastically affected by ostensibly non-political publications.

A string of high-profile cases, sensationalized by the media, have focused the debate between freedom of speech and expression; as claimed by the media, and the right of fair trial as proclaimed by the judiciary. It began in 1807, in the United States of America with the case of Aron Burr[47]; subsequently, it erupted in England; it has finally reached the shores of India. Since the controversy is of a new vintage in India, the Indian judiciary finds itself at a crossroad. Similar to the difficulties faced by the American and the English judiciary, the task before the Indian judiciary is to balance the competing fundamental rights of the media and of the accused. Since we can learn from the American and the English experience.

In 20th century one of the first celebrities in the 20th century to be arguably tried by media was Roscoe 'Fatty' Arbuckle who was acquitted by the Courts but nevertheless lost his career and reputation due to the media coverage. Parallels can be drawn between these cases and the trial of O.J. Simpson. The connection is less about guilt or innocence but about the promotion of the media coverage in the public mind above the status of the Court. Another case in the United States was the Rodney King incident and subsequent

[47] United States v. Burr, 25 F Cas 55 (D Va 1807).

trial of the police officers involved. The acquittal was challenged by the media reporting with violent consequences. What makes this case particularly important historically is the fact that it was amateur video footage which provided the key evidence of perceived guilt. As video cameras and their digital successors and CCTV become wide spread, this type of 'caught on camera' incident become more and more common. This can pose real problems for the legal system as the evidence they provide may be inadmissible for technical reasons (e.g. not being able to pinpoint exact times) but they give very strong images for the media (and public) to seize upon and the potential to manipulate by editing.

Even where a criminal Court finds somebody guilty the media can still appear to sit in judgement over their sentence. Examples include Myra Hindley whose proposed release from prison after thirty years was widely condemned by the British press (the argument became moot when she died in 2002); Maxine Carr who, having served her sentence, has been released and is, according to some commentators being "demonised by the press". One case popularized by the media between 1980 and 1982 was the murder trial of Lindy Chamberlain in Australia who was convicted of killing her baby, but later released in 1986 on new evidence showing that a dingo had in fact committed the act as was originally claimed by Chamberlain. The motion picture *A Cry in the Dark* depicted Chamberlain, as played by actress Mery Streep, caught in a "trial by media" which fed the public's, and subsequently the jury's false conviction of her.

Often the coverage in the press can be said to reflect the views of the person in the street. However, more credibility is generally given to printed material than 'water cooler gossip'. The responsibility of the press to confirm reports and leaks about individuals being tried has come under increasing scrutiny and journalists are calling for higher standards. There was much debate over U.S President Bill Clinton's impeachment trial and prosecutor Kenneth Starr's investigation and how the media handled the trial by reporting commentary from lawyers which influenced public opinion. Another example was the investigation into biologist Steven Hatfill allegedly sending anthrax through the U.S. mail as a terrorist attack, which resulted in no conviction, but Hatfill went on to sue as his reputation was severely tarnished and career destroyed. Families and friends of persons convicted of crimes have apparently successfully used the power of the media to reopen cases, such as the Stephen Downing case in Derbyshire where a campaign by a local

newspaper editor resulted in a successful appeal and his release after twenty seven years in prison.

Trial by Media in India

In India, trial by media has assumed significant proportions. Some famous criminal cases that would have gone unpunished but for the intervention of media are Priyadarshini Mattoo case, Jessica Lal case, Nitish Katara murder case and Bijal Joshi rape case.

The media however drew flak in the reporting of murder of Aarushi Talwar, when it preempted the Court and reported that her own father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar were involved in her murder, thus reviving memories of JonBenet Ramsey murder, which was hauntingly similar. The CBI later declared that Rajesh was not the killer.[48]

Between September 2004 and March 2005, the media - print, audio and visual all wrote about His Holiness Sri Jayendra Saraswathi Swamigal, a Hindu religious leader, suggesting his guilt in a murder case, but the High Courts of Madras and Andhra Pradesh and the Supreme Court of India repeatedly found that there was no material evidence to find him guilty and came down heavily on the media and the Government of Tamil Nadu for misuse of government machinery.

[48] http://en.wikipedia.org/wiki/Trial_by_media accessed on 11june2010

CHAPTER-III

Media law –National and International perspective

CHAPTER III
MEDIA LAW NATIONAL AND INTERNATIONAL PERSPECTIVE

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CHAPTER III
MEDIA LAW NATIONAL AND INTERNATIONAL PERSPECTIVE

CHAPTER III:

3.1 MEDIA LAW NATIONAL PERSPECTIVE

The media is the fourth Pillar of democratic system, the legislature, executive and the judiciary being the other three. While legislature enacts the law for the society and the executive takes steps for implementing them, the third stepping stone is the judiciary, which has to ensure the legality of all actions and decisions. The media has to operate within the framework of these statutes and Constitution al provisions to act in public and national Interest. This is indicative of the fact that nobody is above the law. When the Constitution of India guaranteed freedom of speech and expression to its citizen, it ensured the freedom was not absolute. In India "freedom of speech and expression is a fundamental right under Article 19 (1) (a) of the Constitution provides to only citizen. This clause should be read with clause (2) of the Article (19) which states that this right shall not prevent the operation or making of law relating to the subjects specified therein.[1]

*3.2 **Constitutional Provisions***

Unlike the U.S. Constitution and most recent Constitution South African Constitution, the Constitution of India does not separately refer to the freedom of media in part III[2]. But the law treats these rights as part of the freedom of speech and oppression. The demand for the separate provision to media freedom was made even at the time of framing of the Constitution. Dr. K.M. Munshi had proposed the freedom of Press separate right.[3] However, Dr. B.R. Ambedkar explained the position. The press has no special rights which are not to be given or which are not to be exercised by a citizen in his individual capacity. The editor of a press and the manager are all citizens and, therefore, when they choose to write in newspaper, they are merely exercising their right of expression and no special mention is necessary of the freedom of press at all[4] and the Constituent Assembly agreed with this reasoning and rejected the demand for a specific

[1]. The Primary purpose of the constitutional guarantee of a free media was a similar one to create a fourth institution outside the government as an additional check on the three official Branches. Consider the opening words of the Tree claves of the Massachusetts constitution; drafted By john Adams;. "The liberty of the press is essential to the security of the state.
[2]. The Constitution of India, Fundamental Rights(Art.12-35)
[3]. Constituent Assembly Debates Vol. VII, P. 780 (2nd December, 1948)
[4]. Ibid

provision to media freedom. The freedom of press which, though not separately and specifically guaranteed has been read as part of Article 19 (1) (a) the basic structure.[5]

The preamble to the Constitution of India resolves to secure for the citizen of India, liberty of through, expression and belief.[6] The Article 19 (1) (a) of the Constitution from which the media derives its right guarantees to every citizen of India, the freedom of speech and expression, Article 19 (1) (a) reads.

19. (1) All citizens shall have the rights.

(a) to freedom of speech and expression.

3.2.1 Freedom of speech, expression and media: Constituent Assembly Debate

On 13th December, 1946, the Constituent Assembly of India adopted the historic objectives resolution. The Assembly declared in its resolution its firm resolve to draw up a Constitution guaranteeing, inter alia, freedom of speech and expression. Clause 5 of the resolution reads:

Wherein shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to the law and public morality….

An advisory committee was appointed on 24th January 1947 to framed provision relating to fundamental rights and allied subjects. This committee submitted an interim report on fundamental rights which was prepared with the assistance of a sub-committee. The sub-committee recommended that the list of fundamental rights should be in two parts, the first part consisting of rights enforceable under the appropriate legal process and the second consisting of directive principles of social policy which though not enforceable in Courts would be regarded as fundamental in the governance of the country. Clause 8 of the 24 clauses on fundamental rights dealt with the right of freedom and read:

There shall be liberty for the exercise of the following rights subjects to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:

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[5]. I.R. Coelho V. State of Tamilnadu (2007) 2 SCC 737 at para 106
[6]. Constitution of India, 1950, Preamble, we the people of India

(a) The right of every citizen to freedom of speech and expression. Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libelous or defamatory matter actionable or punishable.

This interim report underwent such debate. A number of members, including Pundit Hirday Nath Kunzru and Somnath Lahiri protested that the safeguards were excessive and rendered the rights conferred practically ineffective.

On 29th August, 1949, the Drafting Committee was appointed to prepare a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various committees appointed by it. Article 13 (which later came to be passed as Article 19) was criticized as being riddled with so many exceptions that the exceptions had eaten up the rights altogether. The criticism was summed up by Dr. Ambedkar:'the most criticized part of the Draft Constitution is that which relates to fundamental rights. It is said that Article 13 which defines fundamental rights in ridled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics' fundamental right are not fundamental rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill or Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the fundamental rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

Dr. Ambedkar explained that it was not as if the rights under the American Constitution were absolute or unbridled. What the Draft Constitution did was to define the limitations on the fundamental rights instead of depending on the Supreme Court to come to the rescue of Parliament. There was no difference in the result, explained Ambedkar. One did directly what the other did indirectly.

Some members, in particular, Damodar Swarup Seth and K.T. Shah demanded that provision should be made for the freedom of the press separately from the freedom of expression afforded to the citizen. In support of the demand, K.T. Shah said:

The freedom of the press…is one the time around which the greatest, the bitterest of Constitution al struggles have been waged in all Constitution s and in all countries where liberal Constitution s prevail. They have been attained at considerable sacrifice and suffering. They have now been achieved and enshrined in those countries. Where there is no written Constitution, they are in the well-established conventions or judicial decisions.

In those which have written Constitution s, they have been expressly included as the freedom of the press…Even the United Nations Charter gives good prominence and special mention of freedom of the press….The press may be liable to abuse; I feel there may have been instances where the press has gone, at least in the mind of the established authority, beyond its legitimate limits. But any curtailment of the liberty of the press is…..called a 'black Act'…To omit it altogether….would be a great blemish which you may maintain by the force of the majority, but which you will never succeed in telling the world is a progressive liberal Constitution .

Dr. Ambedkar accepted the demand for the deletion of 'sedition' as a ground of restriction. But on the demand for a separate right for the freedom of the press Dr. Ambedkar responded:

The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press of the manage are all citizens and therefore when they choose to writ in newspapers, they are merely exercising their right of expression and in my judgment therefore no special mention is necessary of the freedom of the press at all.

Finally, when the amendments were put to vote, there emerged no separate right for the press under Article 13. The new Article 13 read thus:

19(1)(a) Every citizen shall have the right to freedom of speech and expression.

(2) Nothing in sub clause (a) of clause (1) of this Article shall affect the operation of any existing law or prevent they State from making any law, relating to libel, slander, defamation, contempt of Court or any other matter which offends against decency or morality or undermines the security of or tends to overthrow the State.

This article was finally passed as Article 19 of the Constitution of India which came into force on 26th January 1950.

3.2.2 Constitutional Status of the Media

The media derives its rights from the right to freedom of speech and expression available to the citizen. Thus, the media has the same right – no more and no less than any individual to write, public, circulate or broadcast. In a case that arose in pre-independent India, the Privy Council held:

The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever lengths the subject in general may go, so also may the journalist, apart from the statute law, his privilege is no other and no higher. No privilege attaches to his position.[7]

The framework for analyzing media right remains much the same in post-independence India. In ***M.S.M. Sharma v. Krishna Singh***,[8] the Supreme Court observed: A non-citizen running a newspaper is not entitled to the Fundamental Right to freedom of speech and expression and, therefore cannot claim, as his Fundamental Right, the benefit of the liberty of the Press. Further, being only a right flowing from the freedom of speech and expression, the liberty of the Press in India stand on no higher footing than the freedom of speech and expression of the citizen and that no privilege attaches to the Press as such, that is to say, as distinct from the freedom of the citizen. In short, as regards citizens running a newspaper, the position under our Constitution is the same as it was when the Judicial Committee decided the case of 41 In App 149[9] and as regards non-citizens the position may even be worse.

In other words, the media enjoys no special immunity or elevated status compared to the citizen and is subject to the general laws of the land, including those relating to taxation.[10] However, in post-independent India both the citizen and citizen-owned media enjoy a Constitution al guarantees that was hitherto absent.

The question of whether or not to insert in the Indian Constitution a separate right for the press as distinct from that of the ordinary citizen was extensively debated by members of the Constituent Assembly. The Constituent Assembly came to the conclusion that such a provision was not necessary. Dr. B.R. Ambedkar, Chairman of the constituent Assembly's Drafting Committee argued:

The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and therefore when they choose to write in newspaper, they are merely exercising their right of

[7]. Channing Arnold v. Emperor, AIR 1914 PC 116
[8]. AIR 1959 SC 395
[9] : AIR 1914 PC 116
[10]. On taxation and the media, available at www.oecd.org/tax/administration/48870427.visited on 29 may 2013

expression and in my judgment therefore no special mention is necessary of the freedom of the press at all.[11]

Although no special provision was made to safeguard the rights of the press, the Courts have time and again confirmed that the rights of the press are implicit in the guarantee of freedom of speech and expression under Article 19(1) (a) of the Constitution.[12] In fact, successive judgments of the Supreme Court of India have struck down laws that abridge the freedom of the press and have echoed the sentiment expressed in the First Amendment of the U S Constitution.

Romesh Thappar v. State of Madras,[13] amongst the earliest cases to be decided by the Supreme Court, involved a challenge against an order issued by the Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the entry and circulation of the journal, Cross Roads, printed and published by the petitioner. The Court struck down Section 9(1-A) holding that the right to freedom of speech and expression was paramount and that nothing short of a danger to the foundations of the State or a threat to its overthrow could justify a curtailment of the right to freedom of speech and expression. The impugned provision which authorized the imposition of restrictions for the wide purpose of securing public safety and public order fell outside the scope of the reasonable restrictions permitted under Article 19(2) and was held to be unconstitutional.

In **Brij Bhushan v. State of Delhi**,[14] the Supreme Court quashed a pre-censorship order passed against the publishers of the Organiser. The order was passed by the authorities under Section 7(i)(c) of the East Punjab Safety Act, 1949. The Court held that Section 7(i)(c) which authorized such a restriction on the ground that it was 'necessary for the purpose of preventing or combating any activity prejudicial to the public safety or the maintenance of public order' did not fall within the purview of Article 19(2).

The strongest affirmation of the spirit of the First Amendment of the U S Constitution is echoed in **Express Newspaper (P) Ltd. v. Union of India**.[15] This case arose out of a challenge to the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provision act, 1955, on the ground that its

[11]. Constituent Assembly Debates, Vol. VII, p. 780 (2nd December, 1948).
[12]. Brij Bhushan v. State of Delhi, AIR 1950 SC 129; Express newspapers Ltd. v. Union of India, AIR 1958 SC 578; Sakal Papers v. Union of India, AIR 1962 SC 305; Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788: AIR 1973 SC 106: Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[13]. AIR 1950 SC 124.
[14]. AIR 1950 SC 129.
[15]. AIR 1958 SC 578.

provisions violated Article 19(1)(a). In the facts of the case, the Court held that the impact of the legislature on the freedom of speech was much too remote and no judicial interference was warranted. However, the Court did recognize an important principle.

Laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its rights to choose the instrument for its exercise or to seek an alternative media, prevent newspapers from being started and ultimately drive the press to seek Government aid in order to survive, would be struck down as unconstitutional.[16]

3.2.3 Emergency provision and Art.19 (1) (a)

The Constitution of India provides three type emergencies: National Emergency (Art.352), State Emergency (Art .356) and Financial Emergency (Art360).Further Art.358 provides for suspension of fundamental right part III of the Constitution .The Art.19 automatically suspended as soon as emergency are proclaimed.

3.3. Dimension of freedom of speech and expression: media freedom under Article-19(1) (a)

The freedom of speech and expression under Article 19(1)(a) is a concept with diverse facets, both with regard to the content of the speech and expression and in the means through which communication takes place. It is also a dynamic concept that has evolved with time and advances in electronic and information technology.

Briefly, Article 19(1)(a) covers the right to express oneself by word of mouth, writing, printing, picture or in any other manner. It includes the freedom of communication and the right to propagate or publish one's views. The communication of ideas may be through any medium, newspaper, magazine or movie,[17] including the electronic and cyber media.

3.3.1 Right to Circulate

Right to free speech and expression includes the right not only to publish but also to circulate information and opinion. Without the right to circulate, the right to free speech

[16]. AIR 1997 SC 73.
[17]. S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.

and expression would have little meaning. The freedom of circulation has been held to be as essential as the freedom of publication.[18]

In **Sakal Papers v. Union of India**,[19] the Supreme Court held that the State could not make laws which directly affected the circulation of a newspaper for that would amount to a violation of the freedom of speech. The right under Article 19(1)(a) extends not only to the matter which the citizen is entitled to circulate but also to the volume of circulation.[20] This case arose out of a challenge to the newsprint policy of the government which restricted the number of pages a newspaper was entitled to print.

Likewise, in **Bennett Coleman & Co. v. Union of India,**[21] the Supreme Court held that newspapers should be left be left free to determine their pages and their circulation. This case arose out of a Constitution al challenge to the validity of the Newspaper (Price and Page) Act, 1956 which empowered the government to regulate the allocation of space for advertisement matter. The Court held that the curtailment of advertisements would fall foul of Article 19(1)(a) since it would have a direct impact on the circulation of newspapers.[22] The Court held that any restriction leading to a loss of advertising revenue would affect circulation and thereby impinge on the freedom of speech.[23]

In **LIC v. Manubhai Shah**,[24] the Supreme Court reiterated that the 'freedom of speech and expression' must be broadly construed to include the freedom to circulate one's views by 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 observed :

Freedom to air one's view is the lifeline of any democratic institution and any attempt to stifle or suffocate or gag this right would sound a death knell to democracy and would help usher in autocracy or dictatorship.[25]

The Court held that any attempt to deny the right to circulation and propagation of ideas must be frowned upon unless it falls within the mischief of Article 19(2).

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[18]. Romesh Thappar v. State of Madras, AIR 1950 SC 124 : Virendra v. State of Punjab, AIR 1957 SC 896; Sakal Papers v. Union of India, AIR 1962 SC 305.
[19]. AIR 1962 SC 305.
[20]. Ibid, paras 33-34, p. 313.
[21]. (1972) 2 SCC 788 : AIR 1973 SC 106.
[22]. Ibid., Para 82, p. 824 (SCC).
[23]. Ibid., Para 43, p. 8813 (SCC).
[24]. (1992) 3 SCC 637.
[25]. Ibid., para 8, p. 651 (SCC).

The right to circulate encompasses the right to determine the volume of circulation.[26]

3.3.2 Right to criticize

Acceptance by Government of a dissident press is the measure of the maturity of the nation.[27] Freedom of speech and expression covers the right to criticize government, the requisite of a healthy democracy. The draft Constitution proposed that laws penalizing sedition would be an exception to free speech. The word 'sedition', defined in draft Article 13(2) as 'exciting or attempting to excite in others certain bad feelings towards the government and not in exciting or attempting to excite mutiny or rebellion or any sort of actual disturbance, great or small', was deleted from Article 13(2) of the draft Constitution , (eventually passed as Article 19(2)). In **Romesh Thappar v. State of Madras**,[28] the Supreme Court noted that the deletion made it clear that the authors of the Constitution intended that criticism of the government was not to be regarded as a ground for restricting the freedom of speech or expression.

In a leading American case, **Terminiello v. Chicago**, which has been frequently cited by Indian Courts, the rationale behind the freedom of speech was explained: A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs the people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. There is no room under out Constitution for a more restrictive view for the alternative would lead to standardization of ideas either by legislatures, Courts or dominant political or community groups.[29]

Kedar Nath Singh v. State of Bihar[30] arose out of a Constitution al challenge to Sections 124-A and 505 of the Indian Penal Code, 1860 which penalize attempts to excite disaffection towards the government by words or in writing and publications which may disturb public tranquility. The Supreme Court dismissed the challenge but clarified that criticism of public measures or comments on government action, however strongly

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[26]. Sakal Papers v. Union of India, AIR 1962 SC 305: Secretary, Ministry of Information and Broadcasting v. Cricket Assn., Bengal, (1995) 2 SCC 161, para 43, p. 208.
[27]. Douglas, J. in Terminiello v. Chicago, (1948) 93 L Ed. 1131 : 337 US 1 (1949).
[28]. AIR 1950 SC 124.
[29]. Terminiello v. Chicago, (1948) 93 Ed. 1131 p. 1134; quoted with approval by Jeevan Reddy, J. in Printers (Mysore) Ltd. v. Asstt. Commercial Tax officer, (1994) 2 SCC 434 para 13 pp. 441-42; also referred to in Secy., Ministry of Information and Broadcasting v. Cricket Assn., Bengal, (1995) 2 SCC 161.
[30]. AIR 1962 SC 955.

worded, would be within reasonable limits and would be consistent with the Fundamental Right of freedom of speech and expression.

3.3.3 Right to Receive Information

The freedom of speech and expression comprises not only the right to express, publish and propagate information through circulation but also to receive information. This was held by the Supreme Court in a series of judgments which have discussed the right to information in varied contexts from advertisements enabling the citizen to get vital information about life saving drugs,[31] to the right of sports lovers to watch cricket[32] and the right of voters to know the antecedents of electoral candidates.[33]

3.3.4 Right to Expression beyond National Boundaries

The right to expression transcends national boundaries. The revolution in communications and the electronic media has broken down traditional barriers and has made possible the transmission of information to any part of the world in a matter of seconds.

The question whether an Indian citizen's right to freedom of speech and expression extends beyond the geographical limits of India was considered by the Supreme Court in **Maneka Gandhi v. Union of India**.[34] The case concerned a challenge to Section 10(3) (c) of the Passport Act, 1967 which permitted a passport to be impounded 'in the interests of the general public', One aspect of the challenge was that the provision infringed Article 1991)(a) since it precluded the petitioner from exercising her right to free speech and expression abroad. The Court considered whether Article 19(1) (a) was confined to Indian Territory, and whether such a right could be said to have been violated in the present case. The Court held that the freedom of speech and expression was not confined to national boundaries and a citizen had the right to exercise that right abroad. The Court observed that the authors of the Constitution had deliberately chosen not to use words confining the right by refraining from the use of words 'in the territory of India' at the end of Article 19(1)(a). At around the time the Constitution was brought into force, the Constitution al debate over the Universal Declaration of Human Rights was underway in the United

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[31]. Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. (1995) 5 SCC 139.
[32]. Secy., Ministry of Information and Broadcasting v. Cricket Assn., Bengal, (1995) 2 SCC 161.
[33]. Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294. See generally, State of U.P. v. Raj Narain, (1975) 4 SCC 428; Indian Express Newspapers v. Union of India, (1985) 1 SCC 641; S.P. Gupta v. Union of India, 1981 Supp. SCC 87; Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay (P) Ltd., (1988) 4 SCC 592 : Dinesh Trivedi v. Union of India, (1997) 4 SCC 306; People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399.
[34]. (1978) 1 SCC 248.

Nations. Article 13 of the Universal Declaration of Human Rights was underway in the United Nations. Article 13 of the Universal Declaration reads:

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

3.3.5 Right of the press to conduct interviews

This is a limited right, subject to the willing consent of the person being interviewed. A number of cases have arisen where the right of the press to interview convicts or under trials has been examined.

In **Prabha Dutt v. Union of India**,[35] the petitioner was seeking to interview the condemned prisoners Billa and Ranga. The Court held that the press does not have an absolute or unrestricted right to information and there is no legal obligation on the party of citizens to supply that information. An interview may be conducted provided the convict gives his consent to being interviewed. The right to interview would also be subject to Rule 594(4) of the Manual for the Superintendence and Management of Jails which allows every prisoner sentenced to death to give interviews, engage in communications with relations, legal advisors, etc. as the Jail Superintendent considers reasonable. The Court held that where there are 'weighty' reasons to do so, the interview can be refused, although the reasons ought to be recorded in writing.

3.3.6 Reporting Court Proceedings

Although in principle the press enjoys no higher status than that of the ordinary citizen, in practice it does. Ordinary citizens are not allowed free access in the way the press does, as for instance, they do not enjoy the privilege of sitting in the press bench as journalists do. The press enjoys privileges on account of the citizen's right to be informed on matters of public importance.

It is not because of any special wisdom, interest or status enjoyed by proprietors, editors or journalists. It is because the media are the eyes and ears of the general public. They act on behalf of the general public. Their right to know and their right to publish is

[35]. (1982) 1 SCC 1.See also Sheela Barse v. Union of India, (1987) 4 SCC 373

neither more nor less than that of the general public. Indeed it is that of the general public for whom they are trustees.[36]

The journalist has a fundamental right to attend proceedings in Court and the right to publish a faithful report of the proceedings witnessed and heard in Court. This right is available in respect of judicial and quasi judicial tribunals.[37]

The right to report judicial proceedings stems from the necessity for transparency. Justice must not only be done, it must be seen to be done. Openness is a safeguard against judicial error and misconduct. Publicity is the very soul of justice. It is keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying, under trial.[38] Publicity of proceedings serves another important purpose. It enhances public knowledge and appreciation of the working of the law and the administration of justice. There is also a therapeutic value to the public in seeing criminal trails reach their logical conclusion.[39]

Publicity of proceedings is not an absolute rule. The open justice system must give way when there is higher consideration. For instance, the names of rape victims or riot victims must be protected. Such persons may be reluctant to complain if their identities are disclosed and rails publicized. It is not only necessary to protect such persons from public humiliation and embarrassment, but also necessary to ensure that the victim gives the best available evidence which she may not be able to provide if she is in the public gaze. Similarly, family disputes warrant privacy, particularly to protect children from unwarranted publicity. In **Naresh Shridhar Mirajkar v. State of Maharashtra**,[40] the Supreme Court held that the Court may restrict the publicity of proceedings 'in the interests of justice'. The Court has the inherent power to order a trail to be held in camera, but this power must be exercised with great caution and only where the Court is satisfied beyond doubt that the ends of justice would be defeated if the case were to be tried in open Court.[41]

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[36]. Lord Donaldson in Attorney General v. Guardian Newspapers Ltd. (No.2), (1988) 3 ALL er 595, p. 600; applied in Re. M. (1990) 1 All ER 205.
[37]. Saroj Iyer v. Maharashta medical (Council) of Indian Medicine, AIR 2002 Bom. 97.
[38]. Bentham quoted in Scott v. Scott, 19911 ER I. p. 30; quoted with approval in Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1 and Samarias Trading Co. (P) Ltd. v. S. Samuel, (1984) 4 SCC 666. Also see Vineet Narain v. Union of India, (1998) 1 SCC 226.
[39]. Kartar Singh v. State of Punjab. (1994) 3 SCC 569, para 269, p. 684.
[40]. AIR 1967 SC 1.
[41] Civil Procedure Code, 1908, under Section 151

3.3.7 Reporting legislative proceedings

The right to report proceedings of Parliament and the State Assemblies stems from the public's right to be informed about the debates and deliberations of its elected representatives on matters of public importance. Under Article 361-A of the Constitution, there is no liability in respect of the publication of a substantially true report of Parliamentary proceedings or those of the state assemblies so long as the publication is untainted by malice. A similar provision is contained in the Parliamentary Proceedings (Protection of Publication) Act, 1977.[42]

The right to report legislative proceedings has often been curtailed in the name of legislative privilege available to both Parliament and the state assemblies. Legislative privilege refers to special rights conferred by the Constitution on Parliament and the State Legislatures to ensure freedom of speech for legislators, to enable them to discuss and debate matters of importance without the fear of inviting liability of any sort.[43]

It is of the essence of parliamentary system of government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the speaker. The Courts have no say in the matter and should really have none.[44]

In an age of information and accountability, where the live telecast of legislative proceedings has become mandatory,[45] the whole concept of legislative privilege and contempt is anachronistic. Further, in the absence of defined privileges, this power is misused with impunity.[46]

3.3.8 Right to advertise (commercial speech)

In **Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.,**[47] the Supreme Court interpreted the Fundamental Right to freedom of speech and expression under Article 19(1)(a) as including the right to advertise or the right of commercial speech. Till this judgment, advertisements were excluded from the realm of free speech. In an earlier

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[42]. The Parliamentary Proceedings (Protection of Publication) Act, 1977. Sections 3 and 4.
[43]. Constitution of India, Articles 105, 194.
[44]. Tej Kiran Jain v. N. Sanjiva Reddy, (1970) 2 SCC 272 : AIR 1970 SC 1573.
[45]. Gazette Notification No. 16(1) Cable/2005 E-III dated 25 February, 2005 issued by Prasar Bharti.
[46]. See P.V. Narasimha Rao v. State (CBI/SPE). (1998) 4 SCC 626 and a detailed discussion in Chap. 10 titled 'Privileges of Parliament and the State Assembles.
[47]. (1995) 5 SCC 139.

ruling, **Hamdard Dawakhana v. Union of India,**[48] the Supreme Court held that advertisements being for commercial gain, could not avail of the rights under Article 19(1)(a). The case concerned a challenge to the provisions of the Drugs and Magic Remediesd (Objectionable Advertisements) Act, 1954 which was intended at preventing self-medication. The Court held that although an advertisement was a form of speech, it ceased to fall within the concept of free speech when it took the form of a commercial advertisement seeking to promote trade or commerce. The Court observed:

Freedom of speech goesd to the heart of the natural right of an organized freedom loving society to 'impart and acquire information about that common interest' If any limitation is placed which results in the society being deprived of such right then no doubt it would fall within the guaranteed freedom under Article 19(1)(a). But if all it does is that it deprives a trader from commending his wares, it would not fall within that term.[49]

In **Indian Express Newspapers V. Union of India,**[50] a case concerning a challenge to the imposition of import duty on newsprint thereby affecting the circulation of newspapers and consequently advertising revenue, the Supreme Court restricted the application of Hamdard Dawakhana:

In the above said case the Court was principally dealing with the right to advertise prohibited drugs, to prevent self medication and self-treatment. That was the main issue in the case. It is no doubt true that some of the observations referred to above go beyond the needs of the case and tend to affect the right to publish all commercial advertisements…….we feel that the observations made in the Hamdard Dawakhana case are too broadly stated and the Government cannot draw much support from it. We are of the view that all commercial advertisements cannot be denied the protection of Article 19(1)(a) of the Constitution merely because they are issued by businessmen.[51]

This position was endorsed in **Bennett Coleman & Co. v. Union of India**[52] where the Court recognized the position that advertisements were an essential factor affecting circulation and any restraint on advertisements would have the effect of infringing the Fundamental Right of propagation, publication and circulation under Article 19(1)(a).

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[48]. AIR 1960 SC 554.
[49]. Ibid., para 18. P. 564
[50]. (1985) 1 SCC 641.
[51]. Ibid., para 93, pp. 701-02.
[52]. (1972) 2 SCC 788: AIR 1973 SC 106.

Since the time the **Hamdard Dawakhana** case was decided there has been a huge transformation in the economy and advertising has come to acquire a very prominent role not only in shaping public choices but also in influencing economic activity. In the liberalized economy, where countless products have flooded the market generating fierce competition, advertising gives one product an edge over another. More importantly, it is advertising which effectively sustains the media. Newspapers earn far more revenue from advertisements than from readership subscription. In **Tata Press Ltd. V. Mahanagar Telephone Nigam Ltd.,**[53] the Supreme Court recognized this phenomenon:

Advertising is considered to be the cornerstone of our economic system. Low prices for consumers are dependent on mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the lifeblood of free media paying most of the costs and thus making the media widely available. The newspaper industry obtains 60% 80% of its revenue from advertising. Advertising pays a large portion of the costs of supplying the public with newspaper. For a democratic press the advertising subsidy is crucial. Without advertising, the resources available for expenditure on the news' would decline, which may lead to an erosion of equality and quantity. The cost of the 'news' to the public would increase, restricting its 'democratic' availability.[54]

In **Hindustan Times v. State of U.P.**,[55] the Supreme Court reiterated the importance of advertising and its impact on the circulation of a paper. The case arose out of a challenge to an order issued by the U.P. State Government directing a cut of 5% from bills payable to newspapers with a circulation of about 25,000 copies for publication of government advertisements. The government claimed that the order was to aid a pension and social security scheme for full-time journalists. The Court held that advertisements in newspapers play an important role in generating revenue and have a direct nexus with circulation. Advertising revenues enable newspaper to meet the cost of newsprint and other financial liabilities. Advertising also enables the reader to purchase a newspaper at an affordable price. The owner of a newspaper was not liable to undertake the burden of the impugned tax which was struck down as being unconstitutional. The bargaining power of the State and newspapers in matters of release of advertisements was unequal and any

[53]. (1995) 5 SCC 139.
[54]. Ibid., para 20, p. 154 (SCC).
[55]. (2003) 1 SCC 591.

unjust condition on newspapers would be violation of Article 14 of the Constitution as also of Section 23 of the Contract Act.[56]

3.3.9 Right of rebuttal

The freedom of speech and expression entails the right to resend or the right of rebuttal. This was held by the Supreme Court in **LIC V. Manubhai Shah**.[57] The case arose out of the publication in a newspaper of an article by the trustee of a consumer rights organization. The article criticized unfair practices adopted by the LIC (Life Insurance Corporation of India) on its policy holders. A member of the LIC responded to this article challenging the conclusion of the trustee and published them in the same newspaper. The trustee published his rejoinder which also appeared in the same newspaper. Meanwhile, the author of the counter had his piece published in the Yogakshema, the in house magazine of the LIC. When the trustee tried to have his rejoinder published in the same journal, his request was turned down on the ground that the magazine was an in-house publication. Adopting the 'fairness doctrine', the Gujarat High Court allowed the trustee's writ petition. The Supreme Court upheld the High Court judgment and held that the LIC was under an obligation to publish the rejoinder since it had published the counter. The trustee's Fundamental Right of speech and expression entitled him to insist that his view on the subject should reach readers so that they have a complete picture rather than a lopsided or distorted one. The Court held that the LIC, a 'monopolistic state instrumentality' which survived on public funds could not act in an arbitrary manner on the ground that it was a matter of exclusive privilege to publish or refuse to publish in an in-house magazine. But the Court also clarified that there was no absolute rule that a public institution was under an obligation to publish any matter that a citizen forwarded for publication.[58]

3.3.10 Right to broadcast

The concept 'speech and expression' has evolved with the progress of technology and encompasses all available means of expression and communication. This would include the electronic and the broadcast media. India is a country of curious contradictions. A vast proportion of its urban population has nowhere to live other than on streets and pavements, in squalor and apparent penury without proper shelter, sanitation or

[56]. Ibid., paras 27-30, pp. 601-02; para 39, p. 604.
[57]. (1992) 3 SCC 637.
[58]. Ibid., para 12. P. 655 (SCC).

drinking water. But peering into some of the shanties that line our roads, it shouldn't be a surprise to see its inhabitants rapt before a television set. So potent is the power of the idiot box that its demand seems to surpass the need for a decent dwelling. Perhaps this should be no surprise3 in a country which has been unable to achieve for a vast majority of its citizens the right to a decent standard of living, but, nevertheless where watching televised cricket has been elevated, virtually, to the status of a fundamental right.

This phenomenon of burgeoning television audiences is the result of the broadcasting revolution of the 1990s. Technological developments, spurred by the satellite invasion, have outpaced the law. Though three hundred television channels cram the airwaves, there is no organized and effective regulatory mechanism

In **Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana**,[59] the Supreme Court held that the right of a citizen to exhibit films on the State channel, Doordarshan is part of the Fundamental Right guaranteed under Article 19(1)(a). The Court held that this right was similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisements, hoardings and so on. In this case, the petitioners challenged the exhibition on Doordarshan of a serial titled Honi Anhoni on the ground that it encouraged superstition and blind faith amongst viewers. The petition was dismissed as the petitioner failed to show evidence of prejudice to the public.

The right to broadcast was also recognized in **LIC v. Manubhai D. Shah**.[60] Doordarshan refused to telecast a documentary film on the Bhopal Gas Disaster titled Beyond Genocide, on the ground that the film had lost its relevance and that it criticised the action of the State Government. The Supreme Court held that the film maker had a Fundamental Right under Article 19(1)(a) to exhibit the film and the onus lay on the party refusing exhibition to show that the film did not conform to the requirements of the law. If was held that Doordarshan, a State-controlled agency that was dependent on public funds was not entitled to refuse telecast except on grounds under Article 19(2).

Similarly, in **Secretary, Ministry of Information and Broadcasting v. Cricket Assn., Bengal,**[61] the Supreme Court held that broadcasting is a means of communication and a medium of speech and expression within the framework of Article 19(1)(a). This case involved the rights of a cricket association to grant telecast right to an agency of its

[59]. (1988) 3 SCC 410.
[60]. (1992) 3 SCC 637.
[61]. (1995) 2 SCC 161.

choice. It was held that the right to entertain and to be entertained, in this case, through the broadcasting media are an integral part of the freedom under Article 19(1)(a).

If the right to freedom of speech and expression include the right to disseminate information to as wide a section of the population as is possible the access which enables the right to be so exercised is also an integral part of the said right.[62]

The Court went on to hold that since the broadcasting media depended on the use of airwaves, a limited common property resource, the right of the telecaster were also limited. This was a restriction in addition to those set out under Article 19(2) and was justified on the ground of the limited spectrum of airwaves. This limitation did not extend to the viewer, whose right to be informed, educated and entertained is paramount.[63]

3.3.11 Right to entertain and to be entertained

The term 'expression' under Article 19(1)(a) covers the right of an individual to entertain as also the right of the audience to be entertained.[64] Both the participant in a sports event and the organizer and telecaster of the even have a right to entertain. As we have seen, this right is restricted by the limited availability of airwaves.[65]

3.3.12 Right to fly the national flag

In **Union of India v. Naveen Jindal**,[66] the Supreme Court upheld the right of a citizen to fly the national flag. This right was held as being integral to the Fundamental Right of the citizen under Article 19(1)(a) being an expression of the citizen's allegiance to and love for his nation. This right is however not an absolute one but is regulated by the Emblems and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971

3.4 Right to freedom of speech and expression: Article-21

3.4.1 (i)Right to silence

The Constitution of India guarantees every person right against self incrimination under Article 20 (3)[67]. It is well established that the Right to Silence has been granted to the accused by virtue of the pronouncement in the case of **Nandini Sathpathy vs**

[62]. Ibid., para 78, p. 227 (SCC)
[63]. Ibid.
[64]. Ibid., para 78, pp. 226-27; para 194 pp. 292-94 (SCC)
[65]. Ibid., para 78, pp. 226-27 (SCC)
[66]. (2004) 2 SCC 510.
[67] No person accused of any offense shall be compelled to be a witness against himself".

P.L.Dani[68], no one can forcibly extract statements from the accused, who has the right to keep silent, but only in the Court of law. The accused cannot exercise his right to silence during interrogation by public servants. By the administration of these tests, forcible intrusion into one's mind is being restored to, thereby nullifying the validity and legitimacy of the Right to Silence.[69] In 2010 The Supreme Court made narco-analysis, brain mapping and lie detector test as a violation of Article 20(3)[70].

3.4.2 (ii)Right to privacy

The right to freedom of speech and expression and the right to privacy are two sides of the same coin. One person's right to know and be informed may violate another's' right to be left alone. Just as the freedom of the speech and expression is vital for the dissemination or information on matters of public interest, it is equally important to safeguard the private life of an individual to the extent that it is unrelated to public duties or matters of public interest. The law of privacy endeavors to balance these competing freedoms. The exponential growth of the media, particularly the electronic media in recent years has brought into focus issues of privacy. The media has made it possible to bring the private life of an individual into the public domain, exposing him to the risk of an invasion of his space and his privacy. At a time when information was not so easily accessible to the public, the risk of such an invasion was relatively remote. In Indian, newspapers were, for many years, the primary source of information to the public. Even then, newspapers had a relatively limited impact given that the vast majority of the population was illiterate. This has changed today with a growth in public consciousness, a rise in literacy and perhaps most importantly, an explosion of visual and electronic media has facilitated an unprecedented information revolution. It is no longer the film star alone who is in the public eye. Politicians, business persons, media personalities, professionals and socialites actively Court the media to project themselves and to advance their agenda.

3.5.1 The law on privacy in India

In India, the right to privacy is not a specific Fundamental Right but has nevertheless gained Constitution al recognition. 'Privacy' is not enumerated amongst the various 'reasonable restrictions' to the right to freedom of speech and expression enlisted

[68] AIR 1957 SC 1025

[69] "PrivilegeAgainstSelfIncrimination".Legalserviceindia.com.http://www.legalseviceindia.com/article/l466-Privilege-Against-Self----Incrimination.html Retrieved 2011-12-21

[70] "Forced narco tests illegal: Supreme Court Times Of India". Timesofindia.indiatimes.com. 2010-05-06. http://timesofindia.indiatimes.com/india/Forced-narco-tests-illegal-Supreme-ourt/articleshow/5895005.cms. Retrieved 2011-12-21

under Article 19(2). However, this lacuna has not prevented the Courts from carving out a Constitution al right to privacy by a creative interpretation of the right to life under Article 21 and the right to freedom of movement under Article 19(1)(d).

.Under Constitution al law, the right to privacy is implicit in the fundamental right to life and liberty guaranteed by article 21 of the Constitution.[71] This would include the right to be let alone. The Constitution al right to privacy flowing form Article 21 must, however, be balanced against the Fundamental Right of the media to publish any matter of public interest. Privacy as a concept involves what privacy entails and how it is to be valued. Privacy as a right involves the extent to which privacy is (and should be legally protected). "The law does not determine what privacy is, but only what situations of privacy will be afforded legal protection[72]." It is interesting to note that the common law does not know a general right of privacy and the Indian Parliament has so far been reluctant to enact one.

Privacy" is not a subject in any of the three lists in Schedule VII of the Constitution of India. But Entry 97 of List I states: "any other matter not enumerated in List II and List III ……." Thus only the Indian Parliament is competent to legislate on privacy since it can be interpreted as any other matter not enumerated in List II and List III. Till date there is no specific enactment on Privacy. But the Constitution of India has embodied many Rights in Part III, which are called Fundamental Rights. These are enumerated in Article 14-30 of the Constitution .Article 13 (2) prohibits the Indian State (Parliament and State legislatures) from making any law, which takes away or abridges the rights conferred by Part III. Article 32 guarantees the right to move the Supreme Court of India for enforcement of the rights conferred by Part III. This right is available against the State, which is defined in Article 12 as inclusive of the Government and Parliament of India and Government and Legislatures of each State and all local and other authorities in India.

From the above discussion it follows that while no legislative competence is found for the subject of Privacy, yet the Constitution of India has provided for many Rights (Fundamental Rights), which cannot be taken away by the State and are legally enforceable against the State.

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[71]. R. Rajagopal v. State of T.N., (1994) 6 SCC 632.
[72]. Hyman Gross, The Concept of Privacy, 42 N.Y.U.L. Rev. 36, 36 (1967).

The fundamental right "to freedom of speech and expression" as enumerated in Article 19(1)(a) of the Constitution of India comes with reasonable restrictions imposed by the State relating to (i) defamation; (ii) contempt of Court; (iii) decency or morality; (iv) security of the State; (v) friendly relations with foreign states; (vi) incitement to an offence; (vii) public order; (viii) maintenance of the sovereignty and integrity of India. Thus, the right to privacy is limited against defamation, decency or morality.

3.5.2 Privacy and Data Protection

Privacy is closely connected to Data Protection. An individual's data like his name address, telephone numbers, profession, family, choices, etc. are often available at various places like schools, colleges, banks, directories, surveys and on various web sites. Passing on such information to interested parties can lead to intrusion in privacy like incessant marketing calls. Data protection is, thus, a Central subject and only the Central Government is competent to frame legislations on issues dealing with data protection. In fact, the Information Technology Act, 2000, enacted by the Indian Parliament is the first legislation, which contains provisions on data protection but not in an exclusive manner

Malak Singh v. State of P&H[73] was yet another challenge to the Constitution ality of police powers of surveillance, this time under the Police Act and the Punjab Police Rules. The Supreme Court again upheld the regulations that authorized surveillance for the prevention of crime and justified the maintenance of 'history sheets' and surveillance registers as confidential documents. The Court observed that surveillance of persons who did not fall within the category mentioned under the impugned regulation, or for reasons unconnected with prevention of crime or excessive surveillance would entitled a citizen to the protection of the Court. But the law on privacy was taken no further.

R. Rajagopal v. State of T.N.[74] is a watershed in the development of the Indian law of privacy. For the first time, the Supreme Court discussed the right to privacy in the context of the freedom of the press. The case concerned the right of the publisher of a magazine to publish the autobiography of the condemned prisoner, 'Autoshankar'. The Respondents contended that the intended publication (which was to expose some sensational links between the police authorities and the criminal) was likely to be defamatory and therefore required to be restrained. The issue of the right to privacy came up in this context. The Supreme Court held that the press had the right to publish what

[73]. (1981) 1 SCC 420: 1981 SCC (Cri) 169.
[74]. (1994) 6 SCC 632.

they claimed was the autobiography of Autoshankar in so far as it appeared from the public record, even without his consent or authorization. However, if the publication went beyond the public record and published his life story that would amount to an invasion of his right to privacy. Similarly, the government and prison officials who sought to protect themselves (by ostensibly seeking to protect the privacy of the incarcerated prisoner), did not have the right to impose a prior restraint on the publication of the autobiography; their remedy, if at all, could arise only after the publication.

The Court recognized two aspects of the right to privacy (1) the tortuous law of privacy which affords an action for damages resulting from an unlawful invasion of privacy and (2) the Constitution al right 'to be let alone' implicit in the right to life and liberty under Article 21. A citizen has the right to safeguards has own privacy, that of his family, marriage, procreation, parenthood, child berating, education, etc. and no person has the right to publish anything relating to such matters without the consent of the person concerned. The Court acknowledged two exceptions to this rule: first, where the matter has become a matter of public record, the right to privacy no longer subsists. Second, public officials are not entitled to claim privacy when the act or conduct in question relates to the discharge of their official duties. Even where the publication is based upon facts found to be untrue, the public official is not entitled to protection unless it is shown that the publication was made with reckless disregard for truth. It is sufficient for the publisher to show that the he acted after a reasonable verification of facts.

In **Kaleidoscope (India) P Ltd. V. Phoolan Devi,**[75] Phoolan Devi, once India's most dreaded dacoit, sought an injunction restraining the exhibition of the controversial biographical film Bandi Queen both in India and abroad. The trial Court reached a prima facie view that the film infringed the right to privacy of Phoolan Devi, notwithstanding that she had assigned her copyright in her wirings to the films producers. This was upheld by the Division Bench. The Court reached the prima facie conclusion that even assuming that Phoolan Devi was a public figure whose private life was exposed to the media, private matters relating to rape or the alleged murders committed by her could not be commercially exploited as news items or as matters of public interest.

Does the disclosure by a hospital of the medical condition of an AIDS patient to his fiancée amount to a breach of the patient's privacy? This question arose in **Mr 'X' v.**

[75]. AIR 1995 Del 316.

Hospital 'Z'.[76] The Supreme Court was confronted with the task of striking a balance between two conflicting fundamental rights; the AIDS patient's right to life which included his right to privacy and confidentially of his medical condition, and the right of the lady to whom he was engaged to lead a healthy life. The Supreme Court concluded that since the life of the fiancée would be endangered by her marriage and consequent conjugal relations with the AIDS victim, she was entitled to information regarding the medical condition of the man she was to marry. There was, therefore, no infringement of the right to privacy.[77]

This case may be compared with n English case that arose in their late eighties, **X v. Y**.[78] A newspaper reporter acquired information about two doctors practicing in the National Health Service despite having AIDS. The information was acquired from hospital records and was supplied by employees of the NHS. Despite the plaintiffs having obtained an injunction against the use of any confidential information from hospital records, the second defendants, owners of a national newspaper published an article written by the defendant reporter titled 'Scandal of Docs with AIDS' and threatened to disclose the identity of the doctors. While recognizing the public interest in having a free press and informed public debate, the Court took the view that this was outweighed by the public interest that victims of AIDS should be able to resort to hospitals without fear of disclosure and breach of confidence by employees of the hospital. The Court felt that a breach of confidentiality would make patients reluctant to come forward for treatment and counseling and this, in turn, would lead to a spread of the disease, which was contrary to publish interest.

3.6.1Right to Information

For many decades, despite the establishment of parliamentary democracy in India, there was no legal right to information. It was through a creative interpretation of Article 19(1)(a) of the Constitution that the Supreme Court out a fundamental right to information as being implicit in the right to free speech and expression. This right is of special importance to the media whose lifeline is information and whose business it is to communicate information to the electorate so that the latter may make informed choices.

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[76]. (1998) 8 SCC 296.

[77]. Interestingly, although the identity of the parties was concealed, a law journal which first reported the judgment disclosed the names of the parties. This was subsequently rectified by the publication of an apology and the rectification of names. But the damage to the privacy of those concerned had already been done. In a subsequent clarification. (Mr. 'X' v. Hospital 'Z', (2003) 1 SCC 500). The Supreme Court set aside some observations passed in the earlier judgment , while holding that the right of the HIV infected person was not violated by the disclosure of his medical condition to his fiancee's family.

[78]. (1988) 2 All ER 648.

One of the earliest cases where the Supreme Court laid emphasis on the people's right to know was **Ramesh Thappar v. State of Madras.**[79] The petitioner challenged an order issued by the then Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the circulation of the petitioner's journal Cross Roads. The order was struck down as being violation of the right to freedom of speech and expression under Article 19(1)(a). The Supreme Court held:

Very narrow and stringent limits have been set to permissible legislative abridgment of the right of free speech and expression and this was doubtless due to the realization 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 the process of popular Government, is possible.[80]

3.7 Right to freedom of speech and expression: Media Trial vs. Fair Trial

Article 19(1) (a) of the Indian Constitution, which is provides freedom of speech and expression includes within ambit, freedom of press and media. The Constitution of India guaranteed some fundamental right and protection to an accused from conviction against ex post facto laws[81] , double jeopardy[82]and right to fair trial in the Court of law.

3.7.1 Right to legal representative and Media Trial The media assumption of guilt clearly encroach upon the right to legal representation – a critical component of the right to fair trial and also intimidate lawyers into represent accused person[83].

3.8 Freedom of Media, information and Intellectual property right

The Intellectual property right[84] laws should not prevail over the right to education, knowledge and information. This right must exercised through the concept of fair use that is for education and research. The free and responsible media can play important role to establishing information and communication society.

3.9 Freedom of speech and expression Parliamentary Privileges

Article 361-A of the Constitution of India confers protection on newspapers in respect of the publication of a substantially true report of proceedings of either House of

[79]. AIR 1950 SC 124.
[80]. Ibid., para 11, pp. 128-29.
[81] Art. 20 (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
[82] 2) No person shall be prosecuted and punished for the same offence more than once.
[83] Priti Saxena ,Role of judiciary in Trial By Media On Crossing The Line Between The Private and The Publice Domain,1 JFJS(2009)
[84] Intellectual property right means; Copy right, patent, Trademarks etc.

Parliament and/or of the State legislatures.[85] Under the Parliamentary Proceedings (Protection of Publication) Act, 1977 a person is not liable in any civil or criminal proceedings in respect of the publication in a newspaper of a substantially true and accurate report of any proceedings in either House of Parliament unless the publication is proved to have been made maliciously. The protection is, however, not available if the publication is not for the public good.[86] The Act also applies to broadcasting agencies

3.10 Right to freedom of speech and expression: Electronic Communication Technology (ECT) and Cyber Media

The internet represents a communication revolution. A medium of instaneous, long-distance communication, and the uniqueness of the internet lies in its ability to make communication with a million or more people no more difficult than with a single person. Also it takes no longer for a message to ravel for thousands of miles across the globe than it takes to travel next door. The internet breaks down traditional berries as it knows no geographical or jurisdictional constraints. It is a medium that facilitates free speech and the exchange of ideas like no medium has before. The internet renders censorship of speech somewhat meaningless as what may be sought to be controlled in one jurisdiction can be made easily available through another.

The internet is an important means of expression and communication but equally important is its role as a source of information. The net offers information on a limitless and mind-boggling variety of subjects. The right to information has been judicially recognized to be part of the right to freedom of speech and expression under Article 19(1)(a). The role of the internet as a source of information is therefore an important facet from the standpoint of Article 19(1)(a)

Ironically, the very qualities about the internet that have revolutionized communication are the qualities that have made it amendable to misuse. The internet has become an engine for rampant piracy of copyrighted music, for pornography and obscenity, for defamation, for hate speech and lately for terrorist planning and

[85]. The Parliamentary Proceedings (Protection of Publication) Act, 1977, Section 3. C.K. Daphtary v. O.P. Gupta, (1971) 1 SCC 626: AIR 1971 SC 1132. See also Jawahar Darda v. Manohar rao Ganpatrao Kapsikar, (1998) 4 SCC 112.

[86]. C.K. Daphtary v. O.P. Gupta (1971) 1 SCC 626: 1971 SCC (Cri) 286. See also Cook v. Alexander, (1974) QB 279 and Wasan, ex p., (1869) LR 4 QB 573.

propaganda.[87] The instantaneous and technologically advanced means of communication make it difficult to contain and the damage is manifold compared to any other traditional means of communication, by reason of its sheer speed and the sweep of its reach. In India, the internet is regulated by the Information Technology Act, 2000

3.10.1 Convergence of Media

Traditionally, communication services were distinct: broadcasting, voice telephony and on-line computer services. These operated on different networks and used distinct means or platforms: television sets, telephones and computers. Each of these media has been regulated by separate laws and separate regulators. Digital technology allows a substantially higher capacity of traditional and new services to be transported over the same networks and to use integrated consumer devices for purposes such as telephony, television or personal computing. Examples of convergent services include internet service delivered to television sets via systems like web television; web-casting of radio and television programming on the internet; using the internet for voice telephony; and email and World Wide Web (www) access via digital television decoders and mobile telephones. Convergence plays a crucial role in the democratic and social process by enabling the citizen to act both as a recipient and a generator of information. It also facilitates electronic commerce and contributes to faster economic growth.

Variegated technological changes in information services have posed a formidable challenge to legal regulation as new forms of delivery of information are able to escape effective regulatory control. There is a pressing need for a comprehensive legal framework to cover the convergence of technologies and service.

3.11 Constitutional restrictions on the freedom of speech and expression

The freedom of speech means expression of views through words, spoken, written of printed or through any other channel like Radio, Television or other media. But it is subject to restriction, imposed under Article 19 (2) of the Constitution of India.[88]Article 19(2) exhaustively sets out the grounds upon which the freedom of speech and expression

[87]. The Al Qaeda is known to advertise for recruitments on the web. The net is used for terrorist communication through a variety of methods which include steganography and false emails. Steganography, in which messages are hidden inside image files was used by conspirators in the 2001 Parliament attack case as well as by the Al Qaeda post 9/11. False images are messages that are not actually dispatched but are read with the help of a common password. Several terrorists have the passward to one email account. One of them writes an email and saves it as a draft. Another logs on to the same account and accesses the draft message. Communication thus takes place without the email actually being sent. Other methods of communication include message in the font of an esoteric language and using high encryption system. Such messages take so long to decrypt that by the time they are deciphered the message is likely to become useless. The traditional espionage concept of 'dead drops', of dropping messages in a pre-arranged public place such as a phone booth or a toilet has now evolved to 'dead drops on the web. Terrorists use remotely controlled computers called 'bots' which allow emails to be sent from an account without the knowledge of the account holder.

[88]. Life Insurance corporation of India v. Prof M.D. Shah AIR 1993 SC 171 at P. 2-177

under Article 19(1)(a) can be restricted. Any restriction which does not fail within those clearly spelt out in Article 19(2) is not permissible and would be struck down as being in violation of Article 19(1)(a).[89]

Article 19(2), as it originally stood,[90] subjected the freedom of speech and expression to the government's authority to legislate on matters concerning 'lible, slander, defamation, contempt of Court, any matter offending decency and morality, or which undermines the security of or tends to overthrow, the State.[91]

In Punjab, the State Government imposed pre-censorship on an English language weekly in the name of protecting public safety and order. The East Punjab Public Safety Act, 1949 which was the subject-matter of the challenge in **Brij Bhushan v. State of Delhi,**[92] was struck down by the Supreme Court on the ground that pre-censorship was an unjustifiable restriction on the liberty of the press. The Court held that Section 7(i)(c) which authorized such a restriction on the ground that it is 'necessary for the purpose of preventing or combating any activity prejudicial to the public safety or the maintenance of public order' could not fall within the purview of Article 19(2). Patanjali Shastri, J. who delivered the majority judgment observed:

There can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Article 19(1)(a). as pointed out by Blackstone in his Commentaries.

"The liberty of the press consists in laying no previous restraint upon publications, and not in freedom from censure from criminal matter when published. Every free man has an undoubted right to liberty what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press'.[93]After much deliberation and debate in Parliament, the first amendment to the Constitution was passed in June, 1951,[94] retroactively empowering the government to impose 'reasonable restrictions' on the freedom of expression 'in the interests of the security of the State,[95] friendly relations with foreign State, public order, decency or morality, or in relation to contempt of Court,

[89]. Express Newspapers (P) Ltd. v. Union of India, AIR 1958 SC 578; Supdt., Central Prison v. Ram Manohar Lohia, AIR 1960 SC 633; Bennett Coleman v. Union of India, (1972) 2 SCC 788: AIR 1973 SC 106.
[90]. Prior to the 16th amendment to the Constitution vide the Constitution (Sixteenth Amendment) Act, 1963.
[91]. Amended and substituted vide the Constitution (Sixteenth Amendment) Act, 1963.
[92]. AIR 1950 SC 129.

[93] Blackstone's Commentaries, Vol. IV, pp. 151, 152."[93]
[94]. The Constitution (First Amendment) Act, 1951.
[95]. Replacing the words 'tends to overthrow, the State'.

defamation, or incitement to an offence.' 'Defamation' replaced the words 'libel' and 'slander' in Article 19(2). The introduction of 'incitement to an offence' was a response to the Bihar and Punjab High Court decisions referred to earlier.[96] A redeeming feature of the amendment was the inclusion of the word 'reasonable' before the world 'restrictions'.

Although Prime Minister Nehru was anxious to outlaw certain kinds of speech and the language of the amendment ostensibly made prosecution easier, the qualification of the restrictions by the addition of the word 'reasonable' empowered the citizen to turn to the Courts for judicial review.

The second amendment to Article 19 came in 1963 and added that the government had the power to place restrictions on the freedom of speech and expression in the interests of 'the sovereignty and integrity of India'.[97] The Article 19 (2) of the Constitution states that's; Nothing is sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law; in so for as such law impose reasonable restrictions on the exercise of the right conferred by the said provision. The qualifier in Article 19(2)[98] 'reasonable' remained in place. The amended Article 19(2) contains the following grounds on which reasonable restrictions can be placed on the freedom of speech: The sovereignty and integrity of India, The security of the state, Friendly relation with foreign states, Public order, Decency or Morality, In relation to contempt of Court, Defamation and Incitement to an offence.

3.11.1 Sovereignty and integrity of India

The amendment introducing 'sovereignty and integrity of India' as a ground under Article 19(2) for restricting the freedom under Article 19(1)(a) was reaction to the tense situation prevailing in different parts of the country. Chinese incursions had started in the north-east in 1960. Also around this time, there were strong demands led by Master Tara Singh for a separate Sikh homeland. The Dravida Munnetra Kazhagam (DMK) had called for an entity separate from India called Dravida Nadu comprising Madras, Mysore, Kerala and Andhra. Law Minister Asoke Sen introduced a bill in the Lok Sabha on 21st January, 1963 describing its object as giving 'appropriate powers to impose restrictions against those individuals or organizations who want to make seccession from India or disintegration of India as political purposes for fighting elections.' The object of the

[96].State of Bihar v. Shailabala Devi, AIR 1952 SC 329; Brij Bhushan v. State of Delhi, AIR 1950 SC 129.
[97]. Inserted by the Constitution (Sixteenth Amendment) Act, 1963, w.e.f. 6-10-1963.
[98] The words the sovereignty and integrity of India in Clause.2 of Article 19 have been inserted by Section 2 of the Constitution (Sixteenth Amendment) Act, 1963 .

amendment was to confer on Parliament specific power to legislate on this subject without having to face a Constitutional challenge on the ground that the legislation was inconsistent with Article 19(1)(a). The amendment enabled the enactment of laws such as the Criminal Law Amendment Act, 1961 and the Unlawful Activities (Prevention) Act, 1967 which made punishable the act or words of any individual or association intending or supporting 'the cession of any part of the territory of India or the secession' of the same.[99]

3.11.2 Security of the State' and 'Public Order'

The term 'public order' means public peace, safety and tranquility. The insertion of 'public order' as a ground under Article 19(2) by the Constitution (First Amendment) Act, 1951 was an attempt to get over the effect of the decisions of the Supreme Court in ***Romesh Thappar v. State of Madras***[100] **and** ***Brij Bhushan v. State of Delhi.***[101] The former case was a challenge to Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 under which the Government of Madras had issued an order imposing a ban on the entry and circulation of the journal Cross Roads in the state. In considering whether the impugned Act was made in the interests of the security of the State, Patanjali Shastri, J. drew a difference between a breach of public order which affects the security of the State and that which involves a breach of a purely local significance.

Though all these offences thus involve disturbances of public tranquility and are in theory offences against public order, the difference between them being only a difference of degree, yet for the purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories as has been done by the Penal Code. Similarly, the Constitution in formulating the varying criteria for permissible legislation imposing restrictions on the Fundamental Rights enumerated in Art 19(1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify the curtailment of the rights to freedom of speech and expression. The Constitution thus requires a line to be drawn in the field of public order or tranquility marking off, more or

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[99]. In People's Union for Civil Liberties v. Union of India, (2004) 9 SCC 580, the Supreme Court dismissed a challenge to the Prevention of Terrorism Act, 2002 on the ground, inter alia, that Parliament was competent to legislate on the subject of terrorism which was a threat to the security and sovereignty of the nation. This Act was subsequently repeated with effect from 21st September, 2004.

[100]. AIR 1950 SC 124.

[101]. AIR 1950 SC 129.

less roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance treating for this purpose differences in degree as if they were differences in kind.[102]

The Court held that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or its overthrow, such law cannot fall within the restriction under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order.[103] This decision was followed by the Supreme Court in **Brij Bhushan v. State of Delhi.**[104]

In **State of Bihar v. Shailabala Devi[105],** while interpreting Section 4(1)(a) of the Press (Emergency Powers) Act, 1931 dealing with words, sings or visible representations which incite or encourage or tend to incite or encourage the commission of any offence of murder or violence, the Supreme Court held that any speech or expression which incites or encourages the commission of violent crimes such as murder, undermines the security of the State and falls within the ambit of Article 19(2).

Supdt., Central Prison v. Ram Manohar Lohia,[106] concerned a challenge to Section 3 of the U.P. Special Powers Act, 1932 which made it an offence to instigate persons not to pay dues to the government. Dr. Lohia was arrested under the Act for making speeches exhorting people not to pay the government's increased irrigation rates. The impugned provision was struck down by the Supreme Court which held that the provision was not 'in the interests of public order'. The Supreme Court held that the expression 'in the interests of public order'. The Supreme Court held that the expression 'in the interests of public order' though wider than the phrase 'for the maintenance of public order' could not mean that the existence of any remote or fanciful connection between the impugned act and public order would be sufficient to sustain the validity of the law. There should be a reasonable and rational relation between the act and the object sought to be achieved, not a farfetched or remote connection.[107]

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[102]. AIR 1950 SC 124, Para 10, p. 128.
[103]. Ibid., Para 12, p. 129.
[104]. AIR 1950 SC 129.
[105]. AIR 1952 SC 329..
[106]. AIR 1960 SC 633.
[107]. Ibid., paras 13-14, p. 640.

'Public order' 'law and order' and 'security of the State' are not synonymous expressions. These concepts are in the nature of three concentric circles, 'law and order' representing the largest circle, within which lies the next circle representing 'public order' and within which is the smallest circle representing 'security of the State'. Thus, as act which affects 'law and order' may not necessarily effect 'public order' and an activity which may be prejudicial to 'public order' may not necessarily affect 'security of the State'.[108] **In *Madhu Limaye v. Sub-Divisional Magistrate,*[109]** the Supreme Court held that 'public order' includes the absence of all acts which are a danger to the security of the State and also the acts described by the French as *ordre publique,* that is, the absence of insurrection, riot, turbulence, or crimes of violence. But it does not include acts which disturb only the serenity of others.

In matters of forfeiture of books or other publications by the government on grounds of a likely disturbance of public order, tranquility or the like, the Courts have emphasized the necessity for the government to lay down the precise grounds under which such forfeiture became necessary. In **Harnam Das v. State of U.P.,**[110] the Supreme Court struck down an order of forfeiture passed by the Government of Uttar Pradesh under Section 99-A of the Code of Civil Procedure, 1898 in respect of two books published in Hindi on the ground that the publication of those books was punishable under Sections 153-A and 295-A of the Indian Penal Code. The Court found that the government had not set out the grounds for its opinion and had not stated in its order which communities were alienated from each other, whose religious beliefs had been wounded or why the government though that such alienation or offence to religion had been caused by the publication of the books in question. Under Section 99-D of the Code of Civil Procedure, held the Supreme Court, it is the duty of the High Court to set aside an order of forfeiture if it is not satisfied that the grounds on which the government formed its opinion, could justify that opinion. It is not the duty of the Court to do any more or to find out for itself whether the book contained any such matter.[111]

In **Gajanan Visheshwar Birjur v. Union of India,**[112] the petitioner challenged the confiscation of books imported by him from China containing Marxist literature under Section 111-D of the Customs Act, 1962. It was found that the order of confiscation failed

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[108]. Ram Manohar v. State of Bihar, AIR 1966 SC 740, para 52, pp. 758-59. Also see V.K. Javali v. State of Mysore, AIR 1966 sC 1387 ; Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955; Dalbir Singh v. State of Punjab, AIR 1962 SC 1106.
[109]. (1970) 3 SCC 746 : AIR 1971 SC 2486.
[110]. AIR 1961 SC 1962.
[111]. Ibid., paras 12-13, pp. 1665-66.
[112]. (1994) 5 SCC 550.

to specify which of the books contained words, sings or visible representations which were likely to incite or encourage any person to resort to violence for sabotage for the purpose of overthrowing or undermining the government. It was found that the show cause notices were devoid of particulars and extremely casually drawn up and that the final orders of confiscation also lacked the required specifications. The orders of confiscation were struck down as being violation of Article 19(1)(a).

3.11.3 Friendly relations with foreign states

Restrictions under this category would include not only libel of foreign dignitaries but also propaganda in favour of rivals to authority in a foreign state after India has recognized a particular authority in that state, or propaganda in favour of war with a state at peace with India. At present there is no specific legislation on this subject. However, a variety of statues contain restrictions on forms of expression which would have an adverse impact on friendly relations with foreign states. These statues include the Cinematograph Act, 1952,[113] the Cable Television Networks (Regulation) Act, 1995[114] and the Right to Information Act, 2005.[115]

3.11.4 Incitement to an offence

The word 'offence' is not defined in the Constitution[116]. According to the General Clauses Act, 1897, it means 'any act or omission punishable by any law for the time being in force'.[117] In order to qualify as a reasonable restriction under Article 19(2), the law imposing a restriction relating to 'incitement to an offence' must relate to a pre-existing offence i.e. the incitement must be of an act which is, at the time, a punishable offence under an existing law.[118] Further, the legislation must be in respect of a definite offence. Mere approval of or admiration for an act of murder or violence does not automatically come within the scope of this restriction unless the publication itself has a present tendency to incite or encourage the commission of the offence. The Court must look to the circumstances in each case in judging such a tendency, the purpose of the work, the time at which it was published, the class of the people who would read it, the effect it would

[113]. The Cinematograph Act, 1952, Section 5-B (1).
[114]. See the Cable Television Networks Rules, 1994, Rules 6(1)(b).
[115]. The Right to Information Act, 2005, Section 8(1)(a). See also, Section 8(1)(f).
[116]. See Indian Penal Code,1860,Sec.40.
[117]. General Clauses Act, 1897, Section 3(8).
[118]. Supdt, Central Prison v. Ram Mahohar Lohia, AIR 1960 SC 633.

have on their minds, the context of the words and the interval between the incidents narrated and the publication of the work.[119]

3.11.5 Decency and morality: exceptions to Article 19(1) (a)

One of the exceptions to the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution is in respect of laws which impose reasonable restrictions in the interest of 'decency' and 'morality'.[120]

Some of the laws which embody restrictions on the right to free speech in the interest of decency and morality are :

(i) The Indian Penal Code, 1860 makes the sale, letting to hire, distribution, public exhibition, circulation, import, export and advertisement of obscene material an offence punishable with imprisonment and fine.[121]

(ii) The Cinematograph Act, 1952 prohibits the certification of a film by the Censor Board for public exhibition if the film or any part of it is against the interests of morality and decency.[122]

(iii) The Dramatic Performances Act, 1876 empowers the government to prohibit public dramatic performance on the ground of obscenity and visits the disobedience of a prohibition with imprisonment and fine.[123]

(iv) The Customs Act, 1962 empowers the government to prohibit or impose conditions on the import or export of goods in the interest of decency and morality.[124]

(v) The Post office Act, 1898 prohibits the transmission by post any material on the ground of decency or obscenity.[125]

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[119]. State of Bihar v. Shailabala Devi, AIR 1952 SC 329.
[120]. Constitution of India, 1950, Article 19(2).
[121] Indian Penal Code, 1860 Sections 292-94.
[122]. The Cinematograph Act, 1952, Section 5-B. also see Sections 4 and 5-A of the Act on the examination and certification of films for public exhibition. A film certified by the Board of Film Certification for unrestricted public exhibition carries a 'U' certificate. A film certified as being suitable for unrestricted public exhibition may carry a 'UA' certificate if the Board is of the view that the question as to whether a child below the age of twelve should be allowed to view the film should be considered by his parents or guardians. A film cetifed for public exhibition restricted to adults carries an 'A' certificate, while a film certified for public exhibition restricted to members of any profession or class of persons carries an 'S' certificate. Once the film has obtained any of these certificates, the distributor, exhibitor or any other person to whom rights in the film have passed shall not be liable for punishment under any law relating to obscenity. See Section 5-A(1). See also LIC v. Manubhai Shah, (1992) 3 SCC 637; Ramanlal v. Central Board of Film Certification, AIR 1988 Bom 278.
[123]. The Dramatic Performances Act, 1876, Preamble; Section 3(c); Section 6.
[124]. The Customs Act, 1962, Section 11(b).
[125]. The Post Office Act, 1898, Section 20.

(vi) The Indecent Representation of Woman (Prohibition) Act, 1986 prohibits the indecent representation of women through advertisements or other publications, writings, painting, figures, etc. and makes the contravention of the provisions of this Act punishable with imprisonment and fine.[126] Section 2(c) of the Act defines the indecent representation of women as:

> 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, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals;

(vii) The young persons (Harmful Publications) Act, 1956 prohibits publications which could corrupt a child or young person and incite him to commit crimes of violence or cruelly, etc. A contravention of the provisions of this Act is punishable with imprisonment and fine.[127]

(viii) The Information Technology Act, 2000 makes the publication and transmission in electronic form of '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' punishable with imprisonment and fine.[128]

(ix) The Cable Television Networks (Regulation) Act, 1995 prohibits the telecast of programmes on cable television, which offend decency and morality and visits a contravention with imprisonment and fine.[129] In fact, Section 5 of the Cable Television Networks (Regulation) Act, 1995 read with Rule 6(1)(o) of the Cable Television Network Rules, 1994 prohibits the carriage of programmes that are not suitable for 'unrestricted public exhibition'. The expression, 'unrestricted public exhibition' is found in Section 5-1 read with Section 4 of the Cinematograph Act, 1952 which provides for the examination and certification of films by the Boards of Film Certification (CFBC). This effectively means that no adult film ('A' film) or film which is suitable for public exhibition restricted to member of any

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[126]. The Indecent Representation of Women (Prohibition) Act, 1986, Sections 3-6.
[127]. The Young Persons (Harmful Publications) Act, 1956, Sections 2(a); 3-7.
[128]. The Information Technology Act, 2000, Section 67; see also Avinash Bajaj v. State; (2005) 3 Comp. LJ 364 (Del).
[129]. The Cable Television Networks (Regulation) Act, 1995 5, 6, 17, 19 and 20 read with the Cable Television Network Rules, 1994, Rules 6(1)(a), (d), (k), (n) and (o), 6(2), 6(5); Rule 7(2)(iii) and (vi) ; Ruel 7(8).

profession or any class of persons ('S' film) can be telecast on television by cable operators.[130]

Indecency and obscenity

Used often in the context of 'decency' and 'morality' is the term 'obscenity' which is expressly prohibited by Section 292 of the Indian Penal Code, 1860.

Section 292(1) defines 'obscenity' thus:

For the purpose of sub-section (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. The definition is very similar to that found in the English Obscene Publications Act, 1959.[131] 'Obscenity' has been defined by the Supreme Court as 'the quality of being obscene which means offensive to modesty or decency; lewd, filthy and repulsive.[132]

'Indecency' is a concept wider than 'obscenity'. Although anything that is 'obscene' must necessarily is 'indecent',[133] what is 'indecent' need not always be 'obscene'.[134] In other words, while 'indecent' merely means non conformance with accepted standards of morality, 'obscenity' refers to that which has prurient or lascivious appeal.[135]

In the USA, the term 'obscene' refers to material which 'the average person applying contemporary standards would find that, taken as a whole, appeals to the prurient interest, contains patently offensive depictions or descriptions of specified sexual conduct, and has no serious literary, artistic, political or scientific value.[136]

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[130]. In Pratibha Naitthani v. Union of India (Writ Peitition No. 1232 of 2004), a public interest petition filed by a college lecturer to control obscenity in the media, in an order dated 21st December 2005 (unreported), the Bombay High Court interpreted Rule 6(1)(o) of the Cable Networks Rules. 1994 to mean that no film of which public exhibition is restircted can be carried on the cable service. The Court upheld the restriction under Rule 6(1)(o) holding that it did not violate the rights of an adult to watch films ('A' films) since such films could be viewed in a cinema hall or even privately on DVD or VCD.

[131]. Section 1(1) of the English Act defines 'obscenity' thus: 'For the purposes of this Act, an article shall be deemed to be obscene if its effect or (where the article 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, in all the circumstances, to read, see or hear the matter contained or embodied in it.

[132]. Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881, para, 7. P. 885.

[133]. R. v. Stanely, (1965) 1 All ER 1035.

[134]. R. v. Greater London Council, (1978) 3 All ER 184, pp. 188-89.

[135]. F.C.C. v. Pacifica Foundation, (1978) 438 US 726 (740).

[136]. Miller v. California, 37 L Ed 419. P. 422.

The Supreme Court quoted with approval, the comparison made by the Appellate Tribunal[137] with the scene of naked men and women being led to their death in a Nazi concentration camp in the film Schindler's List. The nudity was meant to convey horror and shame at these men and women who were about to die but were stripped of even their last shred of dignity. The Supreme Court took the view that a film that condemns social evil must necessarily show that evil and that the scenes of nudity and rape were intended not to arouse prurient or lascivious thought but revulsion against the perpetrators and pity for the victim. Such powerful portrayals are not to be censored in the name of perverts who would feel titillated rather than repulsed even at such scenes.

3.11.6 Contempt of Court

The law of contempt is one of the recognized exceptions under Article 19(2) to the freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution of India.[138]

3.11.6.1 Criminal contempt

'Criminal contempt' is defined under Section 2(c) of the contempt of Courts Act, 1971 :

2(c) 'criminal contempt' means the publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise, of any matter or the doing of any other act whatsoever which –

(i) Scandlises or tends to scandalise, or lowers or tends to lower the authority of any Court; or

(ii) Prejudices, or interferes or tends to 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.

The language contained in the section is loosely couched and there is no explanation is respect of what 'tends to' scandalise or interfere with or obstruct the administration of justice and how it is different from actually scandalising or interfering with or obstructing

[137]. Constituted under the provisions of the Cinematograph Act, 1952.
[138]. Article 19(2) reads : '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 confrred by the said sub clause in relation to contempt of court.

the administration of justice. The definition is extremely wide with the result that the jurisdiction can be quite easily invoked.

3.11.7 Defamation

The law of defamation is recognition of the inherent right of every individual to the preservation of his honour and the esteem in which he is held by society. Every individual has a right to claim that his reputation shall not be disparaged by defamatory statements made about him to a third person of person without lawful justification or excuse. Reputation is an integral and important aspect of the dignity of an individual.[139] Reputation has an important bearing on many decisions in a democratic society which are vital to its well-being: whom to vote for, whom to work for, whom to employ, whom to do business with, whom to socialize with. The right to preservation of one's reputation is acknowledged as a right in rem, a right good against the entire world.

The law of defamation is a culmination of a conflict between society and the individual. On one hand lies the Fundamental Right to freedom of speech and expression enshrined under Article 19(1)(a) of the Constitution , on the other is the right of the individual to have his reputation intact. How far does the liberty of free speech and expression extend? And when does it become necessary for the law to step in to safeguard the right of the individual to preserve his honour and reputation? The law of defamation seeks to attain a balance between these competing freedoms and is a reasonable restriction under Article 19(2) on the Fundamental Right to freedom of speech and expression guaranteed by Article 19(1)(a).The wrong of defamation consists in the publication of a false and defamatory statement about another person without lawful justification or excuse. A statement is said to be 'defamatory' when it injures the reputation of the person to whom it refers and 'exposes him to hatred, ridicule, or contempt, or which causes him to be shunned or avoided or which has a tendency to injure him in his office, profession or calling.'[140]

Further restriction have been imposed on freedom of speech and expression by Article 51 A defining fundamental duties of citizen.[141] Under the Article 5 (A), no one should in exercise of the freedom of expression or of the press do any of the following acts:-

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[139]. Right to reputation is a fact of the right to life. Where any authority in discharge of its duties traverses into the realm of personal reputation it must provide a chance to the person concerned to have a say in the matter. State of Bihar v. Lal Krishna Advani, (2003) 8 SCC 361.

[140]. Nevill v. Fine Art and General Ins. (1897) AC 68, p. 72

[141]. 42nd Constitutional Amendment, 1976.

1. To disparage the Constitution , its ideals and institution, or the National flag or the National Anthem;
2. To undermine the sovereignty by, unity and integrity of India;
3. To disrupt the spirit of common brother hood among all the people; and
4. To insult the rich heritage of our composite culture.

3.12 Statutory provision in refer to the freedom of speech and expression vis-a-vis media freedom, Media Trial and Electronic Technology

3.12.1 Press Laws: Print Media

Print media in India has always played a crucial role in the country's development and well-being. Unlike many other countries, the print media has very well withstood the stiff competition from the electronic media, if the growing number of newspaper and magazines in India is a yardstick to adhere by. The print media is also the well-regulated media in India. There exist a number of Acts which deal with the functioning of print media. This chapter deals with the Acts which regulated the print media in India. This chapter provides the salient features of the Press and Registration of Books Act, 1867, Press Council Act 1978 and Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955.

3.12.2 Press Council Act, 1978

The purpose of the Act was to establish a Press Council for preserving the freedom of the Press and of maintaining and improving the standards of newspapers and news agencies in India. The Act made way for the establishment of the press council.

Section 5. It states that the Council shall consist of a Chairman and twenty-eight other members.

Section 6. It states that in general circumstances, the Chairman and other members shall hold office for a period of three years.

Section 7. Conditions of service of members- The Chairman shall be a whole-time officer and shall be paid such salary as the Central Government may think fit; and the other members shall receive such allowances of fees for attending the meeting of the Council, as may be prescribed. Powers and functions of the Council :-

Section 13. Objects and functions of the Council

(1) The objects of the Council shall be to preserve the freedom of the press and to maintain and improve the standards of newspapers and news agencies in India.

(2) The Council may, in furtherance of its objects, perform the following functions, namely;

(a) to help newspapers and news agencies to maintain their independence;

(b) to build up a code of conduct for newspaper, news agencies and journalists in accordance with high professional standards;

(c) to ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste and promote a due sense of both the rights and responsibilities of citizenship;

(d) to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism;

(e) to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance;

(f) 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 an individual, association of persons or any other organization.

(g) 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.

(h) To promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers of in news agencies.

(i) 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 the Press;

(j) 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 the Central Government;

(k) to do such other acts as may be incidental or conducive to the discharge of the above functions.

Section 14. Power to Censure

The Council may conduct an inquiry with the newspaper, or news agency, the editor or journalist-on the receipt of a complaint or otherwise-if the Council has reason to believe that they have offended against the standards of journalistic ethics or public taste or that an editor or working journalist has committed any professional misconduct. If the Council is satisfied that it is necessary to do so, it may, for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist

3.12.3 The young persons (Harmful Publications) Act, 1956

It is an Act to prevent the dissemination of certain publication harmful to young persons.

"Harmful publication" means any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or 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 of 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 whatsoever.

"Young person" means a person under the age of twenty years.

3.12.4 Drugs and Magic Remedies (Objectionable Advertisements) Act. 1954
This is an Act 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 matter connected therewith.

"Advertisement" includes any notice, circular, label, wrapper, or other document, and any announcement made orally or any means of producing or transmitting light, sound or smoke; (b) drug" includes-(i) a medicine for the internal or external use of human

beings or animals; (ii) any substances intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals; (iii) any article, other than food, intended to affect of influence in any way the structure or any organic function of the body of human being or animals; (iv) any article intended for use as a component of any medicine, substance or article, referred to in subclasses (i), (ii) and (iii).

"Magic remedy" includes a talisman, mantra, kavacha, and any other charm of any kind which is alleged to possess miraculous power for or in the diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals or for affecting or influencing in any way the structure or any organic function of the body of human beings or animals.

3.13 Media Laws

Broadcasting is dissemination of information through audio or video. Broadcasting comprising both radio and television constitutes a very large part of the mass media. In India, radio broadcasting (All India Radio) started in the year 1936 and television broadcasting (Doordarshan) was introduced in the year 1959. For a long time, broadcasting in India was under the Control of Government till Prasar Bharti (Broadcast Corporation of India) Act, 1990 was framed to provide autonomy to All India Radio and Doordarshan. A change in the policy of the Indian Government in the early 1990s resulted in mushrooming of private television channels and Cable Television Network (Regulation) Act, 1995 was framed to regulated them.

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

The Prasar Bharti Act, 1990 The Prasar Bharti Act establishes a legal framework for public broadcasting in India. The Act provides the Prasar Bharti Corporation as the principal public broadcasting agency. It is an Act to provide for the establishment of Broadcasting Corporation for India, to be known as Prasar Bharati, to define its composition, functions and powers and to provide for matters connected therewith or incidental thereto.

3.13.2 The Cable Television Networks (Regulation) Act, 1995

Cable Network Act, 1995 The cable television networks (Regulation) Act, 1995 regulates the operation of cable television networks in India. The Act was amended in 2003 to require cable operators to sue 'addressable systems' also called (CAS) conditional

access systems based on satellite. It is an Act to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto.

Broadcasting Services Regulations Bill, 2006 The government also announced a new broadcasting Bill. The will establish a broadcasting regulatory authority to regulate broadcasting and cable service. The object of the bill is as follows:

To promote, facilitate and develop in an orderly manner the carriage and content of broadcasting,

To provide for regulation of broadcasting services in India for offering a 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 matters connected therewith or incidental thereto.

To provide for the establishment of an independent authority to be known as the Broadcast Regulatory Authority of India for the purpose of regulating and facilitating development of broadcasting services in India.

Whereas airwaves are public property and it is felt necessary to regulate the use of such airwaves in national and such public interest, particularly with a view to ensuring proper dissemination of content and in the widest possible manner;

Whereas Government has issued guidelines from time to time, with the approval of the Union Cabinet, for regulating the Broadcasting Services and it is felt necessary to give a statutory effect to these guidelines with retrospective effect

3.14 The Film Media

The important regulation related to film media in India is Cinematograph Act, 1952. The others include The Cinematograph (Certification) Rules, 1983. Those related to Cine Workers are The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984, The Cine-Workers Welfare Cess Act, 1981, The Cine-Workers Welfare Cess Rules, 1984, The Cine-Workers Welfare Fund Act, 1981 and The Cine-Workers Welfare Fund Rules, 1984.

3.14.1 Cinematograph Act, 1952

The salient features of the Act are as follows :

Section 3. Board of Film Censors

(1) For the purpose of sanctioning films for public exhibition, the Central Government shall, by notification in the official gazette, constitute a Board to be called the Board of Film Certification having not less than twelve and not more than twenty five other members.

Section 4. Examination of films and 5.A Certification of films

Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate. The Board may, after examining either;

A. Sanction the film for unrestricted public exhibition (in which case certificate will be U).

B. If the board is of the opinion that whether children below the age of twelve years should watch the film should be considered by their parents, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect (certificate UA).

C. Sanction the film for public exhibition restricted to adults (certificate A).

D. Sanction the film for public exhibition restricted to members of any profession or any class of persons, depending upon the nature, content and theme of the film (certificate S).

E. Direct the applicant to carry out certain decisions or modifications in the film before sanctioning the film for public exhibition under any of the foregoing clauses; (or)

Refuse to sanction the film for public exhibition

3.15 Telecommunication Laws

3.16 Constitution and communication Law

The Constitution s of India has a significant influence over the regulatory and legal framework for communication. The impact of Constitution law on communication classified in to four categories. *First,* under India's federal system[142], the Constitution of India ordains whether and to what extent the centre and the states have competence to

[142] India is a federation which comprises of the Union, various States and Union Territories[142].The Constitution apportions executive and legislative power between the Union and States[142]. Parliament which is the Union legislature, con make law for the any part of India[142]. As a default rule, the union gets to make and implement laws for any matters that are not expressly included in any of the three lists in the Seventh Schedule[142] contains point, the Supreme Court has described India as federation with a bias to the center, although states are supreme within their assigned competences

regulate, controls and tax communication[143]. *Second* the Constitution protects citizens and other persons from arbitrary and subversive state action by guaranteeing them certain fundamental rights. This guarantees the right to freedom of speech and expression. *Third,* a set of Constitution al provisions called the directive principle about appropriate role of the state in economic matters including the provision of communication service. *Finally*, the Constitution s guarantee of Equal protection of administrative law principals that affect the manner in which licensing and regulatory decisions are made. .

3.16.1 Union Government responsibility for Communication

The Constitution assigns all legislative and executive power over communication to the Union: only parliament can make law to govern and regulate communication. The seventh schedule entry 31 in Union List: Post and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

It gives the Union are ability to make laws for new Technologies and service that developed over time. Therefore; although the Internet and satellite are not expressly mentioned in entry 31 as they constitute other like forms of communication[144].

States are forbidden from directly regulation communication because Art-240 Provides that parliament has exclusive power be enact laws for items, such as entry-31 Union List. It should be noted that entry 13 in the state list also was on term communication that entry focuses on physical means of communication such as roads, bridges. It does not over electronic Radio visual communication, which the subject of Union List entry 31[145].

3.16.2 State and Local Regulation on Communication

Although central Government plays a dominant role in regulating communication, but State and Local Government are also important players in the regulatory land scope for several aspects. First; state government are responsible for enforcing various Central statutes as party their General responsibility to maintain law and order in their territories second, state health and safely lows can affect the operations of telecom and communication network thirds, state levy a significant amount of sales, entertainment tax on communication services.

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[143]. S.R. Bommai, Vs Union of India, AIR 1994 SC. 1918.
[144]. Gujarat Cable T.V. operators Vs state of Gujarat AIR 1999 Guj. 330.
[145]. Bharat Shantilal Shah Vs state of Maharastra (2002) 1 BOM. L.R. 529. Seventh Schedule (Art. 246) List-I Entry 31. Post and Telegraphs ; telephones, wireless, Broadcasting and other like forms Communication.

3.16.3 Public order, law enforcement function and communication Law and order is a state subject[146]. There for state police and law enforcement agencies are usually responsible for implementation of central law like Telegraph and communication laws. The case on point recent controversy over the condition Accuses system (CAS) satellite based cable Television.

In case of **PUCL Vs Union of India**[147] Supreme Court held that the state law enforcement agencies have to monitor and intercept communication.

3.17 Fundamental Rights and Communication

The Constitution protects every activity and, in some cases all person against state action that violates the fundamental right in part III of the Constitution fundamental rights, and it is important to obtain a basic understanding of these rights.

3.17.1 Equality and equal Protection of laws

Article14of the Constitution provides that the state shall not deny to any person equality before law equal protection of the laws within the Territory of India. This article is of great importance to communication. All government development and regulatory agencies must act consistently, fairly and reasonably according to Supreme Court, equality is antithesis to arbitrariness[148].

3.17.2 Freedom of Speech and Expression: Life and personal liberty

The Constitution of India includes various basic freedoms in Art, 19. The right freedom of speech and expression in Art, 19(1)(a). This Article is of tremendous significant to communication, it read as follows: All citizens shall have the right- (a) to freedom of speech and expression.

Unlike the more recent South African Constitution, India is Constitution does not expressly recognize media freedom[149]. Life and personal liberty: The Constitution of India provides that no person shall be deprived of life or personal liberty except according to procedure established by Law[150].We are of the view that to have a communication telephone, satellite phone as connection from the government nowadays

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[146]. See, The constitution of India, Sch. VII, List-II, Entry 1. Public order [but not including (the use of any Naval, military or air force or any other armed force of the Union or of any other force subject to the control or of any contingent or unit thereof in aid of civil power)] 2. Police (including railway and village police) Subject to the entry of List-I.

[147]. AIR 1997 S.C. 368.

[148]. E.P. Royappa Vs State of Tamil Nadu AIR 1974 SC 555.

[149]. The Constitution of the Republic of South Africa, Sec. 16(1)(a),However Indian judiciary has inserted media rights as part of Art.19(1)(a) through interpretation some of the cases are; Romesh thoper case

[150]. See, The constitution of India, Part-III, Art. 21 Protection of life and personal liberty – No Person shall be deprived of his life or personal liberty except according to procedure established by Law.

is a necessity in order to load a meaningful life within the meaning of Act 21 of the Constitution of India[151].

3.17.3 Right to Communicate and telecast

The Supreme Court decision Cricket Association[152] was a defining event in the evolution of India free speech jurisprudence. In this case Supreme Court recognized and strong linkage between Act 19(1) (a)[153] and Broadcasting communication freedom.

3.17.4 Restriction of free speech and communication

Article 19(2) provide that the government of was impose reasonable restrictions on free speech and explosions in the interest of India's sovereignty and integrity, state security, friendly relation with Foreign states, public order, decency, morality contempt of Court defamation and incitement of an offence.

3.18 Statutory Framework and communication

3.18.1 Indian Telegraph Act, 1885

Indian communication law started from the Indian Telegraph Act, 1885. This statute was passed by British Government for India and electric Telegraph were the Principal means of electronic communication. Although the Telegraph Act is more than 120 years old, it remains the principal pillars of the regulatory framework for communication. The statute, legal rule and regulatory provisions are organized around the concept of a Telegraph. This term is capaciously defines in the Act this definition covers within it most modern form of communication including landline telephone, cellular service, satellite Radio and the internet. However, statutes such as the telegraph Act, that regulate technology and scientific matters must be given a progressive construction to accommodate new inventions and innovations that arise after the first enacted[154].

3.18.2 Telecom Regulatory Authority of India Act, 1997

Telecom Regulatory Authority of India Act is a key element in the regulatory framework for Indian communication. The TRAI Act builds upon and establishes the telegraph Act is basic legal architecture. Its main objective was to establish an independent

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[151]. Francis coralie Vs State of Delhi AIR 1981 SC 746.
[152]. Secretary, Ministry of Information and Broadcasting Vs Cricket Association of Bengal AIR 1995 SC 1236
[153]. See, Constitution of India, Article 19 Protection of certain rights regarding freedom of speech, etc. – (1) All citizens shall have the rights – (a) to freedom of speech and expression.
[154]. Senior Electric Inspector Vs Laxmi narayan Chopra AIR 1962 SC 159.

regulatory system for communication, licenses and to protect consumers. The Act was substantially amended in 2000 and provides to the establishment of (TDSAT) Telecom Disputes Settlement and Appellate Tribunal exclusive dispute resolution forum for communication. The directions, regulations and recommendations have contributed to the emergence of distinct communications jurisprudence in India[155].

3.18.3 The Telegraph Wires (Unlawful possession) Act, 1950

The telegraph wires (Unlawful possession) Act a penal statute designed to curb the theft of copper wires used in telegraph and telephone service[156].

3.18.4 The Wireless Telegraphy Act, 1933 the act deals with wireless equipment like transmitters, cellular phones and radio to obtain a license.

3.18.5 Information Technology Act, 2000

The information technology Act, 2000 This Act not exclusively deals with the communication but some provision of the Act that's includes communication technology[157].This is an Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

Whereas the General Assembly of the United Nations by resolution. A/RES/51/162, dated the 30th January, 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law; and where as the said resolution recommends inter alia that all State give favorable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information; and whereas it is considered necessary to give

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[155]. Krishnalal Shridharan, Story of Indian telegraph: A century of progress, Post and Telegraph Department 1993.
[156]. Vikram Raghavan, Communication Law in India, Lexis Nexis, Butterworths, Wadhwa Nagpur p. 7.
[157]. S.4 of Information Technology Act, 2000 provides definition of Computer Networks-Means the interconnection of one or more computers or computer system or communication device through-
(i) The use of satellite, microwave, wire, wireless are other communication media.
(ii) Terminals or a computer consisting two or more inter connected computers or communication device.

effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records.

3.18.6 Electronic governance

Section 4. Legal recognition of electronic records ; Where any law provides that information or any other matter shall be in writing or in the type written or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is, -

(a) Rendered or made available in an electronic form; and

(b) Accessible so as to be usable for a subsequent reference.

3.18.6.1 Penalties and Adjudication

This Act deals with two types of wrongs, the civil wrongs and the offences. While the civil wrongs are covered by Section 43-45, the offences are mentioned in Section 65-81.

Section 43. Penalty for damage to computer, computer system, etc

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(a) accesses or secures access to such computer, computer system or computer network;

(b) downloads, copies or extracts any data, computer data base or information from such computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorized to access any computer, computer system or computer network by any means;

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made there under;

(h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network;

he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

Section 44. Penalty for failure to furnish information return, etc.

If any person who is required under this Act or any rules or regulation made there under to,-

(a) furnish any document, return or report to the Controller or the Certifying Authority fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;

(b) file any return or furnish any information, books or other documents within the time specified therefore in the regulations fails to file return of furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues;

(c) Maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

3.18.2 Offences

Section 65. Tampering with computer source documents

Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroys or alters any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to years, or with fine which may extend up to two lakh rupees, or with both.

Explanation: For the purposes of this section, "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.

Section 66: Hacking with computer system

(1) Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hack:

(2) Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend upto two lakh rupees, or with both.

Section 67 Publishing of information which is obscene in electronic form

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest of 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 on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

3.19 Miscellaneous Statutory Laws

3.19.1 Indian Penal Code, 1860

Indian Penal Code covers almost all the crime happening in the society. It is a piece of British colonial legislation dating from 1860. Now it provides a penal code for the entire country including Jammu and Kashmir, where it was renamed the Ranbir Penal Code (RPC). The code could be applied to any offence committed by an Indian citizen anywhere and on any Indian registered ship or aircraft (This law does not however apply to the armed forces or supersede any other acts). The draft of the Indian Penal Code was prepared by the First Law Commission, chaired by Lord Macaulay. The draft, after it underwent a very careful revision, was passed into law in 1860. Indian Penal Code came into force and is regularly amended. The code has a total of 511 Sections covering various aspects of the criminal law.

Section 124A. Sedition

Section 153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts pre judicial to maintenance of harmony

153B. Imputations, assertions prejudicial to national integration

Section 171G. False statement in connection with an election

Section 292. Sale, etc., of obscene books, etc.

Section 293. *Sale, etc., of obscene objects to young person*

Section 295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs

Section 499. Defamation **Section 500.** Punishment for defamation

Section 501. Printing or engraving matter known to be defamatory

Section 505. Statements conducting to public mischief

3.19.2 Criminal Procedure code, 1973

The Code of Criminal Procedure, 1973 deals with many offences. Bail able (the accused has the right to get bail) and no-bail able offences (the decision to grant bail or not is the decision of the Court), cognizable (the police officer can arrest an offender without a warrant) and non-cognizable (the police officer cannot arrest without a warrant) offences, compoundable (can be compromised by the parties to the dispute) and non-compoundable (those which cannot be compromised by any means) offences. In both Indian Penal Code and Criminal Procedure Code, certain provisions specifically deal with media. This chapter provides an account of those portions which are relevant to media. The following provisions of the Criminal Procedure Codes, 1973 are relevant to media.

Section 91. Summons to produce document or other thing

1. **Section 93.** When search warrant may be issued
2. **Section 95.** Power to declare certain publications forfeited and to issue search-warrants for the same
3. **Section 108.** Security for good behaviour from persons disseminating seditious matters

4. **Section 144.** Power to issue order in urgent cases of nuisance or apprehended danger
5. **Section 196.** Prosecution for offence against the State and for criminal conspiracy to commit such offence
6. **Section 199.** Prosecution for defamation
7. **Section 327.** Court to be open
8. **Section 345.** Procedure in certain cases of contempt
9. **Section 349.** Imprisonment or committal of person refusing to answer or produce document

3.19.3 Official Secrets Act, 1923

To combat the nefarious act of spying, the Government had been adopting various measures by making various provisions in different laws. The first step in this direction was the enactment of the Indian official Secrets Act, 1889 which was amended by the Indian Official Secrets (Amendment) Act, 1904. Later, the Official Secrets Act, 1911, a British Act was brought into force in India. But it has been recognized that it is unsatisfactory to have two separate laws in force simultaneously in India. Further, although the British Act of 1911 was in force in India, difficulties arose in applying it because of the use in it of English common law terms and so on. For these reasons it was felt desirable that these should be a single consolidated Act applicable to Indian condition. To consolidate and amend the law relating to official secrets, the Official Secrets Bill was put before the Legislature. It was passed in the year 1923. This Act is of importance to journalists also, as it deals with 'wrongful communication'. The objective of the official Secrets Act is to consolidate and amend the law related to official secrets.

3.19.4 The Juvenile Justice (Care and Protection) Act, 2000

This Act is restricted media freedom in matter relating to juvenile.

3.19.5 The Indecent Representation of Women (Prohibition) Act, 1986

Section 3 of this Act state that: (Prohibition of advertisement containing indecent representation of women)**-** No person shall publish ,or cause to be published ,or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

3.19.6 The Contempt of Courts Act, 1971

The jurisdiction to punish for contempt of Courts touches upon two important fundamental rights of the citizens, namely, the right to personal liberty and the right to freedom of expression. It was, therefore, considered advisable to have the entire law on the subject scrutinized by a special committee. In pursuance of this, a committee was set up in 1961 under the chairmanship of the late Shri H.N. Sanyal, the then Additional Solicitor General. The committee made a comprehensive examination of the law and problems relating to contempt of Court in the light of the position obtaining in our own country and various foreign countries. The recommendations which the committee made took note of the importance given to freedom of speech in the Constitution and of the need for safeguarding the status and dignity of Courts and interests of administration of justice. The recommendation of the committee have been generally accepted by Government after considering the view expressed on those recommendations by the State Governments, Union Territory Administrations, the Supreme Court, the High Court and the Judicial Commissioners. After it was enacted, the Contempt of Courts Act gave effect to the accepted recommendations of the Sanyal Committee.

According to this Act, contempt could be civil or criminal.

Section 2(a) "contempt of Court" means civil contempt or criminal contempt;

Section 2(b) "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court;

Section 2(c) "criminal contempt" means 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 –

(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;

Section 2(d) "High Court" means the High Court for a State or a Union territory, and includes the Court of the Judicial Commissioner in any Union territory.

Section 3. Innocent publication and distribution of matter not contempt

(1) A person shall not be guilty of contempt of Court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs, or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of Court.

(3) A person shall not be guilty of contempt of Court on the ground that he, has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid:

Provided that, this sub-section shall not apply in respect of the distribution of

(i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in Section 3 of the Press and Registration of Books Act, 1867, (25 of 1867);

(ii) Any publication which is a newspaper published otherwise than in conformity with the rules contained in Section 5 of the said Act.

Section 4. Fair and accurate report of Judicial proceeding not contempt

Subject to the provisions contained in Section 7 of this Act, a person shall not be guilty of contempt of Court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

Section 5. Fair criticism of judicial act not contempt

A person shall not be guilty of contempt of Court for publishing any fair comment on there merits of any case which has been heard and finally decided.

Section 7. Publication of information relating to proceeding in chambers or in camera not contempt except in certain cases

(1) notwithstanding anything contained in this Act, a person shall not be guilty of contempt of Court for publishing a fair and accurate report of a judicial proceeding before any Court sitting in chambers or in camera except in the following cases, that is to say,-

(a) where the publication is contrary to the provisions of any enactment for the time being in force;

(b) where the Court, on ground of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding of information of the description which is published;

(c) where the Court sits in chambers or in camera for reason connected with public order or the security of the State, the publication of information relating to those proceedings;

(d) Where the information relates to a secret process, discovery or invention which is an issue in proceedings.

(2) Without prejudice to the provisions contained in sub-section (1), a person shall not be guilty of contempt of Court for publishing the text or a fair and accurate summary of the whole or any part, of an order made by a Court sitting in chambers or in camera, unless the Court has expressly prohibited the publication thereof on grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

Section 10. Power of High Court to punish contempt's of subordinate Courts

Every High Court shall have, and exercise, the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt's of Courts subordinate to it as it has and exercises in respect of contempt's of itself:

Provided that no High Court shall take cognizance of Contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

Section 12. Punishment for Contempt of Court

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court. (An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide).

(2) Notwithstanding anything contained in any law for the time being in force, no Court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a Court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of Court in respect of any undertaking given to a Court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the Court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

3.19.7 The Right to Information Act, 2005

The Government also decided to repeal the Freedom of Information Act, 2002 and The Right to information Act, 2005[158] passed with provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.

3.19.8 Freedom of media, Sting Operation and the Public Interest Discloser (Protection of Information) Bill, 2002

The Public Interest Discloser (Protection of Information) Bill, 2002[159] introduced in parliament which gives protection to the person who discloses information relating to the conduct of any public servant including the commission of any offence made in public interest. In other countries like U.S.A., U.K. and Australia[160] have protection of information laws are known as whistle blowers Laws. The investigative journalism and sting operation I part of whistle blowing activity[161].

3.20 The Media Council Bill, 2010

Media is a social instrument that is powerful enough to mould a society, to develop and destruct it. It is a force that could be put to much constructive use in the right hands. Every democracy gets the government it deserves and every society, its media. In a country with as robust and multi-faceted a freedom of expression as India, media plays a very significant role in balancing interests of public and exercise its powers.

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. Recently this freedom of press has been in controversy for reasons like 'paid news', Media Trial, for twisting facts, for invasion of privacy and so on and so forth.

Interestingly, from the perspective of many Indian laws, the Indian news media is already perhaps the most regulated amongst the advanced democracies. According to the freedom

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[158] The Act passed by Lok Sabha on 11th May, 2005 and by Rajya Sabha on 12th in May, 2005 received the assent of President on 15th June, 2005.

[159] This Bill has been introduced accordance with the 179th Report of the Law Commission of India in Dec.14, 2001.Justice B.P.Jeavan Reddy was the Chairman of the Commission at that time.

[160]The Whistler Blower Protection Act,1989(U.S.A.),Publice Intrest Disclosure Act, 1948(U.K.) The Australian Service Public Bill,1999

[161] In India The Tehalka exposure of Dileep Singh Judeo incident and acceptance of money by the member of parliament for raising question in the parliament re the instance of whistle blowing

of the press 2011 study, India ranks 79th and is categorized as 'partly free'. Any further regulation of the media would effectively undermine individual liberties that are so essential to a democracy. Even so, the Media Council Bill, 2010, has been drafted to regulate the Indian media.

3.21 Electronic Technology and Media Convergence Laws

3.21.1 Electronic communication and media

The Electronic and satellite communication covers- T.V., radio,internet,satellite internet access, satellite phone, satellite radio, satellite television, satellite navigation, weather satellite, earth observation satellites, research satellite etc. Space stations and human space craft in orbit are also satellite.

The world has become a global village through satellite communication. Communication satellite frequently called birds or teacher's in sky' are merely orbiting solar powered relay stations. They receive up linked, signals from special satellite, earth stations equipped with suitable transmitters and dishes, which retransmit the signals earth worlds as the speed of light.

Satellite broadcasting implies the direct reception of radio and television programming through dish antenna. In India the most common form of satellite television is direct-to-home (DTH).

3.21.2 Communication convergence Bill

Communication Convergence Bill: A legislative proposal is pending in parliament since 2000 called the communication convergence Bill[162]. The main propose of this law is to create a single regulatory and licensing umbrella for all type of telecommunication and communications broadcasting and cable services. It would replace following statutes:-

- The Indian telegraph Act 1885
- The Indian wireless telegraphy Act 1933.
- The India wireless (Unlawful possession) Act 1950.
- The telecom regulatory authority of India Act, 1997.
- The cable television networks (Regulation) Act, 1995.

[162]. The communication convergence Bill, 2000 reprinted in 2001.

The Communications Convergence Bill, 2001 ("Convergence Bill") aims at promoting, facilitating and developing the carriage and content of communications including broadcasting, telecommunication and multimedia in an orderly manner. It recognizes the coming together of voice, video and data, aims to set up a single super-regulator for the telecom, Internet and broadcasting sectors, to be called the Communications Commission of India ("CCI"). [163]The Convergence Bill will replace the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, the Telegraph Wires (Unlawful Possession) Act, 1950, the Cable Television Networks (Regulation) Act, 1995 and the TRAI Act, 1997.[164]The Convergence Bill also provides for a new licensing regime, with a limited number of five licenses, which include network infrastructure facilities[165], networking services,[166]network application services,[167]content application services[168]and value-added network application services.[169]While granting licences, the CCI may grant them either singly or jointly, depending upon the nature of services to be offered. Therefore, while providing Internet telephony services, the service provider would have to obtain the network application services licence and probably the value-added network application services licence under the Convergence Bill. Presently, the Convergence Bill is before the Standing Committee on Information Technology. The Committee is likely to finalize its recommendations by May 2002. The Standing Committee is also expected to examine issues such as direct-to-home television broadcasting, quality of electronic media programming, problems and requirements of the information technology industry, human resource development in information technology as well as the expansion of telecom networks with special focus on rural and remote areas.The Prasar Bharti Act is not covered under the Bill. The proposed law would establish the communication commission of India as the super regulator of India communication systems with both power regulatory and licensing functions. The Bill also proposed to create a commission appellate tribunal to hear appeals from the communication commission's decision.

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[163] Clauses 6 to 22 of the Convergence Bill deal with the establishment, objectives, powers, duties and functions of the CCI.

[164] Clause 93 of the Convergence Bill.

[165] Clause 26(a) of the Convergence Bill. They include earth station, cable infrastructure, wireless equipments, towers, posts, ducts and pits used in conjunction with other communication infrastructure, and distribution facilities including facilities for broadcasting distribution.

[166] Clause 26(b) of the Convergence Bill. They include bandwidth services, fixed links and mobile links

[167] Clause 26(c) of the Convergence Bill. They include public switched telephony, public cellular telephony, global mobile personal communication by satellite, internet protocol telephony, radio paging services, public mobile radio trunking services, public switched data services and broadcasting (radio or television service excluding continued)

[168] Clause 26(d) of the Convergence Bill. They include satellite broadcasting, subscription broadcasting, terrestrial free to air television broadcasting and terrestrial radio broadcasting.

[169] Clause 26(e) of the Convergence Bill. Information technology enabled services such as call centers, electroniccommerce, tele-banking, tele-education, tele-trading, tele-medicine, videotex and videoconferencing shall not be licensed under this Act.

3.22 Government policies and Programmes

3.22.1 Freedom of Press and Freedom of Information and the National Commission to Review the Working the Constitution (N.C.R.W.C)

Article 19(1)(a) refers to 'freedom of speech and expression'. It is proposed that the article must expressly include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas. It is also proposed to amend article 19(2) by adding a further restriction on disclosure of information received in confidence except if required in public interest. The Commission recommends that article 19(1)(a)[170] and (2)[171] be amended .

A mere legislation by the Parliament by amending the Contempt of Courts Act, 1971 alone may not suffice because the power of the Supreme Court and the High Courts to punish for contempt is recognized in the Constitution. Therefore, the Commission recommends that an appropriate proviso to article 19(2) of the Constitution may be added as under:-

"Provided that, in matters of contempt, it shall be open to the Court to permit a defence of justification by truth on satisfaction as to the bona fides of the plea and it being in public interest."

3.22.2 Media Freedom and Regulation

Under the Constitution of India, Media, Press, telecom, broadcasting and cable service are regulated by the union government. The following agencies involved in communication regulation.

- Press Council of India
- Telecom regulatory authority of India (TRAI)
- Department of telecommunication (DoT)
- Telecom commission and Prime Minister Office[172].
- Telecom disputes settlement and appellate tribunal (TDSAT).
- Ministry of Information and Broadcasting.

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[170] Art. 19(1): All citizens shall have the right -(a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas;".

[171] 19(2): "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or preventing the disclosure of information received in confidence except when required in public interest.".

[172]. Charu Malhotra, Chronology perspective of telecommunication infrastructure develops in India, IJPA No. 3 Vol. 47, 2001.

- Prasar Bharti Corporation.
- Advertising Slandered Council of India (ASCI)
- All India Newspaper Editors's Conference (AINCE)Code
- Code for Commercial
- News Broadcasters Association
- Advertising Council of India
- Advertising Agencies Association of India

- The Central Board for Film Certification (CBFC)

3.23 MEDIA LAW: INTERNATIONAL PERSPECTIVE

The right to freedom of expression is a fundamental human right; fundamental both in the sense of its central importance to human life and dignity but also because it is the essential underpinning of all human rights – including the right to participate in political life – due to its crosscutting nature as well as its role in ensuring the effective protection of rights. It is a freedom that includes the right to express controversial opinions in public; the mere fact that an idea is unpopular cannot justify preventing a person from expressing it. Freedom of expression is not, however, limited to the right to express oneself. It also includes the right to seek and receive information from others including the right to obtain and read newspapers, to listen to broadcasts, surf the internet, and of course, to participate in discussions, public and private, as a listener. It is increasingly being recognised that the right includes the right to access information held by public authorities. As such, it places a duty on these bodies to both disseminate information of key public importance and to respond to requests for access to publicly held information.

Freedom of expression has long been viewed as the cornerstone of democracy and fundamental freedoms. At the beginning of 2010, the four 'special international mandates for promoting freedom of expression'[173] confirmed in a joint statement " *the fundamental importance of freedom of expression – including the principles of diversity and pluralism – both inherently and as an essential tool for the defence of all other rights and as a core element of democracy.*"[174]

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[173]. The four special international mandates on freedom of expression are the UN Special Rapporteur for the promotion and protection of the Right to Freedom of opinion and expression ("UN Special Rapporteur on Freedom of Expression"), the Organisation for Security and Co-operation in Europe (OSCE) Special Rapporteur for Freedom of Expression, the Organization of American States (OAS) Special Rapporteur For Freedom of Expression, and the African Commission on Human and People's Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information.

[174]. UN Special Rapporteur on Freedom of Expression, OSCE Special Rapporteur on Freedom of Media, OAS Special Representative for Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information, Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade, 3 February 2010, available at: http://www2.ohchr.org/english/bodies/hrcouncil/ docs/14session/A.HRC.14.23.Add.2_en.pdf.

Freedom of expression is important for three main reasons. First, it is a key right for ensuring individual dignity. It gives people autonomy to express themselves as they see appropriate and exchange ideas with others so as to obtain a better understanding of themselves and the society around them.[175]

Second, freedom of expression, as noted in the statement of the special international mandates above, is essential to democracy. Without the ability to express their views freely, access information and assemble together to address issues of common concern, people are unable to influence government, participate in decision-making and hold government to account all of which are vital tenets of democracy.[176] Freedom of expression also bolsters democracy by providing a tool for accountability. Scrutiny of the government, and the opposition, by the media, civil society actors and citizens is an important mechanism for curtailing corruption and dishonesty. Freedom of expression thus plays an essential role in improving democratic governance and is vital for the progressive development of democracy. Third, freedom of expression is not only important as a right in itself but it is the fundamental guarantor of all other human rights. Without the space to exercise freedom of expression it becomes increasingly difficult to protect and promote other human rights and bring to light violations of those rights.

The right to freedom of opinion and expression is defined and protected under both international and domestic law. Some limitations on the right are permitted. However, in spite of these ratifications and incorporations, restrictions on the right to freedom of expression that are incompatible with human rights principles continue to exist.

The League of Nations originally made the earliest attempt at producing a multilateral instrument on information – the International Convention Concerning the use of Broadcasting in the Cause of Peace of 1936.[177] According to this Convention, states have a right to control and if necessary suppress information transmitted by radio broadcasting. The League's stance on information was more of an effort at suppression rather than support for openness. It was only after 1945 that freedom of expression and information made a debut in the international governance and democracy arena. Indeed the formation of the UN was coupled with a general concern for individual human rights. At

[175]. ARTICLE 19, Central Asian Pocketbook on Freedom of Expression (London: ARTICLE 19, October 2006), p. 21, available at: http://www.article19.org/pdfs/tools/ central-asian-pocketbook.pdf.
[176]. Ibid., pp. 21 – 22.
[177]. Inger Osterdahl, "Freedom of Information in Question: Freedom of Information in International Law and the Calls for a New World Information and Communication Order (NWICO)," The International and Comparative Law Quarterly, 43, No. 2 (April 1994): 476.

the time, the predominance of the Western liberal attitudes within the newly established UN as well as the emergence of the American news agencies played an instrumental role in shedding light on the need for freedom of information.

Within the UN, freedom of information was recognized as a fundamental right of the people. In 1946, during its first session, the UN General Assembly adopted resolution 59(1) which stated: "Freedom of Information is a fundamental human right and…the touchstone of all the freedoms to which the UN is consecrated."[178] From its inception, the UN placed great significance to freedom of information especially in summoning the International Conference on Freedom of Information in Geneva in 1948.[179]

Moreover, in 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR), which guarantees the freedom of opinion and expression under Article 19. The adoption of this Declaration was an important milestone that placed the right of access to information at the heart of human rights. The UDHR was reaffirmed by the 1966 legally binding treaty, the International Covenant on Civil and Political Rights (ICCPR).[180] Freedom of information was so fundamental in the UDHR that ICCPR adopted this provision and Article 19 was mirrored in the ICCPR.

More recently, the UN Commissioner on Human Rights has established the office of the "UN Special Rapporteur on Freedom of Opinion and Expression" in 1993 who has worked since then on the right to freedom of information through annual reports, commentaries and statements. Although the UDHR, as a UN General Assembly resolution, is not directly binding on States, Article 19 is now widely regarded as having acquired "legal force as customary international law" since its adoption in 1948.[181]

3.23.1 The International Bill of Human Rights

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.

3.23.2 The Universal Declaration of Human Rights

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[178]. Article 19 & The British Council, Access to Information Booklet, [publication online] (British Council 2004, accessed 12 January 2008); available from http://www.britishcouncil.org/governance-foebooklet. doc, Internet.

[179]. Carlos P. Romulo, "UN Freedom of Information Convention: What the Conference Achieved," United Nations Bulletin, 4, No. 9 (May 1984), 2.

[180]. Article 19 & The British Council, Access to Information Booklet, [publication online] (British Council 2004, accessed 12 January 2008); available from http://www.british council.org/governance-foebooklet. doc, Internet.

[181]. Toby Mendel, National Security and Open Government: Striking the Right Balance (New York: Campbell Public Affairs Institute, Syracuse University, 2003), 4.

The **Universal Declaration of Human Rights** (hereinafter referred as '**UDHR'**) is a declaration adopted by the United Nations General Assembly (10 December 1948 at Palais de Chaillot, Paris). The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national Constitution s and laws.

The underlying structure of the Universal Declaration was introduced in its second draft which was prepared by René Cassin. Cassin worked from a first draft prepared by John Peters Humphrey. The structure was influenced by the Code Napoleon, including a preamble and introductory general principles. Cassin compared the Declaration to the portico of a Greek temple, with a foundation, steps, four columns and a pediment. Articles 1 and 2 are the foundation blocks, with their principles of dignity, liberty, equality and brotherhood. The seven paragraphs of the preamble, setting out the reasons for the Declaration, are represented by the steps. The main body of the Declaration forms the four columns. The first column (articles 3–11) constitutes rights of the individual, such as the right to life and the prohibition of slavery. The second column (articles 12–17) constitutes the rights of the individual in civil and political society. The third column (articles 18–21) is concerned with spiritual, public and political freedoms such as freedom of religion and freedom of association. The fourth column (articles 22–27) sets out social, economic and cultural rights. In Cassin's model, the last three articles of the Declaration provide the pediment which binds the structure together. These articles are concerned with the duty of the individual to society and the prohibition of use of rights in contravention of the purposes of the United Nations.

Article 3 state that: *Everyone has the right to life and security of person*.

Article 12deals with the person's privacy right and reads; *No one shall be subject to arbitrary interference with his privacy ,family home or correspondence ,nor attack upon his owner and reputation*.

So far as freedom of expression Article 19 of the Universal Declaration of Human Rights (the "UDHR") states that:

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

Article 21

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

3.23.3 The International Covenant on Civil and Political Rights

The **International Covenant on Civil and Political Rights** (hereinafter referred as **'ICCPR'**) is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and in force from March 23, 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of March 2012, the Covenant had 74 signatories and 167 parties. The *International Covenant on Civil and Political Rights* (ICCPR),[182] a treaty which elaborates on many rights included in the UDHR, imposes formal legal obligations on State Parties to respect its provisions. The ICCPR Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR;

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

3.23.3.1 Media Freedom and ICCPR

[182]. UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights has consistently emphasized the "pre-eminent role of the press in a State governed by the rule of law."[183] It has further stated:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.[184]

The media merit special protection in part because of their role in informing the public and in acting as watchdog of government. The European Court of Human Rights has made this clear in the following statement, which it has often quoted:

Whilst the press must not overstep the bounds set [for the protection of the interests set forth in Article 10(2)] … it is nevertheless incumbent upon it to impart information and ideas of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would by unable to play its vital role of "public watchdog".[185]

The Court has also held that Article 10 applies not only to the content of expression but also the means of transmission or reception.[186]

3.23.3.2 Restrictions on the Right to Freedom of Expression

The right to freedom of expression is not absolute. Both international law and most national Constitution s recognise that freedom of expression may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

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

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

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[183]. Thorgeirson v. Iceland, 25 June 1992, Application No. 13778/88, 14 EHRR 843, para. 63.
[184]. Castells v. Spain, 24 April 1992, Application No. 11798/85, 14 EHRR 445, para. 43.
[185]. See Castells v. Spain, note 13, para. 43, Thorgeirson v. Iceland, note 12, para. 63, The Observer and Guardian v. UK, 26 November 1991, Application No. 13585/88, 14 EHRR 153, para. 59 and The Sunday Times v. UK (II), 26 November 1991, Application No. 13166/87, 14 EHRR 229, para. 65.
[186]. Autronic AG v. Switzerland, 22 May 1990, Application No. 12726/87, 12 EHRR 485, para. 47.

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

It is a maxim of human rights jurisprudence that restrictions on rights must always be construed narrowly; this is especially true of the right to freedom of expression in light of its importance in democratic society. Accordingly, any restriction on the right to freedom of expression must meet a strict three-part test, as recognised by the Human Rights Committee. This test requires that any restriction must a) be provided by law, b) be for the purpose of safeguarding one of the legitimate interests listed, and c) be necessary to achieve this goal.

The first condition, that any restrictions should be 'provided by law', is not satisfied merely by setting out the restriction in domestic law. Legislation must itself be in accordance with human rights principles set out in the ICCPR.[187]

3.23.4 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to individuals, including labour rights and the right, the right to education, and the right to an adequate standard of living. As of July 2011, the Covenant had 160 parties. A further seven countries, including the United States of America, had signed but not yet ratified the Covenant.

3.23.5 the Convention on Rights of Child, 1989

Article 13

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

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

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

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

[187]. Faurisson v. France, Decision of 8 November 1996, Communication No. 550/1993 (UN Human Rights Committee).

Art.19 (2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article- 30 In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

3.23.6 International Cyber Space governance and human rights

The impacts of Internet companies on human rights should be viewed in the context of how the Internet is governed and regulated nationally and

Internationally, this is a controversial topic provoking strong opinions among many stakeholders (representing governments, business and civil society) across the world. The UN promoted a World Summit on the Information Society (WSIS) involving 175 countries in two phases (Geneva 2003 and Tunis 2005) to try to develop a framework for global Internet governance.[188] In the end, the Tunis meeting, unable to agree on how to govern the Internet, decided to leave much of the control where it currently resides – concentrated in the hands of the US-based Internet Corporation for Assigned Names and Numbers (ICANN). The failure to reach a binding agreement on the future of Internet governance, or even what the term should encompass,[189] ended with a compromise agreement to set up a consultative Internet Governance Forum which will meet for the first time in Athens in November 2006.

Ensuring respect for human rights, including freedom of expression, is a vital component in creating the Information Society. As UN Secretary General Kofi Annan stated in his address to the Tunis WSIS meeting:

And of course, the information society's very life blood is freedom. It is freedom that enables citizens everywhere to benefit from knowledge, journalists to do their

[188]. World Summit on the Information Society. http://www.itu.int/wsis/visited on 05 April,2012

[189].The June 2005 report of the Working Group on Internet Governance offers as a working definition: Internet governance is the development and application by Governments, the private sector, civil society, in their respective roles, of shared principles, norms, rules, decision making procedures, and programmes that shape the evolution and use of the Internet.

essential work, and citizens to hold government accountable. Without openness, without the right to seek, receive and impart information and ideas through any media and regardless of frontiers, the information revolution will stall, and the information society we hope to build will be stillborn.[190]

Similarly, the Declaration of Principles agreed by the WSIS in Geneva and reaffirmed in Tunis emphasises the importance of respecting human rights in developing the Information Society. This is reflected in the following clauses:[191]

We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Communication is a fundamental social process, a basic human need and the foundation of all social organisations. It is central to the Information Society. Everyone everywhere should have the opportunity to participate and no one should be excluded from the benefits the Information Society offers.

We further reaffirm our commitment to the provisions of Article 29 of the Universal Declaration of Human Rights, that everyone has duties to the community in which alone the free and full development of their personality is possible, and that, in the exercise of their rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. In this way, we shall promote an Information Society where human dignity is respected.

In 2005, the UN Commission on Human Rights requested the UN Secretary-General to appoint a Special Representative on the issue of human rights and business. The mandate includes identifying and clarifying standards

3.23.7 UNESCO Conference

Every year on 3 May the 'World Press Freedom Day' is celebrated. It was proclaimed by the UNESCO in 1992, to mark the ratification of the 'Windhoek

[190]. Kofi Annan, November 2005, Tunis. http://www.itu.int/wsis/tunis/statements/docs/io-un-opening/1.html,visited on 7 March2009
[191]. Outcome of the first phase of the World Summit on the Information Society, Geneva, December 2003. http://www.itu.int/wsis/docs/geneva/official/dop.html visited on 9 May,2014

Declaration'. It was adopted one year later, during a regional UNESCO conference, when media representatives and experts had demanded independence, freedom and pluralism of the press.

3.23.8 The Madrid Principles on the Relationship between the Media and Judicial Independents – 1994

A group of 40 distinguished Legal experts and Media representatives, convened by the Internationals Commission of Jurists (ICJ), at its center for though independents of Judge and Lawyers, and Spanish committee of UNICEF, met in Madrid, Spain between 18-20, January 1994 to examine the relationship between media and judiciary .The formulating principle recognized 'Rule of Law', Independent judiciary, freedom and restriction of media as per UDHR[192] and ICCPR[193].

3.23.9 The International Telecommunication Union

The International Telecommunication Union (hereinafter referred as ITU) is an agency of the United Nations which is regulating information and communication technology issues. ITU Coordinates the shared global use of the Radio spectrum, Promotes International cooperation assigning satellite orbits works to improve Telecommunication in infrastructure in the developing world and establish worldwide standards. To establish sustainable and affordable access to International and Communication Technologies (hereinafter referred as ICT).

ITU are based in Geneva, Suitzerland and its 191 Member states. The legal frameworks of ITU are adopted by the Plenipotentiary Conference, the optional protocol on the settlement of disputes. ITU also set up the International Telephone and Telegraph consultative committee (hereinafter referred as CCITT) in 1992.

3.23.10 World Summit on the Information Society, (WSIS)

It's provided a global forum on the thereof ICTs for development. European Conference on Postal and telecommunication Administrations. (Hereinafter CEPT) was established on June 26, 1959. As a Coordinating body for European State Telecommunication and Postal Organizations, CEPT also create of the European Telecommunication standards Institute in 1988.

3.24 REGIONAL PERSPECTIVE

[192] The Universal Declaration of Human Rights,1948
[193] The International Covenant on Civil and Political Rights,1966

Freedom of expression is also protected in the three regional human rights systems.

3.24.1 French declaration of 1789

French declaration of 1789 Article -11 says “Free communication of thought and opinions is one of the most precious rights of man.

3.24.2 The Council of Europe

At the end of the Second World War Europe was marked by unsurpassed destruction and human suffering. This harsh experience gave rise to new political efforts especially compromise among the peoples of Europe[194]. These efforts worked out and The Council of Europe was founded on 5 May 1949 by the Treaty of London. In Article 1 of the Statute of the Council of Europe, its aim has been determined as “to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress” and in Article 3 its stated that, in the realization of its aim “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively”. As indicated, the primary components, to implement “a greater unity”, are to accept the principles of the rule of law, the enjoyment of human rights and fundamental freedoms by all persons and collaborate sincerely and effectively.

3.24.3 African (Banjul) Charter on Human Rights and Peoples’ Rights

The *African Charter on Human and Peoples’ Rights*[195]*Preamble:* The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights[196]", the African Charter on Human and Peoples' Rights came into effect on 21 October 1986– in honour of which 21 October was declared "African Human Rights Day".

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a "preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights";

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[194]. Council of Europe, http://en.wikipedia.org/wiki/Council_of_Europe#History accessed 24 December 2008.
[195]. Adopted 26 June 1981, in force 21 October 1986.

[196] Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered intoforce 21 October 1986

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples";

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations. And the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of people's rights should necessarily guarantee human rights;

Article 2: Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 9: Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law

3.24.4 Declaration on Promoting an Independent and Pluralistic Media in Afghanistan

On 5 September 2002, an International Seminar bringing together representatives of the Afghan government, local civil society and the international community adopted a Declaration on Promoting an Independent and Pluralistic Media in Afghanistan (Declaration). Action Point 2 of this Declaration provides:

It is recommended that a thorough and time-bound review of the legal system as it affects the media begin immediately, with the goals of creating laws and procedures that promote freedom of expression, protect the rights of journalists, and guarantee their freedom to do their work in safety, including publishing critical reports and opinions.

3.24.5 The *European Convention on Human Rights* (ECHR),[197]

The Convention for the Protection of Human Rights and Fundamental Freedom (commonly known as the European Convention on Human Rights (ECHR,) ,198 is an international treaty to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the then newly formed Council of Europe, the convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.

The Convention established the European Court of Human Rights (ECHR). Any person who feels his or her rights have been violated under the Convention by a state party can take a case to the Court. Judgments finding violations are binding on the States concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgments, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained. The establishment of a Court to protect individuals from human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena (traditionally, only states are considered actors in international law). The European Convention is still the only international human rights agreement providing such a high degree of individual protection. State parties can also take cases against other state parties to the Court, although this power is rarely used. The Convention has several protocols, which amend the convention framework.

The Convention is drafted in broad terms, in a similar (albeit more modern) manner to the English Bill of Rights, the American Bill of Rights, the French Declaration of the Rights of Man or the first part of the German Basic law. Statements of principle are, from a legal point of view, not determinative and require extensive interpretation by Courts to bring out meaning in particular factual situations.

3.24.5.1 Article 6 - Fair Trial

Article 6 provides a detailed right to a fair trial, including the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, and other minimum rights for those charged with a criminal offence (adequate time and facilities to prepare their defence, access to legal

[197]. Adopted 4 November 1950, in force 3 September 1953
[198]. Adopted 4 November 1950, in force 3 September 1953

representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter).

The majority of Convention violations that the Court finds today are excessive delays, in violation of the "reasonable time" requirement, in civil and criminal proceedings before national Courts, mostly in Italy and France. Under the "independent tribunal" requirement, the Court has ruled that military judges in Turkish state security Courts are incompatible with Article 6. In compliance with this Article, Turkey has now adopted a law abolishing these Courts.

Another significant set of violations concerns the "confrontation clause" of Article 6 (i.e. the right to examine witnesses or have them examined). In this respect, problems of compliance with Article 6 may arise when national laws allow the use in evidence of the testimonies of absent, anonymous and vulnerable witnesses.

3.24.5.2 Article 8 - Privacy

Main article: Article 8 of the European Convention on Human Rights

Article : 8 provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This article clearly provides a right to be free of unlawful searches, but the Court has given the protection for "private and family life" that this article provides a broad interpretation, taking for instance that prohibition of private consensual homosexual acts violates this article. This may be compared to the jurisprudence of the United States Supreme Court, which has also adopted a somewhat broad interpretation of the right to privacy. Furthermore, Article 8 sometimes comprises positive obligations: whereas classical human rights are formulated as prohibiting a State from interfering with rights, and thus *not* to do something (e.g. not to separate a family under family life protection), the effective enjoyment of such rights may also include an obligation for the State to become active, and to *do* something (e.g. to enforce access for a divorced father to his child).

3.24.5.3 Article 10 - Expression

Article 10 provides the right to freedom of expression, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas, but allows restrictions for:

- interests of national security
- territorial integrity or public safety
- prevention of disorder or crime
- protection of health or morals
- protection of the reputation or the rights of others
- preventing the disclosure of information received in confidence
- maintaining the authority and impartiality of the judiciary

3.24.6 Convention Protocols

As of January 2010, fifteen protocols to the Convention have been opened for signature. These can be divided into two main groups: those amending the framework of the convention system, and those expanding the rights that can be protected. The former require unanimous ratification by member states before coming into force, while the latter require a certain number of states to sign before coming into force.

3.24.7 The *American Convention on Human Rights*[199]

Article 13 of the *American Convention on Human Rights*[200] : The American Convention on Human Rights, also known as the Pact of San José, is an international human rights instrument. It was adopted by many nations of the Americasin San José, Costa Rica, on 22 November 1969. It came into force after the eleventh instrument of ratification (that of Grenada) was deposited on 18 July 1978.

The bodies responsible for overseeing compliance with the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, both of which are organs of the Organization of American States (OAS).

The first, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (commonly known as the "Protocol of San Salvador"), was opened for signature in the city of San Salvador, El Salvador, on 17 November 1988. It represented an attempt to take the inter-American human rights system to a higher level by enshrining its protection of so-called second-generation rights in the economic, social, and cultural spheres. The protocol's provisions cover such areas as the

[199]. Adopted 22 November 1969, in force 18 July 1978.
[200]. Adopted 22 November 1969, in force 18 July 1978.

right to work, the right to health, the right to food, and the right to education. It came into effect on 16 November 1999 and has been ratified by 14 nations.

3.25 Constitution of other countries: Freedom of speech and expression

3.25.1 United State of America

First Constitutional Amendment - Freedom of Religion, Press, and Expression[201]

Article [I.] 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; of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteen Amendments - Citizenship Rights [202]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3.25.2 The Republic of South Africa[203]

Article 10 Human dignity.-Everyone has inherent dignity and the right to have their dignity respected and protected.

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[201] First Amendment Ratified on 12/15/1791. The first ten Amendments collectively are commonly known as the Bill of Rights. The first ten amendments were ratified by the following States, and the notifications of ratification by the Governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22,1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; New York, February 24, 1790; Pennsylvania, March 10, 1790; Rhode Island, June 7,1790; Vermont, November 3, 1791; and Virginia, December 15, 1791.Ratification was completed on December 15, 1791 The amendments were subsequently ratified by the legislatures of Massachusetts, March 2,1939; Georgia, March 18, 1939; and Connecticut, April 19, 1939.

[202] The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 13th of June, 1866. It was declared, in a certificate of the Secretary of State dated July 28, 1868 to have been ratified by the legislatures of 28 of the 37 States. The dates of ratification were: Connecticut, June 25, 1866; New Hampshire, July 6, 1866; Tennessee July 19, 1866; New Jersey, September 11, 1866 (subsequently the legislature rescinded its ratification, and on March 24, 1868, readopted its resolution of rescission over the Governor's veto, and on November 12, 1980, expressed support for the amendment); Oregon, September 19, 1866 (and rescinded its ratification on October 15, 1868); Vermont, October 30, 1866; Ohio, January 4, 1867 (and rescinded its ratification on January 15, 1868); New York, January 10, 1867; Kansas, January 11,1867; Illinois, January 15, 1867; West Virginia, January 16, 1867; Michigan, January 16, 1867; Minnesota, January 16, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Indiana, January 23, 1867; Missouri, January 25, 1867; Rhode Island, February 7, 1867; Wisconsin, February 7, 1867; Pennsylvania, February 12, 1867; massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, March 16, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; North Carolina, July 4, 1868 (after having rejected it on December 14, 1866); Louisiana, July 9, 1868 (after havingrejected it on February 6, 1867); South Carolina, July 9, 1868 (after having rejected it on December 20, 1866).Ratification was completed on July 9, 1868. The amendment was subsequently ratified by Alabama, July 13, 1868; Georgia, July 21, 1868 (after having rejected it on November 9, 1866); Virginia, October 8, 1869 (after having rejected it on January 9, 1867); Mississippi, January 17, 1870; Texas, February 18, 1870 (after having rejected it on October 27, 1866); Delaware, February 12, 1901 (after having rejected it on February 8, 1867); Maryland, April4, 1959 (after having rejected it on March 23, 1867); California, May 6, 1959; Kentucky, March 18, 1976 (after having rejected it on January 8, 1867).Ratified 7/9/18686 .Date of Enforcement: May 3, 1947.

[203] Date of promulgation: 18 December19, 961 [Dated of commencement: 4 Feb.5,' 1971

Article 16 Freedom of expression.-(1) everyone has the right to freedom of expression, which includes-

(a) Freedom of the press and other media;

(b) Freedom to receive or impart information or ideas;

(c) Freedom of artistic creativity; and

(d)academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to-

(a) Propaganda for war;

(b) Incitement of imminent violence; or

(c) Advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.

3.25.3 Japan[204]

The Constitution of Japan provides under, Article 21 Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No Censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

3.25.4 Britain

Foundations of British Media Law: It is well known that Britain does not have a written Constitution. The most basic of these principles is that Parliament is sovereign and has the power to make laws concerning any matter relating to Britain. Britain became a party to the European Convention on Human Rights in 1952.The government has now radically changed the legal treatment of human rights issues in Britain with the adoption of the Human Rights Act 1998 **.**

It is a fundamental principle of English law that the Courts should administer justice in public and should exclude the public only when it is necessary to secure the proper administration of justice. This is sometimes called the "open justice principle". This long-standing right of public access to the Courts is also supported by which states in

Article 6(1)[205] that "everyone is entitled to a fair and public hearing". Open justice refers to the right of the public to attend the Courts and does not include a right to use cameras or make television films in Court. These are currently banned in England because of concerns about their influence on Court proceedings. However, some judges have called for the abolition of this ban on photography and television filming.

3.25.5 The Islamic Republic of Pakistan

Article 19 [206] Every citizen shall have the right to freedom of speech and expression ,and there shall be freedom of press be freedom of the press ,subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or integrity, security or defence of Pakistan or any part thereof ,friendly relation with foreign state ,public order , decency or morality ,or in relation to contempt of Court, [commission of] or incitement to an offence.

3.25.6 Burma

The Constitution of Burma Sec. 17 (1) There shall be liberty for the exercise of the following rights, subject to law, public order and morality: (i) the right of the citizens to express freely their convictions and opinion.

3.25.7 France

The following declaration appears in the preamble of the Constitution of the French Republic:

The free communication of ideas and opinions is one of the most precious rights of man; every citizen then can freely speak, write and print, subject to responsibility for the abuse of this freedom in cases determined by law

3.25.8 German Democratic Republic

The Constitution of German Democratic Republic, Article 9 - All citizens have the right within the limits of the laws applying tom all, to use their opinion freely and openly, and to assemble peaceable and without arms for this purpose. This freedom shall not be restricted by any contract of service or labour; no one shall be prejudiced through making use of this right.

3.25.9 The Republic of Ireland

[205] The European Convention of Human Rights,
[206] The Costitution of the Islamic Republic of Pakistan,Art.19

The Constitution of Eire Sec. 40(6)(1)- The state guarantees liberty for the exercise of the following rights , subject to public order and morality :(i) The right of citizens to express freely their convictions and opinions.

3.25.10 Czechoslovakia

The Constitution of Czechoslovakia: Article 18(1) The Freedom of expression is guaranteed.

(2) Every person may, within the limits prescribed by law, express his opinion by word of mouth, in writing, in print, pictorially or in any other manner, No person shall suffer prejudice through the exercise of the right.

Article 21-(1) Freedom of press is guaranteed It is not therefore permitted as a rule to subject the press to prior censorship.

(2) The law shall determine in what person shall have the right to publish newspaper and periodicals and on what conditions (in particular, such as ensure that the press is not conducted for profit)

(3) The law shall determine in what manner the publication and distribution of non periodicals publication (in particular books music and reproduction of works of art)shall be organized on a planed basis while maintaining the freedom of science and art and with due regard to the protection of valuable works.

Article 22-(1) The right to produce, distribute, publicly exhibit, import and export cinematograph film is reserved to state.

(2) Broadcasting and television are the exclusive right of state.

(3) The exercise of the above rights shall be governed by laws, which shall prescribe any exceptions

3.25.11 The People's Republic of China[207]

The Constitution of peoples Republic of China- provides under *Article* 35 Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

[207] Adopted on December 4, 1982

3.25.12 Finland

Finland is one of the most democratic countries in the world, with a government that respects freedom of everyone's expression. Freedom of the press has a long history in Finland. The first Freedom of Information Act was stated in 1766. Today, freedom of expression and access to information in Finland is guaranteed by the Constitution. There is no censorship in the media. The Constitution of Finland States that: *Section 10 - The right to privacy;* Everyone's private life, honour and the sanctity of the home are guaranteed. More detailed provisions on the protection of personal data are laid down by an Act. The secrecy of correspondence, telephony and other confidential communications is inviolable. Measures encroaching on the sanctity of the home, and which are necessary for the purpose of guaranteeing basic rights and liberties or for the investigation of crime, may be laid down by an Act. In addition, provisions concerning limitations of the secrecy of communications which are necessary in the investigation of crimes that jeopardise thesecurity of the individual or society or the sanctity of the home, at trials and security checks, as well as during the deprivation of liberty may be laid down by an Act.

Section 12 - Freedom of expression and right of access to information; Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act. Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.

Two basic tools in Finnish media policy are legislation and public subsidy. The Ministry of Transport and communications oversees telecommunications; the operating licenses for local radio and television. Journalism in Finland is self-regulated by publishers and journalists. The Council for Mass Media (CMM) was established in 1968 by publishers and journalists in the field of mass communication. CMM interprets good professional practice and defends the freedom of speech and publication. CMM does not exercise legal jurisdiction.

3.25.13 Norway

The Norwegian Constitution [208] in state that: Article 100

1. *There shall be freedom of expression.*
2. *No person may be held liable in law for imparting or receiving information, ideas or messages unless such liability can be justified in relation to the reasons behind freedom of expression, i.e. the seeking of truth, the promotion of democracy and the individual's freedom to form his or her own opinions. Such legal responsibility must be clearly prescribed by law. No person may be held liable in law for the reason that a statement is untrue if it was uttered in non-negligent good faith.*
3. *Everyone shall be free to speak his mind frankly on the administration of the State and on any other subject whatsoever.*
4. *Prior censorship and other preventive measures may only be used as far as is necessary to protect children and the youth from harmful influence of moving pictures. Censorship of letters may only be implemented in institutions and by leave of a Court of law.*
5. *Everyone has a right of access to the documents of the State and of the municipal administration and a right to be present at sittings of the Courts and of administrative bodies elected by the people. The law may only prescribe such clearly defined limitations to this right as overriding considerations show to be necessary.*

   It is the responsibility of the authorities of the State to create conditions enabling an open and enlightened public debate.

3.25.14 Sri Lanka

The Constitution of Sri Lanka States That's Article: 14**.** (1) Every citizen is entitled to –(*a*) the freedom of speech and expression including publication ;

Restriction: Art. 15 (2) The exercise and operation of the fundamental right declared and recognized by Article 14(1)(*a*) shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, Contempt of Court, defamation or incitement to an offence.

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1. [208] http://library2.parliament.go.th/giventake/content_cons/norway.pdf (accessed on 20.12.2012)

3.25.15 Switzerland

The Federal Constitution of the Swiss Confederation[209] States that's;

Art. 16 Freedom of expression and of information

1 Freedom of expression and of information is guaranteed.

2 Everyone has the right freely to form, express, and impart their opinions.

3 Everyone has the right freely to receive information to gather it from generally accessible sources and to disseminate it.

Art. 17 Freedom of the media :(1) Freedom of the press, radio and television and of other forms of dissemination of features and information by means of public telecommunications is guaranteed.

(2) Censorship is prohibited.

3 The protection of sources is guaranteed.

Art. 18 Freedom to use any language: The freedom to use any language is guaranteed.

3.25.16 Canada

Canada's 1982 constitution guarantees freedom of expression and freedom of the press. The government may legally restrict free speech with the aim of ending discrimination, ensuring social harmony, or promoting gender equality, but the definition of hate speech, which is punishable by law, remains vague. In November 2010, the Supreme Court began hearing the case *Saskatchewan Human Rights Commission v. William Whatcott*, in which a local human rights tribunal found Christian activist William Whatcott's flyers and messages against homosexuality to be in violation of the Saskatchewan Human Rights Code. Whatcott's lawyer has argued that defining "hate" is extremely difficult. The Supreme Court continued to review the issue in 2012, and the case was ongoing at year's end. In previous cases, the Supreme Court has ruled that inciting hatred is a criminal offense, but the threshold for guilt is high: It must be proven that the person engaged in hate speech willfully and publicly.

In 2009, the Supreme Court attempted to strike a balance between freedom of expression and protection of reputation, allowing journalists to avoid liability for alleged defamation if they are able to show that they acted responsibly in reporting a matter of public interest, even if the statements were untrue.

[209] Adopted by the popular vote of 18 April 1999 (Federal Decree of 18 Dec. 1998, Federal Council Decree of 11 Aug. 1999

3.25.17 Australia

Press freedom in Australia is upheld by convention rather than by constitutional guarantees, except in the state of Victoria, where it is protected under the Charter of Human Rights and Responsibilities. In 2006, Australia consolidated varying state-level defamation regulations under the Uniform Defamation Laws Reform Act, which allows only individuals, nonprofits, and corporations with fewer than 10 employees to sue over defamation. Although rarely invoked, criminal defamation laws are still on the books in Australia. Civil cases, which are more common, can result in heavy fines. In May 2012, the News Corporation media group was ordered to pay A$325,000 (US$339,000) for an article in the *Sunday Telegraph* that labeled a former police detective as "corrupt."

The 2011 Evidence Amendment Act protects the identity of journalists' sources and extends this protection to include bloggers, citizen journalists, independent media organizations, and anyone "active in the publication of news in any medium." Journalists are only compelled to reveal sources when it is proven that the public interest outweighs any potential harm to the source or the public caused by divulging the source's identity. While the Evidence Amendment Act can only be applied in federal cases, states such as Victoria and Western Australia enacted similar legislation in 2012.

The Freedom of Information (FOI) Act of 1982 provides for access to government documents. Reforms passed in 2010 revised the fees charged for FOI requests, making them more accessible; allowed for fewer FOI exemptions; and created a new, single public-interest test weighted in favor of disclosure. In October 2012, the government announced that the 1982 FOI Act would be reviewed to determine whether it and related laws still provide an adequate framework for accessing official information.

CHAPTER-IV

Media, e-Media and its Convergence: Media trial

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

4.1 a. Media and Human right

4.2 b. Media and Sting operation

4.3 Trial by Media

4.4 Fair Trial and Human Rights

4.4.1 Pre Trial Rights

4.4.2 Post Trial Rights

4.5 Media and Sting Operation

4.6 Electronic Media, Information Technology and its Convergence

The emergence and convergence of various Media (Information and communication technologies hereinafter referred as ICTs) such as radios, televisions, computers, the Internet, telephones, cell phones, videos, multimedia, CD-ROMs, software and hardware (ICT) constitutes both a challenge and an opportunity for developing countries. ICT alone provides a powerful convergence of tools for handling information, from acquisition and production to transmission, archiving and storage. Combined with space technology[1], it has an enormous impact on all aspects of life by reducing time, distance and the information gap. It increases the scope for greater and faster interaction within different groups of people from different societies and civilizations. Under favorable conditions, ICT can be a powerful instrument for increasing productivity, generating economic growth by facilitating trade, transport and financial issues, thus creating jobs and improving the quality of life of all. ICT has brought e-commerce, e-learning, e health and e-sustainability, and among many other things, the creation of an e-society. The emergence of new ICTs has shaped and transformed today's society, forming new social and political structures.

[1] Space technology, here mainly referring to satellite communications, remote sensing and geographic information systems (GIS), plays both a complementary and a supplementary role to conventional technologies in the different types of applications. It has indeed been instrumental in providing the means to extend the reach of ICT services to even the most remote and isolated regions.

ICT have become commonplace entities in all aspects of life. Across the past twenty years the use of ICT has fundamentally changed the practices and procedures of nearly all forms of endeavor within life, business and governance. The way these fields operate today is vastly different from the ways they operated in the past.[2] ICT created virtual communicative space that known as Cyberspace[3]. It is not limited to the operation of computer networks, but also encompasses all social activities in which digital information and communication technologies are deployed. It thus ranges from computerized reservation systems to automated teller systems and smart cards. With the 'embedding' of digital facilities in more and more objects (from microwave ovens to jogging shoes), these acquire intelligent functions and communicative capacities and begin to create a permanent virtual life-space. The issue of the governance of cyberspace emerges in many current ICT-debates at different levels. There is the curb revolutionary position that considers cyberspace[4] a totally new and alien territory where conventional rules do not apply. But, however attractive this approach may seem, if more people are to use cyberspace this is likely to need public and corporate policymaking. This is equally the case if cyberspace is to be protected against unprecedented opportunities for criminal activity. Cyberspace is perceived by the digital settlers as the last 'electronic' frontier, but cyberspace also colonizes our non-virtual reality and lest it totally controls daily life it needs to be governed by norms and rules. A re-current question is whether cyberspace gives rise to new forms of democratic [electronic] governance, which are less-territory based, less hierarchical, more participatory, and demand new rules for political practice. As for as Human Rights is Concern, in cyberspace the Human rights should not only be articulated as individual rights, but should be recognized both as individual and as collective rights.. Media plays a vital role in mold the opinion of the society and it is capable of changing the whole viewpoint through which people perceive various events.

[2] http://elrond.scam.ecu.edu.au/oliver/2002/he21.pdf visted on 5/4/2010

[3] Thomas Ploug , Ethics in Cyberspace: How Cyberspace May Influence Interpersonal Interaction,Spiringer Pub.p.70

[4] The ICT consists of segments as diverse as telecommunications, television and radio Broadcasting, computer hardware, software and services and electronic media (for example, the Internet and electronic mail). Information and communication needs can be met byMore traditional means, such as print media and fixed telephone lines, or by satellite technology, mobile phones and the Internet. Traditional technologies continue to be important for large numbers of people around the world, particularly in rural areas. However, new technologies have a vast potential for empowerment which needs to be fully exploited. The term ICT has been used to encompass technological innovation and convergence in information and communication leading to the development of so-called information or knowledge societies, with resulting changes in social interaction, economic and business practices, political engagement, education, health, leisure and entertainment. Over the past decade, there has been a growing understanding that these technologies can be powerful instruments for advancing economic and social development through the creation of new types of economic activity, employment opportunities, improvements in health-care delivery and other services, and the enhancement of networking, participation and advocacy within society. ICT also have the potential to improve interaction between Governments and citizens, fostering transparency and accountability in governance.

The media can be commended for starting a trend where the media plays an active role in bringing the accused to hook. Especially in the last two decades, the advent of Electronic media i.e. cables television, local radio networks and the internet have greatly enhanced the reach and impact of the mass media. The circulation of newspapers and magazines in English as well as the various vernacular languages has also been continuously growing in our country. This ever-expanding readership and viewership coupled with the use of modern technologies for newsgathering has given media organizations an unprecedented role in shaping popular opinions. However, media freedom also entails a certain degree of responsibility. In an increasingly competitive market for grabbing the attention of viewers and readers, media reports often turn to distortion of facts and sensationalisation. The pursuit of commercial interests also motivates the use of intrusive newsgathering practices which tend to impede the privacy of the people who are the subject of such coverage. The problem finds its worst manifestation when the media extensively covers sub judice matters by publishing information and opinions that are clearly prejudicial to the interests of the parties involved in litigation pending before the Courts.

However, sensationalized news stories circulated by the media have steadily gnawed at the guarantees of a right to a fair trial and posed a grave threat to the presumption of innocence. In recent times there have been numerous instances in which media has conducted the trial of an accused and has passed the verdict even before the Court passes its judgment. Some famous criminal cases that would have gone unpunished but for the intervention of media, are Priyadarshini Mattoo case, Jessica Lal case[5], Nitish Katara murder case[6] and Bijal Joshi rape case[7]. This phenomenon is popularly called as media trial. Trial by Media it is 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. There is a heated debate between those who support a free press which is largely uncensored and those who place a higher priority on an individual's right to privacy and right to a fair trial. The media exceeds its right by publications that are recognized as prejudicial to a suspect or accused like concerning the character of accused, publication of confessions, publications which comment or reflect upon the merits of the case, photographs, police activities, imputation of innocence, creating an atmosphere of prejudice, criticism of witnesses, It encompasses several other rights including the right to

[5] Robert S. Fortner, P. Mark Fackler , The Handbook of Global Communication and Media Ethics,wiley Pub.

[6] Abhinav Garg (31 May 2008). "Trial court sees Katara murder as honour killing". Times of India. Retrieved 2008-05-31

[7] N Prabha Unnithan , Crime and Justice in India, Sage Pub.,p291

be presumed innocent until proven guilty, the guilt is to be proved beyond reasonable doubt and the law is governed by senses and not by emotions the right not to be compelled to be a witness against oneself, 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 witnesses, etc.

In **Zahira Habibullah Sheikh v. State of Gujarat**[8], 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. 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." Right to a fair trial is absolute right of every individual within the territorial limits of India vide articles 14 and 20, 21 and 22 of the Constitution. Needless to say right to a fair trial is more important as it is an absolute right which flows from Article 21 of the Constitution to be read with Article 14. Article 19(1) (a) of the Constitution of India guarantees the fundamental right to freedom of speech and expression. In accordance with Article 19(2), this right can be restricted by law only in the "interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence." So the right to freedom and speech and expression does not embrace the freedom to commit contempt of Court. While freedom of expression remains an important facilitator for widespread engagement within a democratic society, it must be balanced against the right to a fair trial and the right to privacy. The Contempt of Court Act[9] defines contempt by identifying it as civil and criminal. Criminal contempt has further been divided into three types: *Scandalizing or prejudicing trial and hindering the administration of justice.* The provision of contempt has its origin to the principle of natural justice i.e. every accused has a right to a fair trial along with the principle that justice should not be done only but it must also appear to have been done. If media exercises an unrestricted or rather unregulated freedom in publishing information about a criminal case and prejudices the mind of the public and those who are to adjudicate on the guilt of the accused and if it projects a suspect or an accused as if he has already been

[8] (2004) 4 SCC 158,

[9] The Contempt of Courts Act, 1971 Sec. 2. Definitions.—In this Act, unless the context otherwise requires,—(a) "contempt of court" means civil contempt or criminal contempt;(b) "civil contempt" means 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;(c) "criminal contempt" means 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—(i) scandalises or tends to scandalise, 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;

adjudged guilty well before the trial in Court, there can be serious prejudice to the accused. In fact, even if ultimately the person is acquitted after the due process in Courts, such an acquittal may not help the accused to rebuild his lost image in society. 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. The various excesses of media trial cannot be ruled out as not hampering the fairness of trials concerned.

Through media trial, we have started to create pressure on the lawyers even — to not take up cases of accused[10], thus trying to force these accused to go to trial without any defense. Is this not against the principles of natural justice? Every person has a right to get himself represented by a lawyer of his choice and put his point before the adjudicating Court and no one has the right to debar him from doing so. For an instance, when eminent lawyer Ram Jethmalani decided to defend Manu Sharma, a prime accused in a murder case, he was subject to public derision. A senior editor of a television news channel CNN-IBN called the decision to represent Sharma an attempt to "defend the indefensible". This was only one example of the media instigated campaign against the accused. As we all knew that in that case we had one of the best lawyers of the country, Gopal Subramaniam, appearing for the state and the case of Manu was handed to some mediocre lawyer. The media assumption of guilt clearly encroaches upon the right to legal representation, a critical component of the right to fair trial and may also intimidate lawyers into refusing to represent accused persons. Suspects and accused apart, even victims and witnesses suffer from excessive publicity and invasion of their privacy rights. Police are presented in poor light by the media and their morale too suffers. The day after the report of crime is published; media says 'Police have no clue'. Then, whatever gossips the media gathers about the line of investigation by the official agencies, it gives such publicity in respect of the information that the person who has indeed committed the crime, can move away to safer places. The pressure on the police from media day by day builds up and reaches a stage where police feel compelled to say something or the other in public to protect their reputation. Sometimes when, under such pressure, police come forward with a story that they have nabbed a suspect and that he has confessed, the

[10] http://www.hrdc.net/sahrdc/hrfeatures/HRF164.htm accessed on 10th June 2009.

'Breaking News' items start and few in the media appear to know that under the law, confession to police is not admissible in a criminal trial[11]. Once the confession is published by both the police and the media, the suspect's future is finished. When he retracts from the confession muddle, Witness protection is then a serious casualty. This leads to the question about the admissibility of hostile witness evidence and whether the law should be amended to prevent witnesses changing their statements. Again, if the suspect's pictures are shown in the media, problems can arise during 'identification parades' conducted under the Code of Criminal Procedure for identifying the accused. Subconscious Effect on the Judge as one of the major allegations upon 'media trial' is prejudicing the judges presiding over a particular case. As there is always a chance judges may get influenced by the flowing air of remarks made upon a particular controversy. The media presents the case in such a manner to the public that if a judge passes an order against the "media verdict", he or she may appear to many either as corrupt or biased.

Justification by Media:

We have a rich tradition of fiercely independent journalism. In fact, most of the big scams were busted by the press. The law enforcers merely followed them up. The poorly paid journalist must be credited for extracting those information's which looked inaccessible for the top vigilance teams of the country. That is how HDW (Howaldtswerke-Deutsche Werft GmbH) marine case and Bofors hit the headlines. That is how we found out that Narasimha Rao had bribed the Jharkhand Mukti Morcha[12] MPs and Satish Sharma and Buta Singh had brokered the deal. The media did us proud at every place of our political juncture. There is increasing and intense public focus on Courts and the cases filed therein. Now that the Courts have come under the media's microscope, they are likely to remain there forever. A Positive byproduct of changes spurred by the media and addressed by the Courts is that more Indians are aware of their Constitution al rights than ever before. The media strongly resents this sub judice rule and complains that Courts during the course of a hearing tend to interpret the sub judice rule quite strictly to prohibit any discussion of the issues before the Court even if they are engaging public attention. There is, therefore, an urgent need to liberalize the sub judice rule, invoking it only in cases of an obvious intent to influence the trial and not to any act that might have the remote possibility of

[11] Trial by Media by Prejudicing the sub judice available at http://www.rmlnlu.ac.in/notice_pdf/devesh_article.pdf ,visited on 10 may 2010

[12]http://indiatoday.intoday.in/story/jharkhand-mukti-morcha-bribery-scandal-in-1993-corruption-got-institutionalised-in-india/1/192408.html,visited on22 May2013

influencing it. Another major constraint on stings and trials by media is the public interest. If public interest is missing and self or manipulative interests surface, the media loses its ground and invites the wrath of the Court. In such cases media reporting can swing popular sentiments either way. It is, therefore, necessary to make a balance between the Constitution al guarantee of free media on one hand and the individual right to fair trial on the other.

The Judiciary and the Media are the third and fourth pillars respectively of a Democratic set up. Both are indispensable for the smooth functioning of the system. While the former should duly regard the Freedom and Right of the latter to cover and disseminate news about Court proceedings in an open justice system, the latter on its part also ought to show its due diligence and extreme caution while reporting the same so as to preserve the sanctity of the former as well as for ensuring a free and fair trial. Any confrontation between the two over Reportage of news in sub judice matters is indeed unwarranted. On the contrary, they both rather ought to work in tandem respecting each other's domain and independence.

In **Saibal Kumar vs. B.K. Sen**,[13] the Supreme Court tried to discourage the tendency of media trial and remarked,

> "*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 the 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 the part of a newspaper tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution*."

Although our judicial system relies on the competence, impartiality and fearlessness of the trial judge and one can argue for unrestrained media converge of Court proceeding on the ground that it will not influence the judgment. But even in England there has been divergence of opinion. In view of Lord Denning, a professional judge will not be influenced by media coverage which affects only common man. This concept of

[13] 1961) 3 SCR 460

judicial superiority was not endorsed by **Lord Dilhorne**.[14] Even in United States the judiciary has been of the view that the Court cannot function properly if a reporting is calculated to disturb the judicial mind. In **John D. Pennekamp vs. State of Florida**,[15] it was observed,

> "*No Judge fit to be one is likely to be influenced consciously, except by what he see or hears in Court and by what is judicially appropriate for his deliberations. However, Judges are also human and we know better than did our forbears how powerful is the pull of the unconscious and how treacherous the rational process—and since Judges, however stalwart, are human, the delicate task of administering justice ought not to be made unduly difficult by irresponsible print*."

It is correct that contempt of Court is one of the ground on which reasonable restriction can be imposed on the freedom of speech. The Contempt Of Court Act defines contempt by identifying it as civil and criminal. Criminal contempt has further been divided into three types: Scandalizing or prejudicing trial and hindering the administration of justice. The provision of contempt has its origin to the principle of natural justice i.e. every accused has a right to a fair trial along with the principle that justice should not be done only but it must also appear to have been done. There may be many ways to prejudice a trial. If it is allowed, a person may be held guilty of an offence, which he has not actually committed. No publication, which is calculated to poison the mind of a Judge, a witness or a party or cerate an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt. No editor has the right to assume the role of an investigator so as to prejudice the Court against any person. But law of contempt can only be attracted to prevent comments when the case is sub-judice. If the case is not pending in the Court, it is of no avail. In our legal system, the Courts do not have any power to impose prior restraints on the publication of prejudicial material during the pendency of Court proceedings.

In **M.P. Lohia vs. State of West Bengal**[16] the Supreme Court has strongly deprecated the media for interfering with the administration of justice by publishing one-sided articles touching on merits of cases pending in the Courts.

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[14] See Attorney General v. British Broadcasting Corporation, 1981 AC 303 (HL)

[15] (1946) 328 US 331

[16] (2005) 2 SCC 686

Pointing out that the article was a one-sided version of the case, N. Santosh Hedge Justice said that the facts narrated therein are materials that may be used in the forthcoming trial in this case and that this type of article appearing in the media would certainly interfere with the administration of justice. He remarked-

> "*We deprecate this practice and caution the Publisher, Editor and the journalist who are responsible for the said articles against indulging in such trial by media when the issue is sub-judice. Others concerned in journalism would take note of this displeasure expressed by us for interfering with the administration of justice."*

Restriction on media trial is necessary so that the people may not have a wrong perception of the Administration of Justice System. Sometimes it is necessary to protect the privacy of individual. But the major concerned is, and which is the core issue of this work is the need to check prejudicial effect caused by a sensational reporting of a sub-judice matter. So far as a criminal trial is concern media reporting has a more negative influence rather than a positive effect. The media cannot be granted a free hand in Court proceedings. The media has to be properly regulated. One way is the recourse to the Law of Contempt. But, in the interest of democracy, it is better to have a self-regulated and self disciplined media in comparison to a media regulated by the Court and the state

It is pertinent to note that May 2, 2008 proved to be a landmark day in the annals of Indian Judiciary, when TV Cameras were allowed in Lok Adalat's held within the premises of the Supreme Court, which were presided over by the Chief Justice of India K.G. Balakrishnan, Justice Ashok Bhan, Justice Arijit Prasayat and Justice Aftab Alam. This was the first instance in India, wherein Cameras were allowed to record Court proceedings. Nevertheless the Chief Justice K.G.Balakirshnan commenting on whether TV Cameras would be allowed to cover the proceedings of the Supreme Court stated that at the given juncture, it would not be feasible to do the same and in fact Lok Adalat[17] proceedings could not be termed as Court proceedings. Elaborating further Chief Justice stated that given the sensitivity of the matters that the Courts have to adjudicate upon, the not common acrimonious exchanges that take place between the lawyers coupled with the embarrassing moments that arise during Court proceedings, necessitate that TV Cameras

[17] Lok Adalat is an Alternative Dispute Resolution Mechanism that has been evolved for speedier dispensation of Justice and many Jurists are of the opinion that Lok Adalatproceedings are of a different nature that expend with the necessity of procedural requirementsand formalities of a regular court.See generallyJUSTICEJITENDRAN. BHATT, A Round Table Justice Through Lok Adalat (People'sCourt) – A Vibrant ADR In India (2002) 1 SCC (Jour) 11; JUSTICEK.A. ABDULGAFOOR, TheConcept of Permanent Lok Adalat And The Legal Services Authorities Amendment Act,2002(2003) 5 SCC (Jour) 33.

should not be allowed in Court rooms.[18] The broadcaster's right to inform the public through televising of Courtroom proceedings could be derived from Article 19(1)(a) provided the time is right for it's sustenance and it is not leading to a violation of a higher right. In India it might not work so well because even in a developed country like America the reare still repentances about the right.

Fair trial has been recognized as a fundamental right under Article 21 of the Indian Constitution and the first imperative in the dispensation of justice.[19]An open Court is occupies one spot in a constellation of requirements for a fair trial. The primary values and interest addressed while holding a public trial is fairness in the administration of justice. Now in certain circumstances if a public trial itself creates certain damaging effects on the trial, then conducting of such trials should be precluded. In India there are statutory provisions[20] wherein the Court can conduct trials in camera, that is, when the hearing takes place with closed door, at the exclusion of the public. This is also a way of ensuring a fair trial and is inactive of the fact that if there is a conflict between the right of the pubic to know and the right of the press to inform about a trial's proceedings on the one hand and the right of the accused to a fair trial on the other hand, then the latter should be given precedence over the former. Recently, even Chief Justice K.G. Balakirishnan, the Chief Justice of India, speaking at a Workshop on "Reporting of Court Proceedings by Media and Administration of Justice"[21]commented that no matter to what extent the fourth estate while covering the Court proceedings tries to be accurate, the margin for a slip-up creeping in cannot be discounted. Since, administration of justice is regarded to be one of the most sanctimonious jobs ever undertaken, such slipups, however small, can dilute the faith that an ordinary Indian reposes in the Judiciary. The Chief Justice laid stress on the fact that with the advent of mass media, trials by media instead of giving a helping hand to the Judiciary's endeavour to ensure justice for all are impinging upon the elementary right of the accused to get a fair trial. These media trials always ride on the wave of public sentiment and usually pronounce the guilt of the accused in sub-judice matters. This acts as a prejudice to the accused that has a right to a fair trial. As an offshoot to this, the re arises a possibility that general public could feel let down by the institution of judiciary

[18] SC Lets Camera Crew Film Lok Adalat Session, The Times of India, 4 May 2008
[19] Commissioner of Police Delhi v Registrar, Delhi High Court, New Delhi, AIR 1997 SC 95.
[20] Section 14 of the Indian Official Secrets Act, 1923; Section 22(1) of the Hindu MarriageAct, 1955, Section 327 (proviso) of The Code of Criminal Procedure, 1973; Section 153 B(proviso) of The Code of Civil Procedure, 1908
[21] This Workshop was held at Vigyan Bhawan, New Delhi on 29thMarch and 30thMarch 2008.
This workshop was jointly organized by the Supreme Court Legal Services Committee,
Press Council of India, Indian Law Institute, National Legal Services Authority and Editors
Guild of India.

when a determination going against the media verdict is made by the Court.[22] The Supreme Court of India in **Naresh Shridhar Mirajkar v State of Maharashtra**[23]observed that the public has a right to be present in Court and to watch the proceedings conducted there, however the same is a right given to the public at large only in the interests of the administration of justice and is not a fundamental right of the public. The Court observed that, as a judicial decision purports to decide the controversy between the parties before the Court and nothing more, a judicial verdict pronounced by the Court in relation to a matter brought before it for its decision would not affect the right of citizens under Article 19(1).[24]Though this observation would hold water with regard to civil suits, in criminal trials the justification would differ to a great extent because crime is considered to be an offense against the whole society and not against one individual alone.[25]Hence, it might be argued that the citizens would have right to know and right to receive information[26]about a criminal trial which is a matter of public concern. But even in criminal trials, the citizen's right to know is not absolute. In the past, Courts have excluded the public in order to safeguard a witness against possible reprisal or prevent embarrassment and emotional disturbance to the witness and such orders have been upheld as valid discretionary decisions made in part to ensure that the Courtroom atmosphere does not inhibit a witness from fully disclosing his or her information. The primary purpose of criminal trials is to provide an impartial forum to the parties in a trial. Moreover, it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done.[27]Thus the paramount concern in any trial ought to be the administration of justice enabled by emergence of truth and truth will emerge only if the witnesses are forth coming in their testimony, the judge has control over the Courtroom and the integrity of the trial is maintained. The presence of cameras in Courtrooms could cause serious threats to the emergence of truth. A public trial is a means of ensuring a fair trial, wherein the accused is not prosecuted or convicted in secret proceedings. It is an endeavour to protect the right of the accused and not to provide a spectacle to the community. The operative right in the judicial system is the right of the accused to a fair trial[28]and not that of the public to see it on television. Therefore an open

[22] CJI for Caution against Trial by Media, The Hindu, Mar. 31, 2008, http://www.thehindu.com/holnus/000 200803310305.htm
[23] AIR 1967 SC 1
[24] Article 19(2) - Nothing in sub-clause (a)of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.
[25] L ARORA, Law of SpeedyTrial in India 17 (2006).
[26] State of U.P. v Raj Narian AIR 1975 SC 865.
[27] R v Sussex (1924) 1 KB 256.
[28] Nancy T. Gardner, Cameras in the Courtroom: Guidelines for State Criminal Trials, 84MICH. L. REV. 475 1985).

Court implies that there ought to be an opportunity with the public to attend the trial, and such opportunity is enough to avert any danger of an unfair trial, further whether or not the opportunity is taken by the public is irrelevant.[29]Although cameras in Courtrooms would imply that more people would have access to judicial proceedings, but such access rather than ensuring a fair trial, might just endanger the right to fair trial. Even in the absence of any unambiguous scientific proof of imminent danger to a fair trial, in the event of televising Court room proceedings, the mere knowledge from the American experience that presence of cameras could detract from the business of the trial and jeopardize a fair trial should be sufficient to warrant the exclusion of cameras from Indian Court rooms. To assure the impartial accomplishment of justice would not lead to an abridgement of freedom of speech and expression or the freedom of the press.[30]The Fundamental Rights provided in Part III of the Indian Constitution occupy a transcendental position and are necessary for the development of human personality.[31] The Supreme Court has recognized that a peripheral or concomitant right which facilitates the exercise of a named fundamental right or gives it meaning and substance or makes it effective, is not itself a guaranteed right included within the named fundamental right.[32]Fundamental rights themselves have no fixed content; most of them are empty vessels into which each generation must pour its content in the light of its experience.[33]Whenever a concomitant right is read into a named fundamental right, it must be ensured that the former can be adjusted with the society at the existing stage of development.

In pursuance of the democratic ideals underlying Article 19(1)(a), the Supreme Court of India at various instances has read freedom of press as a part of the right to free speech and expression.[34]The press has now assumed the role of the public educator making formal and non-formal education possible on a large scale particularly in the developing world.[35]Article 19(1)(a) also guarantees the right to receive and impart information which can be achieved through word of mouth, in writing or in print, inthe form of art or through television, radio etc.[36]

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[29] Josephja ConelliI, Open Justice- A Critique of the Public Trial 23 (2002)
[30] Reliance Petrochemicals Ltd. v Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Ors AIR 1989 SC 190.
[31] I.C. Golak Nath v Union of India. AIR 1967 SC 1643
[32] All India Bank Employees Association v National Industrial Tribunal, AIR 1962 SC 171.
[33] Keshavananda Bharti v State of Kerala (1973) 4 SCC 225.
[34] Sakal Newspapers v Union of India AIR 1962 SC 305; Bennett Coleman & Co. v Union of India AIR 1973 SC 106
[35] Indian Express Newspaper (Bombay) Private Ltd. Ors v Union of India and Ors AIR 1986SC 515.
[36] Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal AIR 1995 SC 1236; Association for Democratic Reforms v Union of India AIR 2001 Del 126

There is little doubt that broadcasting freedom is implicit in the freedom of speech and expression.[37]However Article 19(1)(a) does not confer any right on the press to have an unrestricted access to means of information.[38] From the standpoint of Article 19(1)(a), The Supreme Court has further emphasized that the freedom of press is not so much for the benefit of the press as for the benefit of the general community because the community has a right to be supplied with information. Freedom of press extends to include a right to publish a faithful report of Courtroom proceedings witnessed and heard by the journalist.[39]Thus when it comes to televising of Courtroom proceedings the effective right to be considered is the right of the general public of India, who are to be the viewers of these proceedings. However there can be instances wherein the attendance of the press is banned in the Courtrooms or the press may be prohibited from publishing the trial or any part of it thereof in order to ensure a fair trial. The question that arises for consideration is whether the public has an absolute right to know about the proceedings of a trial and therefore, the press has the right to televise Courtroom proceedings?

Televising of Courtroom proceedings is considered to be a means of ensuring open justice. Cameras in Courts, it is believed, would prevent the abuses that can take place in closed proceedings, provide opportunity to the public to become better educated about the judicial process and ensure the level of public access needed to build genuine public support for the justice system. Section327[40]of The Code of Criminal Procedure Code, 1973 and Section 153B[41]of The Code of Civil Procedure (CPC) prescribe open Courts for criminal proceedings and civil proceedings respectively. Public trials in open Court subject to public scrutiny and gaze naturally act as a check against judicial caprices or vagaries, and serve as a powerful instrument for creating confidence of the public in the fairness, objectivity and impartiality of the administration of justice.[42]

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[37] Broadly speaking, broadcasting freedom can be said to have four facets, (a) freedom of the broadcaster, (b) freedom of the listeners/viewers to a variety of view and plurality of opinion, (c) right of the citizens and groups of citizens to have access to the broadcasting media, and (d) the right to establish private radio/TV stations

[38] Smt Prabha Dutt V. Union of India AIR 1982 SC 6

[39] Jagdish Swarup, Constitution of India 684 (Dr. L.M. Singhvi ed., 2006)

[40] The Code of Criminal Procedure, 1973 Section 327.Court to be open - The place in which may Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them.Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court

[41] The Code of Civil Procedure, 1908 Section 153 B. Place of trial to be deemed to be open Court. - The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access, so far as thesame can conveniently contain them. Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall nothave access to, or be or remain in, the room or building used by the Court

[42] Naresh Shridhar Mirajkar v State of Maharashtra AIR 1967 SC 1

4.2 HUMAN RIGHT AND TRIAL BY MEDIA

The right to a fair trial on a criminal charge is considered to start running not "only upon the formal lodging of a charge but rather on the date on which State activities substantially affect the situation of the person concerned.[43]" This could obviously coincide with the moment of arrest, depending on the circumstances of the case. Fair trial guarantees must be observed from the moment the investigation against the accused commences until the criminal proceedings, including any appeal, have been completed. The distinction between pre- trial procedures, the actual trial and post trial procedures is sometimes blurred in fact, and the violation of rights during one stage may well have an effect on another stage. However the most relevant articles of the ICCPR can be loosely divided into those three categories and the separation is sometimes helpful for the purposes of identifying which issues will be of particular interest during different time periods of the trial process[44].

PRE-TRIAL RIGHTS

1. The Prohibition on Arbitrary Arrest and Detention
2. The Right to Know the Reasons for Arrest
3. The Right to Legal Counsel
4. The Right to a Prompt Appearance before a Judge to Challenge the Lawfulness of Arrest and Detention
5. The Prohibition of Torture and the Right to Humane Conditions during Pre-trial Detention
6. The Prohibition on Incommunicado Detention

THE HEARING

1. Equal Access to, and Equality before, the Courts

[43] Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary (N.P. Engel, Arlington: 1993),p.

[44] Lawyers Committee for Human Rights ,What is fair trial, Basic Guide to Legal Standards and Practice,march 2000This guide was originally prepared by Jelena Pejic in 1995. It was updated by Vanessa Lesnie in 1999

2. The Right to a Fair Hearing
3. The Right to a Public Hearing
4. The Right to a Competent, Independent and Impartial Tribunal Established by Law
5. The Right to a Presumption of Innocence
6. The Right to Prompt Notice of the Nature and Cause of Criminal Charges
7. The Right to Adequate Time and Facilities for the Preparation of a Defense
8. The Right to a Trial without Undue Delay
9. The Right to Defend Oneself in Person or through Legal Counsel
10. The Right to Examine Witnesses
11. The Right to an Interpreter
12. The Prohibition on Self-incrimination
13. The Prohibition on Retroactive Application of Criminal Laws
14. The Prohibition on Double Jeopardy

POST-TRIAL RIGHTS

1. The Right to Appeal
2. The Right to Compensation for Miscarriage of Justice

4.3 Trial by Media

While freedom of expression remains an important facilitator for widespread engagement within a democratic society, it must be balanced against the right to a

fair trial and the right to privacy. Unfortunately, rules designed to regulate journalistic conduct are inadequate to prevent the encroachment of civil rights.

Article 19(1) (a) of the Constitution of India guarantees the fundamental right to freedom of speech and expression. In accordance with Article 19(2), this right can be restricted by law only in the "interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence."

The Indian Supreme Court has concluded that the fundamental rights to privacy and a fair trial flow out of the broader right to life contained in Article 21 of the Constitution. In **Kharak Singh v. State of Uttar Pradesh**, the Supreme Court held that the right to privacy was an "essential ingredient of personal liberty" which is "a right to be free from restrictions or encroachments".

The right to a fair trial is at the heart of the Indian criminal justice system. It encompasses several other rights including the right to be presumed innocent until proven guilty, the right not to be compelled to be a witness against oneself, 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 witnesses, etc. In **Zahira Habibullah Sheikh v. State of Gujarat**, 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. 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."

However, sensationalized news stories circulated by the media have steadily gnawed at the guarantees of a right to a fair trial and posed a grave threat to the presumption of innocence. What is more, the pervasive influence of the press is increasingly proving to be detrimental to the impartial decision-making process of the judiciary. Such news stories cannot easily be defended under the auspices of freedom of expression.

Impact of pre-trial publicity

> Sensationalised journalism has also had an impact on the judiciary. For example, in upholding the imposition of the death penalty on Mohammed Afzal for the December 2001 attack on the Indian Parliament, Justice P. Venkatarama Reddi stated, "the incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender."
>
> A 'media trial' began almost immediately after Afzal's arrest. Only one week after the attack, on 20 December 2001, the police called a press conference during the course of which Afzal 'incriminated himself' in front of the national media. The media played an excessive and negative role in shaping the public conscience before Afzal was even tried.
>
> Similarly, S.A.R. Geelani, one of Afzal's co-defendants in the Parliament attack case, was initially sentenced to death for his alleged involvement despite an overwhelming lack of evidence. Large sections of the Indian media portrayed him as a dangerous and trained terrorist. On appeal, the Delhi High Court overturned Geelani's conviction and described the prosecution's case as "at best, absurd and tragic". ayendra Saraswati, head abbott of Kanchi Kamakoti, was accused of killing two mill-workers as sacrifice, based solely on newspaper reports. The Andhra Pradesh High Court in **Labour Liberation Front v. State of Andhra Pradesh** held that the writ petition filed to force the authorities to investigate relied upon incorrect facts that should have been verified. The Court observed that "(o)nce an incident involving prominent person or institution takes place, the media is swinging into action and virtually leaving very little for the prosecution or the Courts…"

It is becoming a pernicious media practice to blame the accused in a crime even before the judiciary is ruling. To stop this, the Courts would be right in issuing a gag order for cases that are sub-judice.

News paper and TV channels have picked up on the death penalty awarded to Santosh Singh in the Priyadarshini Matto case and are according it a priority in their coverage. People are celebrating it, and are hoping that justice will be done in the Jessica Lal case as well. None of us know whether Santosh had actually committed the rape and murder, but

we all believe that — and believed so right from the beginning — that he indeed committed the crime. How did the people come to this conclusion? Isn't it because this is what they were told and shown by the media?

Similar is the case with Manu Sharma, the accused in the Jessica Lal case, and other accused persons in many other high-profile cases. Right after the incident, the media trial begins and all media entities — print or electronic — more or less have similar focus in their stories. Worse, they even pronounce their judgment, which usually goes against the accused or the suspect.

With almost a propaganda-like zeal, the story is presented to the viewers as if the accused is really the culprit. In cases where the charge is not proved in the Court, there are SMS campaigns, blogging outrages, candle-lit processions, and rallies to mobilize the citizens against the "injustice" done by the Courts and to put the pressure on the appellate Court.[45]

I don't know whether Santosh is the culprit or Manu Sharma has done anything or not, but so is the case with these hundred thousands of people who have been campaigning in the Jessica Lal and Priyadarshani Matto cases. If we are celebrating this new trend of holding anyone guilty by the media and the common people, then why do we have the judiciary and the criminal justice system? Let's start having ballot boxes and put the name of all the suspects of a case for voting and ask common people to cast their vote, send SMSes and the suspect who would get the maximum SMSs and votes shall be held guilty and shall be punished. This will ensure speedy trial with cent-percent conviction rate. Is this what we are moving towards? Is this what we want?

In the criminal justice system, the guilt is to be proved beyond reasonable doubt and if it's not proved, then the person has to be set free. That's the system we have been following. Law is governed by senses and not by emotions. While displaying our emotions, the media and the masses forget that it puts tremendous pressure on the judge presiding over the case. How can we expect a fair judgment from a judge who is under such tremendous pressure from all sections of the society?

[45] Vikas Upadhyay,Trial by media: Stop the menace ,http://www.merinews.com/article/trial-by-media-stop-the-menace/123650.shtml visited on 11june 2010

A person is presumed to be innocent unless he is held guilty by the competent Court, but here the trend, which has started and which is growing day by day, is to declare a person guilty right at the time of arrest.

The trial by media is a very serious thing and must be stopped before it takes a more vicious form. The media is there to report facts or news and raise public issues; it is not there to pass judgments. The media has a responsibility towards the society; it's not for making money.

These big business houses running and controlling the major media players are showing anything that sells in the market, totally unconcerned about their responsibility. Media has an important role to play, but if that's the direction in which they are headed, the Courts need to take a bold step and issue a gag against them on matters that are sub-judice.

A couple of days back, a big hue and cry was created when Ram Jethmalani accepted the brief for Manu Sharma. I am not able to understand that what do we want? In that case we have one of the best lawyers of the country, Gopal Subramanium, appearing for the state and we want the case of Manu to be handled by some mediocre lawyer. Why can't Jethmalani handle the case? Don't we want to give equal opportunity to the defence to prove its case, or have we lost faith in the judiciary?

Through media trail, we have started to create pressure on the lawyers even — to not take up cases of accused, thus forcing these accused to go to trial without any defence. Is this not against the principles of natural justice? Being a lawyer, I believe that every person has a right to get himself represented by a lawyer of his choice and put his point before the adjudicating Court and no one has the right to debar him from doing so. The media have to understand their limit before it becomes too late. Freedom of speech and expression is one thing and its abuse is another. One has a *maryada,* which is to be honored.

The Law Commission in its 200th report, Trial by Media: Free Speech versus Fair Trial under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971), has recommended a law to debar the media from reporting anything prejudicial to the rights of the accused in criminal cases, from the time of arrest to investigation and trial. The commission has said, "Today there is feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused,

witnesses and even judges and in general on the administration of justice". This is criminal contempt of Court, according to the commission; if the provisions of the Act impose reasonable restrictions on freedom of speech, such restrictions would be valid. It has suggested an amendment to Section 3(2) of the Contempt of Courts Act. Under the present provision such publications would come within the definition of contempt only after the charge sheet is filed in a criminal case, whereas it should be invoked from the time of arrest.

In another controversial recommendation, it has suggested that the high Court be empowered to direct a print or electronic medium to postpone publication or telecast pertaining to a criminal case. [46]On November 3, 2006, former chief justice of India Y K Sabharwal expressed concern over the recent trend of the media conducting 'trial' of cases before Courts pronounce judgments, and cautioned: "If this continues, there can't be any conviction. Judges are confused because the media has already given a verdict". According to law an accused is presumed to be innocent till proved guilty in a Court of law, and is entitled to a fair trial. So, it is legitimate to demand that nobody can be allowed to prejudge or prejudice one's case? Why should judges be swayed by public opinion? In the US, the O J Simpson case attracted a lot of pre-trial publicity. Some persons even demonstrated in judges' robes outside the Court, the trial judge. Yet, Simpson was acquitted. The judge was not prejudiced by media campaign or public opinion. The Supreme Court has ruled in many cases that freedom of the press is a fundamental right covered by the right to freedom of expression under Article 19 (1)(a)of the Constitution. But the right to fair trial has not explicitly been made a fundamental right. That does not mean that it is a less important right. More than a legal right, it is basic principle of natural justice that everyone gets a fair trial and an opportunity to defend one self. The NHRC, in its special leave petition filed before the Supreme Court against acquittal of the accused in the Best Bakery case, contended that the concept of a fair trial is a Constitutional imperative recognized in Articles 14, 19, 21, 22 and 39-A as well as by the Cr P C. If there is a clash between the two rights — freedom of expression and fair trial — which should prevail? It is true that contempt of Court is a ground for restricting the freedom of speech, but the media has not tried to lower the dignity of the judiciary by exposing loopholes of the investigation and the prosecution.

[46] Sudhanshu Ranjan, Jan 26, 2007, 12.00am IST,Media on trial, available at http://timesofindia.indiatimes.com/articleshow/1460248.cms on 11june 2010

And if judicial decisions also appear to be arbitrary, they must be subjected to ruthless scrutiny. It will be dangerous to gag the press in the name of contempt of Court. If the appellate Court feels that the media publicity affected fair trial, it can always reverse the decision of the lower Court.

In the US, in 1965, Sam Sheppard was convicted for the murder of his pregnant wife in their Cleveland suburban home. As this case received an enormous amount of pre-trial publicity, the US Supreme Court ruled that Sheppard's Sixth Amendment rights were violated and overturned the trial Court's decision. In the 1970s and 1980s, the US supreme Court began focusing more on the media's First Amendment rights — the right to freedom of the press. The Supreme Court's pronouncement in Rajendra Sail case, though given in context of criminal contempt, provides the proper guideline: "For rule of law and orderly society, a free press and independent judiciary are both indispensable".

Impact on the right to legal representation

There has been extensive media coverage of police investigations of ‘serial-killings’ in Noida in the outskirts of New Delhi. The owner of the house where the corpses were found, Mohinder Singh Pandher, and his domestic help Surendra Kohli, are suspected of having committed these crimes. Influenced by media coverage, much of it proclaiming that the two men had already confessed to the killings, the local Bar Association announced that it had decided that no advocate from Noida would defend Pandher and Kohli in Court.

Likewise, when eminent lawyer Ram Jethmalani decided to defend Manu Sharma, a prime accused in a murder case, he was subject to public derision. A senior editor of the television news channel CNN-IBN called the decision to represent Sharma an attempt to “defend the indefensible”. This was only one example of the media-instigated campaign against the accused. The media assumption of guilt clearly encroaches upon the right to legal representation — a critical component of the right to fair trial — and may also intimidate lawyers into refusing to represent accused persons.

Regulatory measures

The Press Council of India (PCI) was established to preserve the freedom of the press and to improve the standards of news reporting in India. Under the Press Council Act

1978, if someone believes that a news agency has committed any professional misconduct, the PCI can, if they agree with the complainant, "warn, admonish or censure the newspaper", or direct the newspaper to, "publish the contradiction of the complainant in its forthcoming issue." Given that these measures can only be enforced after the publication of news materials, and do not involve particularly harsh punishments, their effectiveness in preventing the publication of prejudicial reports appears to be limited.

Along with these powers, the PCI has established a set of suggested norms for journalistic conduct. These norms emphasis the importance of accuracy and fairness and encourages the press to "eschew publication of inaccurate, baseless, graceless, misleading or distorted material." The norms urge that any criticism of the judiciary should be published with great caution. These norms further recommend that reporters should avoid one-sided inferences, and attempt to maintain an impartial and sober tone at all times. But significantly, these norms cannot be legally enforced, and are largely observed in breach.

Lastly, the PCI also has criminal contempt powers to restrict the publication of prejudicial media reports. However, the PCI can only exercise its contempt powers with respect to pending civil or criminal cases. The limitation over the extent to which pre-trial reporting can impact the administration of justice.

Modern democracy and the media are intrinsically related. In modern democracies the media are the link between those who govern and those who are governed. Media need democracy because it is the only form of government which respects freedom of speech, expression and information, and the independence of the media from the state Political ideas and initiatives, in turn, is disseminated among citizens by the media, and individual opinion making and voting are largely based on political information provided by media. From a normative perspective, the media have three specific democratic functions to meet:

(a) Safe guarding the flow of information;

(b) Providing a forum for public discussion about diverse, often conflicting political ideas;

(c) Acting as a public watchdog against the abuse of power.

Mass media and democracy are obviously closely related. However, democracy is not one-dimensional. In principle, there are as many concepts of democracy as there are democratic countries. Several views about what characterizes democracy give way to a

multitude of concepts of democracy. Although, drawings on recent overviews of democratic theory make a difference between a few basic concepts of democracy, which can be classified on a continuum from minimalist to maximalist variants:

The 'elitist democracy', is based on a minimalist conception,

The 'participatory democracy[47]' is based on a mid-range concept, while

The 'deliberative democracy'[48] stands on a broader understanding of democracy.

The minimalist perspective assumes, that every political system is ruled by political elites capable of making public decisions and protecting individual liberty. The broader public has neither the adequate ability nor the interest to govern itself. However, citizens are nevertheless seen as the final instance which chooses by election the representatives that will govern for a predefined period of time. This view assumes thus active political elites on the one hand and reacting citizens on the other hand. According to the elitist democracy, the basic requirement to the media is the provision of citizen with reliable information. In order to choose between competing political elites, people need information and knowledge about political issues and actors.

In Participatory democracy understands democracy as a value-laden system where a strong ethos, political equality and tolerance play a crucial role. Democracy is sustained by dedicated citizens: "The more people are politically interested, the more they engage in associations and civic organizations, the more they vote, the more they develop attitudes and norms of generalized reciprocity, the better". Therefore, democracy can never be built or sustained from elected skilled elites, it has to be built and sustained by the actions of a large number of people.

Three fundamental principles correspond to these three prototypes of democracy: freedom, equality and control. These principles originate from the 'Age of Enlightment' and the great democratic revolutions of the 18th and 19th century. They are the principles that democrats in all time and places have struggled for and which accompanied the development of modern states freedom can be understood as consisting of three types of rights: political, civil, and social rights. Freedom rights are based on the idea of people's freedom to act (e.g. freedom of opinion, freedom of association, freedom of information).

[47] http://dictionary.reference.com/browse/participatory+democracy,visited on 23 April2014
[48] http://www.britannica.com/EBchecked/topic/1918144/deliberative-democracy,visite on 23 April 2014

In their widest sense, freedom rights should thus be viewed as protecting people's ability to act independently and with self-determination, in political, economic, social and cultural terms. Of central importance for people's freedom is the protection against infringements by the state. "Over time, the list of negative freedom rights has grown and the protection and guarantee of these rights have become one of the minimal conditions for democratic regimes." Beyond this protection, conditions must be created to ensure that people are able to develop freely and live a self-determined life. From this perspective, political liberties are seen as preconditions for citizens to actively influence political decisions. This implies that the state must protect freedom rights.

Freedom as a principle in civil society has often been defined in terms of communication rights to hold opinions and to receive and impart information: "Political communication in democracy is connected with the idea of freedom. Freedom of expression and opinion building as individual basic rights, and as institutional guarantees for an independent media system are part of very core of democracy, and they are constitute for a democratic order. In this view, freedom of expression is both, a crucial individual right and an indispensable social good. The media's communication function which derives from freedom is the information function. Media can meet this function due to their specific capabilities to collect and process large amounts of information and to distribute it to all participants of the political process. Equality, understood as political equality proclaims the equality of all citizens in and before the law and in the political process. Thus, equality means equal treatment of all citizens by the state, and equal rights to participate in politics - i.e. citizens' preferences have the same weight in political decisions.

Control is essential for democracy and its political institutions. This principle demands that citizens control their representatives in the government in order to secure their own freedom and equality: "In a good democracy the citizens themselves have the sovereign power to evaluate whether the government provides liberty and equality according to the rule of law" This also implies that citizens, their organizations and parties participate and compete to hold elected officials accountable for their policies and actions. Moreover, they monitor the efficiency and fairness of the application of the laws as well as the efficacy of government decisions. Control as a principle in relation to communication and power assumes that the mass media should act on behalf of the public as a watchdog

holding government officials accountable. In order to preserve the conditions for the enjoyment of civil rights and political liberties, the mass media should act as an independent, fair and impartial critic of powerful interests and inform about abuses of political and economic power. This implies that mass media should not just be informing in an unfiltered way and without critical analysis of political messages. Some liberal authors consider the watchdog function as even more important than the information function. “We have distinguished two political roles of free press in classical liberalism: the watchdog and the democratic [i.e. information] functions. And we noted that for advocates of limited government, the first is by far the more important .The media’s communication function which follows from control is a watchdog function against the abuse of all sorts of power. The functions the media and communication processes must meet in order to promote the three fundamental democratic principles are (1) a guardian of the flow of information, (2) a public forum for public discussion of diverse, often conflicting political ideas, (3) a public watchdog against the abuse of all sorts of power.

The media concentration and deregulation have weakened their position in most European countries and probably world-wide. They do not fit well in an information world where speed succeeds over accuracy and where corporate interests prevail over the public interest. News and information changes originate in the personalized Internet realm rather than in large and sometimes inflexible public institutions. Nonetheless, democratic societies depend on active citizenry who participate in public life. Public issues concern people, interested in reaching their personal objectives or common goals. These active groups of democratic societies require media services that go beyond what commercial and participatory online media are able to deliver. PSM are best placed to respond to this demand. Information, interest mediation and watchdog control are public service virtues that are more and more neglected by other types of mass media. Internet related forms of public communication can only partially fulfill democratic requirements.

It is most likely that those trend-setting mass media become less interested in comprehensive information on policy processes and democracy. By this development private commercial and internationalized mass media erode their relevance to national and transnational policy institutions and policy processes. Thereby, a window of opportunity opens for public service media that are less exposed to these trends than private commercial mass media. Consequently, the relevance of public service media for the

democratic process and the policy discourse increases. However, the larger and more commercial corporate media become, the less they are interested to enable and fulfill these essential democratic requirements. Public service media with their remit gain strength and relevance in return. Democratic policy making requires specific forms of media coverage that is not offered by commercial transnational corporate media. Public service media are well placed to fill this important vacancy official networks, the whole blogosphere, Internet fora, second life, and other forms of computer-aided communication enable citizens to exchange opinions bypassing traditional mass media. One of the main functions of mass media is at stake: Groups of citizens can communicate to one another without the interpretation of journalism provided by corporate media. Without over-emphasizing this change, digital technology and smart online applications have opened new communication spaces.

4.4 FAIR TRIAL AND HUMANRIGHTS

The right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. It is guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR),[49] which provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

The fundamental importance of this right is illustrated not only by the extensive body of interpretation it has generated but, most recently, by a proposal to include it in the non- derogable rights provided for in Article 4(2) of the ICCPR.[50] The right to a fair trial is applicable to both the determination of an individual's rights and duties in a suit at law and with respect to the determination of any criminal charge against him or her.

[49] International Covenant on Civil and Political Rights, UN General Assembly resolution 2200A (XXI), December16, 1966, entered into force March 23, 1976 [hereinafter ICCPR].

[50] *See* Draft Third Optional Protocol to the ICCPR, Aiming at Guaranteeing Under All Circumstances the Right to a Fair Trial and a Remedy, Annex I, in: "The Administration of Justice and the Human Rights of Detainees, The Right to a Fair Trial: Current Recognition and Measures Necessary for Its Strengthening," Final Report, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities,46th Session, E/CN.4/Sub.2/1994/24, June 3, 1994 [hereinafter The Final Report], at 59-62. http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/d8925328e178f8748025673d00599b81,visited on 25 May 2014

The term "suit at law" refers to various types of court proceedings—including administrative proceedings, for example—because the concept of a suit at law has been interpreted as hinging on the nature of the right involved rather than the status of one of the parties.[51]

The standards against which a trial is to be assessed in terms of fairness are numerous, complex, and constantly evolving. They may constitute binding obligations that are included in human rights treaties to which the state is a party. But, they may also be found in documents which, though not formally binding, can be taken to express the direction in which the law is evolving. The right to a fair trial on a criminal charge is considered to start running not "only upon the formal lodging of a charge but rather on the date on which State activities substantially affect the situation of the person concerned."[52]

4.4.1 PRE-TRIAL RIGHTS

The prohibition on arbitrary arrest and detention

Article 9(1) of the ICCPR provides that "everyone has the right to liberty and security of person." The liberty of a person has been interpreted narrowly, to mean freedom of bodily movement, which is interfered with when an individual is confined to a specific space such as a prison or a detention facility. Security has been taken to mean the right to be free from interference with personal integrity by private persons. Under Article 9(1) "No one shall be subjected to arbitrary arrest or detention" and "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." The principle of legality embodied in the latter sentence both substantively ("on such grounds") and procedurally ("in accordance with such procedure") mandates that the term "law" should be understood as referring to an abstract norm, applicable and accessible to all, whether laid down in a statute or forming part of the unwritten, common law.

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[51] *See* Dominic McGoldrick, *The Human Rights Committee, Its Role in the Development of the International Covenant on Civil and Political Rights* (Clarendon Press, Oxford: 1994), at 415

[52] Manfred Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary* (N.P. Engel, Arlington: 1993) [hereinafter Nowak Commentary], at 244

1. The right to know the reasons for arrest

Article 9(2) of the ICCPR[53] provides that "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." These provisions have been interpreted to mean that anyone who is arrested must be informed of the general reasons for the arrest "at the time of arrest," while subsequent information, to be furnished "promptly," must contain accusations in the legal sense. However there must be sufficient information to permit the accused to challenge the legality of his or her detention. A written arrest warrant is not unconditionally required, but the lack of a warrant may, in some cases, give rise to a claim of arbitrary arrest.

2. The right to legal counsel

The right to be provided and communicate with counsel is the most scrutinized specific fair trial guarantee in trial observation practice, because it has been demonstrated to be the one that is most often violated. Principle 1 of the Basic Principles on Lawyers states that "[a]ll persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings." This right is particularly relevant in case of pre-trial detention.[54]

3. The right to a prompt appearance before a judge to challenge the lawfulness of arrest and detention

The rights of a person arrested or detained on a criminal charge, which "shall be brought promptly before a Court or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." In this context it should be noted: (i) that the term "court" signifies not only a

[53] *See also* European Convention, Article 5(2); American Convention, Article 7(4); Body of Principles, Principle 10; 1992 Resolution on the Right to Recourse Procedure and Fair Trial of the African Commission on Human and Peoples' Rights [hereinafter African Commission Resolution], Paragraph 2(B) (http: //www1.umn.edu/humanrts/africa/achpr11resrecourse.html)

[54] The Human Rights Committee has stated that "all persons who are arrested must immediately have access to counsel." (Concluding Observations of the Human Rights Committee, Georgia, UN Doc. CCPR/C/79 Add.75, April 1, 1997 para 27). *See also* the Report of the Special Rapporteur on the Independence of Judges and Lawyers regarding the Mission of the Special Rapporteur to the United Kingdom, UN Doc E/CN.4/1998/39/Add.4, March 5, 1998, para 47

regular court, but a special court, including an administrative, constitutional or military court as well[55]

4. The prohibition of torture and the right to humane conditions during pre-trial detention

Article 7 of the ICCPR prohibits torture[56]—or cruel, inhuman or degrading treatment or punishment—and is a norm of customary international law that also belongs to the category of *jus cogens*. Article 10 of the ICCPR provides in paragraph 1 that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

5. The prohibition on incommunicado detention

The incommunicado detention may violate Article 7 of the ICCPR which prohibits torture, inhuman, cruel and degrading treatment.

B. THE HEARING

Article 14 of the ICCPR is undoubtedly the most relevant to this review. It specifically provides for equality before the courts and for the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, regardless of whether a criminal trial or a suit at law is involved (paragraph 1). The remainder of its provisions— paragraphs 2 to 7—contains a catalogue of "minimum [procedural] guarantees" belonging to an individual in the determination of any criminal charge against him/her. The following section elaborates the meaning of the rights set out in Article 14 in the order in which they arise.

[5555] the European Court in *Chahal v United Kingdom* (70/1995/576/662, 15 November 1996, paras 130-133) which decided that an advisory panel which did not disclose its reasons for decision, had no binding decision-making power and which did not permit legal representation did not satisfy Article 5(4) of the European Convention., Report of the Human Rights Committee, Vol II, UN Doc.A/45/40, at 99-100), which states that the opportunity of an asylum-seeker to appeal to the Ministry of the Interior does not satisfy Article 9(4) of the ICCPR. Regarding advisory panels.

[56] The definition of and protection against torture was elaborated in the 1984Convention against Torture:

Art 1(1): … the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

1. Equal access to, and equality before, the courts

The first sentence of Article 14(1) provides that "All persons shall be equal before the courts and tribunals" and has been interpreted to signify that all persons must be granted, without discrimination, the right of equal access to a court. The second sentence of Article 14(1) relates to the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. It includes the basic components of due process of law which is, in criminal cases.

2. The right to a fair hearing

The right to a fair hearing as provided for in Article 14(1) of the ICCPR encompasses the procedural and other guarantees laid down in paragraphs 2 to 7 of Article 14 and Article15. However, it is wider in scope, as can be deduced from the wording of Article 14(3) which refers to the concrete rights enumerated as "minimum guarantees.

3. The right to a public hearing

Article 14(1) of the ICCPR[57] also guarantees the right to a public hearing, as one of the essential elements of the concept of a fair trial. However, it also permits several exceptions to this general rule under specified circumstances. The publicity of a trial includes both the public nature of the hearings—not, it should be stressed, of other stages in the proceedings— and the publicity of the judgment eventually rendered in a case. It is a right belonging to the parties, but also to the general public in a democratic society

4. The right to a competent, independent and impartial tribunal established by law

The basic institutional framework enabling the enjoyment of the right to a fair trial is that proceedings in any criminal case (or in a suit at law) are to be

[57] See , European Convention, Article 6(1)

conducted by a competent, independent and impartial tribunal established by law. [58]

5. The right to a presumption of innocence

According to Article 14(2) of the ICCPR "Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law."[69] As a basic component of the right to a fair trial, the presumption of innocence, *inter alia*, means that the burden of proof in a criminal trial lies on the prosecution and that the accused has the benefit of the doubt. The presumption of innocence must, in addition, be maintained not only during a criminal trial *vis á vis* the defendant, but also in relation to a suspect or accused throughout the pre-trial phase. It is the duty of both the officials involved in a case as well as all public authorities to maintain the presumption of innocence by "refraining from prejudging the outcome of a trial.

6. T*he right to prompt notice of the nature and cause of criminal charges*

In the determination of any criminal charge against him/her everyone shall be entitled, in full equality "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.[59]

7. The right to adequate time and facilities for the preparation of a defense

Article 14(3)(b) of the ICCPR provides that in the determination of any criminal charge against him or her everyone is entitled "To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing." The right to adequate time and facilities for the

[58] Article 14(1)ICCPR

[59] ICCPR ,Art.14(3)(a)

preparation of a defense applies not only to the defendant but to his or her defense counsel as well[60] and is to be observed in all stages of the proceedings.

8. *T*he right to a trial without undue delay

In the determination of any criminal charge against him/her, everyone shall be entitled "To be tried without undue delay"[61]

9. The right to defend oneself in person or through legal counsel

The right to counsel is clearly linked to the right to a defense during trial as set out in Article 14(3)(d) of the ICCPR. The provision states that everyone shall be entitled, in the determination of any criminal charge against him/her "To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to ha ve legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it." This provision includes the following specific rights:

(i) the right to be tried in one's presence[62]

(ii) to defend oneself in person;

(iii) to choose one's own counsel;

(iv) to be informed of the right to counsel; and

(v) to receive free legal assistance.

10. The right to examine witnesses

In the determination of any criminal charge against him/her, everyone is entitled "To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him" [63]

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[60] Basic Principles on the Role of Lawyers, Principle 21

[61] ICCPR,Article 14(3)(c)

[62] . This is one of the more controversial rights in terms of its interpretation. A literal reading would not permit trials in absentia, which is a view consistently held by most international human rights NGOs and, more recently, supported by the Statute of the International Criminal Court.

[63] ICCPR,Article 14(3)(e)

11. The right to an interpreter

Everyone is entitled "To have the free assistance of an interpreter if he cannot understand or speak the language used in court" [64]

12. The prohibition on self-incrimination

In the determination of any criminal charge against him/her, everyone is entitled "Not to be compelled to testify against himself or to confess guilt" [65]

13. The prohibition on retroactive application of criminal laws

The retrospective Law is applicable in Criminal law and criminal justice.[66]

14. The prohibition on double jeopardy

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country"[67] The prohibition of *ne bis in idem* or of double jeopardy is aimed at preventing a person from being tried—and punished—for the same crime twice.

4.4.2 POST-TRIAL RIGHTS

1. The right to appeal

"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law"[68] . The right to appeal is aimed at ensuring at least two levels of judicial scrutiny of a case, the second of which must take place before a higher tribunal.

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[64] ICCPR,Article 14(3)(f)
[65] ICCPR ,Article 14(3)(g)
[66] Article 15(1) of the ICCPR which embodies the principle *nullum crimen sine lege* (a crime must be provided for by law).
[67] ICCPR,Article 14(7), *See also* Article 4 of Protocol 7 to the European Convention and Article 20 of the ICC Statute. Note that Article 8(4) of the American Convention is different in that the prohibition applies only if the accused has been previously *acquitted*, but then the prohibition is not limited to retrial on the same charge—no charge arising out of the same facts ("the same cause") may be pursued.
[68] ICCPR,Article 14(5)

2. The right to compensation for miscarriage of justice

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him".[69]

Media and Human right

It is widely accepted that a vibrant and flourishing media is essential to democracy and development. The freedom of the media is essential for the full and effective exercise of freedom of expression and an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information. Media is a social instrument that is powerful enough to mould a society, to develop and destruct it. It is a force that could be put to much constructive use in the right hands. Every democracy gets the government it deserves and every society, its media. In a country with as robust and multi-faceted a freedom of expression as India, media plays a very significant role in balancing interests of public and exercise its powers. The Implementation of Information and Communication Technology (ICT) in Indian Judiciary and in Indian Courts needs rejuvenation. The successful use of e-governance for Indian e-judiciary model requires a techno-legal e-Court framework. We need ICT Training and e-Courts training for Indian Judicial System as soon as possible. Further, e-Courts in India must also be supported by active use of online dispute resolution (ODR) in India to reduce backlog of cases. It really wishes to encase the benefits of Information and Communication Technology (ICT) for effective, speedier and Constitutional justice delivery system. . Information and Communication technology (ICT) can be a panacea for the dying judicial system of India. We can effectively use ICT for establishment of E-Courts in India so that E-Judiciary in India can be a reality.

4.5 Media and Sting Operations: Scope and Limitations

"*When it comes to privacy and accountability, people always demand the former for themselves and later for everyone else*". David Brin

[69] ICCPR,Article 14(6)

The Delhi High Court delivered a judgment on controversial **Anirrudh Bahal v State**,[70] and made sting operations legal. Anirrudh Bahal and Suhasini Raj, conducted a sting operation of some Members of Parliament, in which they were offered money for asking questions in Parliament and the act was caught in the camera. Soon after the operation was over it was aired on television to expose this practice to the public. But the pity was that after this entire incident no First Information Report (FIR) was filed by the Delhi Police against those corrupt politicians. The first FIR was filed one and half year later after this entire episode in which both of the journalists were charged as an accomplice for abetting the offence under Section 12 and 13 of the prevention of corruption act. This raised a pertinent question before the Court that: Whether a citizen of this country has right to conduct sting operations to expose the corruption by using agent provocateurs and to bring to the knowledge of common man, corruption at high strata of society?

The Court considered it to be the fundamental duty of an ordinary citizen under Article 51A[71] (b), 51A (h) and 51A (j) to expose such practices prevailing in the system and thus for this purpose any such act or operation conducted, with the intention of doing public good is justified. The Court refused to consider agent provocateurs as accomplice in such cases.

Therefore the utility of conducting sting operations (as has been described in the judgment) is to expose any practice of public officials (not only corruption), related to his official duty, which are against public interest and which if exposed will do larger public good. In all such cases a public official cannot make claim for his right to privacy.

The law with regard to such exposition of unauthorized acts of public officials is also very clear. The honorable Supreme Court of India in **R. Rajgopal v State Of Tamil Nadu**[72] has even held that in case of infringement of privacy of public officials, they have no remedy or damage available, if the act or conduct is associated with their official duty. However the Court further held that in matter not relevant to his official duty a public official enjoys the same protection as any other citizen. The concept not only applies to public officials but equally applies to other persons as well if the gravity and impact of

[70] Manu/ DE/2461/2010,24/09/2010

[71] The Constitution of India ,Article,51A, Fundamental duties It shall be the duty of every citizen of India, (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

[72] (1994) 6 SCC 632,

conduct is high as for e.g. cases dealing with scams and scandals, sedition, offences related to elections, waging of war against the State etc. In all such cases if the exposition of the acts will do larger public good than the tool of sting can be used by overriding the privacy of an individual.

Limitations: Professor Siras case[73], where authority comes, it should be coupled with responsibility because authority without responsibility leads to abuse of authority. The act or conduct in questions here are the private acts or conducts and thus it is very crucial to identify their association with the official conduct of the person. Any misjudgment will lead to a disastrous consequence as was met by Aligarh Muslim University Professor Srinivas Ram Chandra Siras. A gay professor (Siras) whose homosexual act was captured in camera and was exposed to university authorities, after which he was suspended from the university. In this entire course of event my only concern is with regard to the act of 'sting operation' conducted, which raises two issues: Firstly just because he was a gay and the stand of the Supreme Court is not clear over gay rights, after the controversial NAZ foundation[74] judgment of the Delhi High Court, gives any one the right to enter into their private area and expose the act of consensual sex which a normal prudent man (of any sexual orientation) would not want to get exposed to any third party? Obviously the answer is NO. Secondly was the act or conduct in any manner associated with his official duty? Was the act or conduct in any manner was affecting his efficiency as a professor? Were his conduct in public sphere was such which was objectionable to other students or staff of the University?

Irrespective of whether the answer to the above questions is yes or no, the act of sting operation cannot be justified. The act of homosexuality is a punishable offence under section 377 of the Indian Penal Code[75], 1860 due to the moral turpitude of the Indian society which consider such kind of acts to be immoral. These are a victimless offence which does not victimize anyone and are carried out in utmost secrecy, with the consent of

[73] http://www.ndtv.com/india-news/gay-amu-professor-found-dead-suicide-suspected-414740,visited on 10 April2011
[74] (2014) 1 SCC 1
[75] Chapter XVI Section 377 in The Indian Penal Code,1860, Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section. The section was declared unconstitutional with respect to sex between consenting adults by the High Court of Delhi on 2 July 2009. That judgement was overturned by theSupreme Court of India on 12 December 2013, with the Court holding that amending or repealing Section 377 should be a matter left to Parliament, not the judiciary.

both the partners. Therefore even if the objection is to be raised it should be based on circumstantial evidence which leads to irresistible conclusion that the homosexual act would have been performed and not by conducting sting to give direct evidence. It is highly unethical to capture the compromising position of two consenting adults. However the matter would have been different if there would have been a trap to expose unlawful forced sex or molestation. Secondly if the act of sting is justified on ground that it will maintain the morality of the society than it's nothing more than an empty euphoria. The prohibition on such kind of acts will only develop ground for such kind of acts to be carried out in secrecy and victimization of actors as is evident from the present case. In other words no regulation can stop the continuance of these activities in the society.

What public good than the act of sting operation served? Instead it brought the shame and disrepute, which forced the Professor to commit suicide. Just because he was a gay does not justify the sting, where the opinion of Indian judiciary is also changing with respect to gay rights. Therefore it is very essential to deal with the matter in a cautious manner. Identifying the relevancy of conducting stings with due respect to the privacy of an individual should be determining the extent up to which it is feasible to enter into the private sphere of any individual. The Freedom of the media is indeed an integral part of the freedom of speech and expression; and an essential requisite of a democratic set up. The Indian Constitution has guaranteed this freedom by way of a Fundamental Right. The media, which is obligated to respect the rights of individuals, is also expected to work within the framework of legal principles and provisions so that the right to privacy of an individual is not unnecessarily infringed at any cost whatsoever. The increased role of the media in today's globalized and tech-savvy world was aptly put in the words of Justice Hand of the United States Supreme Court when he said, "The hand that rules the press, the radio, the screen and the far spread magazines, rules the country. Democracy is the rule of the people, a system which has three strong pillars - the executive, the legislature and the judiciary. But as Indian society today tries to stabilize on its three pillars, the guarantee of Article 19 (1) (a) has given rise to a fourth pillar i.e. media. It plays the role of a conscience keeper, a watchdog of the functionaries of society and attempts to address to the wrongs in our system, by bringing them to the knowledge of all, hoping for correction. It is indisputable that in many dimensions the unprecedented media revolution has resulted in great gains for the general public. Even the judicial wing of the state has benefited from the ethical and fearless journalism and

taken suo moto cognizance of the matters in various cases after relying on their reports and news highlighting grave violations of human rights. The criminal justice system in this country has many lacunae which are used by the rich and powerful to go scot-free. Figures speak for themselves in this case as does the conviction rate in our country which is abysmally low at 4 percent. In such circumstances the media plays a crucial role in not only mobilizing public opinion but also bringing to light injustice which most likely would have gone unnoticed otherwise.

The advent of sophisticated information communication, specially the pin-hole camera technology, enables one to clandestinely make a video or audio recording of a Conversation and actions of individuals.[76] In India, the Media has been first to grab this state of the art technology to conduct 'sting operations' to expose an offence before the police or the Judiciary takes the cognizance of the matter. The electronic media particularly TV Channels, in order to hype their TRP[77] by showing innovation and a difference, highly publicize the exposure. This results in unwarranted, illegal and immoral use of technology -the so called 'Trial by Media'. The phrase 'Trial by Media' illuminates the impact of media coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a Court of law. Thus the media, the supposed fourth Pillar of our democracy, usurps the role of the executive and the judiciary. This is not only a sheer violation of state's substantive and procedural penal laws but a hit on the face of the entire Constitutional framework as well.[78].

There is no check on using the hidden cameras in one's own house or office, but, in many Countries, it is illegal to use them covertly against another person in his or her house or Office. In UK there is a heated debate between those who support a free press which is largely uncensored and those who advocate an individual's right to privacy regardless of what wrong they have done. In US, only the law enforcement agencies and police licensed private detectives are allowed to use them under certain circumstances, that too under carefully controlled conditions. Licensed private detectives can use them for the collection of evidence, but not in a sting operation. Except the FBI, no private individual, not even journalists can mount a sting operation.[79] In India, in the absence of law

[76] http://www.legalserviceindia.com/articles/fre_pre_v.htm,visited on 20 may2013
[77] Television Rating Point (TRP)
[78] Jain,Praveen Kumar ;Sting Operations – An Invasion of Privacy,CNN, Vol. 3, No. 9, September 2005, pp. 39-41

[79] https://www.ncjrs.gov/pdffiles1/Digitization/146908NCJRS.pdf,visited on30 June 2013

regulating the sting operations, the media has violated and distorted the rules of natural justice and particularly the basic fundamental rights enshrined under Article 20[80] and 21[81] of the Constitution.

The use of unauthorized and unauthenticated camouflaged cameras poses real problems for the penal procedural laws as the evidence they provide may be inadmissible for numerous reasons like the probabilities of editing, lack of clear audio and video imaging, unavailability of exact dates, times and places etc. Moreover, it is the era of technology. Through computer generation techniques one could create make-believe picture of something, which is far from what actually happened. It is said that in the spectacular scenes of the film "Gladiator", only 30 per cent of the shots were actually taken with a camera; the rest were computer-generated.

There have been complaints from US human rights organization that a number of FBI sting operations have caused serious harm to innocent citizens who were the accidental victims of the make-believe criminal organizations set up by the bureau. They have pointed out that an even bigger risk, associated with sting operations aimed at public corruption, is that the people may lose faith in the Government institutions. There is every possibility that foreign intelligence agencies may use such covert and computer generated techniques to destroy the citizen's confidence in their political leadership and administration. During high publicity Court cases the media is often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but also causes irreparable, irreversible and incalculable harm to the reputation of a person and shunning of his family, relatives and friends by the society. He is ostracized, humiliated and convicted without trial. Recent instance of such a trial is of Punjabi Pop singer Daler Mehandi, whose discharge was sought in a human trafficking case few of days after his humiliation and pseudo trial through media as the police could not find the evidence sufficient even for filing the charge sheet.

[80] Article 20 of Constitution Of India, : Protection in respect of conviction for offences(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence(2) No person shall be prosecuted and punished for the same offence more than once(3) No person accused of any offence shall be compelled to be a witness against himself.

[81] Article 21 of The Constitution Of India 21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

All this is done in the interest of freedom of communication and right of information little realizing that right to a fair trial is equally valuable. There is nothing more incumbent upon Courts of justice to preserve their proceedings from being misrepresented than to prejudice the minds of the public against persons concerned before the cause is finally heard. The streams of justice have to be kept clear and pure. The investigative journalism and publicity of pre-mature, half-baked or even presumptive facets of investigation either by the media itself or at the instance of Investigating Agency have almost become a daily occurrence whether by electronic media, radio or press. It can well lead to miscarriage of justice. The media is supposed to make the people aware of crimes, not to punish criminals.

In **the Jacobson vs U.S. case** of 1992 relating to child sex, the US Supreme Court cited the following guidelines of the US Attorney General on FBI sting operations issued on Dec 31, 1980: "...an inducement to commit a crime should not be offered unless: There is a reasonable indication, based on information developed through in formants or other means, that the subject is engaging, has engaged, or is likely to engage in illegal activity of a similar type, or the opportunity for illegal activity has been structured so that there is reason for believing that the persons drawn to the opportunity, or brought to it, are predisposed to engage in the contemplated illegal activity. "

Functions of sting operations [82]

Operations are emphasized and analyzed: **One** is the informational, or investigatory, function of identifying individuals who are engaged in (or likely to engage in) criminal activity. The **second** is the behavioural function of deterring individuals from engaging in (independent) criminal activity: the threat of being caught in a sting may scare individuals away from genuine criminal opportunities that would otherwise seem appealing. Though complementary in some respects, these functions are also in some tension with each other. A sting operation that does not serve informational purposes may be good for deterrent purposes, and vice versa.

[82] www.law.harvard.edu/programs/olin_center/papers/pdf/441.pdf,visited on03 May2012

Rationales and Hazards of Sting Operations

Normally a sting operation is carried out by agents acting undercover, that is, concealing the fact that they work for the authorities[83]. The critical feature is that the agent is authorized to somehow promote or facilitate (using those terms broadly) the unlawful activity of others, who then are penalized for that crime (including attempted crime). We will use the terms "target" or "sting victim[84]" to refer to the individuals who are thus caught and charged. ng operations come in two basic types.[85]The first type has the agent pose as a participant in unlawful activity, such as a buyer or seller of illegal goods or services.[86]In India Sting operations are also undertaken to establish adultery. Such Operations can also be useful in the arrest of terrorists and anti-national elements. The spy camera of media caught 11 members of the Parliament accepting bribe for asking questions in the Parliament. When the media gets all the evidence against the corrupt and the wrongdoer and the aim is public interest, why do media not file a case in the proper Court and submit these as proof? This will lead to punishing of these wrongdoers. Or, even after getting such evidences, why no information is given to public authorities so as to make them take appropriate actions? But, there exists an opposite view. Such cases cannot be filed in Courts with these tapes- audio or video recording- as evidence or proof because Courts do not consider these as credible evidence and proof. Moreover, as the Government machinery is not functioning the way it should function, that is why instances of sting operations are on the increase. In such circumstances, what is the point in taking it to the public authorities? On the other hand, when this is exposed by media, the general public becomes aware of the illegal business going on inside the "Government machinery". There is a pressure on the government agencies concerned to act. The news Broadcasters Association (NBA) justified Sting Operation as "legitimate journalistic tool". The correspondents who telecast sting operations argue that Sting Operation take place in public interest and where public money is involved. According to them Sting Operations are carried out in hospitals which bring out the problems of paucity of doctors in hospitals, absence of medicines and medication. But, it can easily be made out that one of the basic reasons to carry out Sting Operation is to increase the so called Television Rating Point

[83]http//: scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=3652...mlr,visited on 23 Aug.2014

[84] http://lawinfowire.com/articleinfo/legality-sting-operations,visited on25 May 2014
[85] Most of the examples to follow are drawn from newspaper articles and judicial case reports.
[86] Among the best known recent cases are Abscam, in which members of Congress took bribes in exchange for influencing immigration authorities, Operation Greylord, in which Chicago judges took bribes in exchange for fixing cases.

(TRP) or in other words to 'interest the public' rather than 'in public interest'. In view of this, the 17th Law Commission in its 200th[87] report has made specific recommendations to the centre to bring a comprehensive legislation to prevent the media from interfering with the privacy rights of the individuals.

Role of Judiciary in Maintaining Check and Balances

Since there is no comprehensive law to deal with the subject and the media is yet to evolve a code of conduct of its own, the judiciary is bound to play the role of an umpire. It is worthwhile to mention that all Sting Operations, even though carried out in the purported exercise of right under Article 19 (2), do violate Right to Privacy, as guaranteed by the Constitution , to a certain extent because during such Sting Operation, in nearly all cases, the person being filmed is not aware of the presence of a hidden camera. Thus the consent of the person concerned for such recording does not exist whereas without consent of a person, in ordinary course, no one has the right to film him. However, it may be argued that an illegal act being committed by a public servant during his office hours and in abuse of the spirit of his office, is not worthy of protection under Right to Privacy. Right to Privacy is implicit to Article 21. According to Subba Rao J 'liberty' in Article 21 is comprehensive enough to include privacy. His Lordship said that although it is true that he does not explicitly declare the Right to Privacy as a Fundamental Right but the right is an essential ingredient of personal liberty. It is regarded as a Fundamental Right but cannot be called absolute. It can be restricted on the basis of compelling public interest.[88] The Court, however, has limited it to personal intimacies of the family, marriage, motherhood, procreation and child bearing.[89]The movement towards the recognition of right to privacy in India started with **Kharak Singh v. State of Uttar Pradesh and Others,**[90] wherein the apex Court observed that it is true that our Constitution does not expressly declare a right to privacy. Today, it is seen that the over-inquisitive media, which is a product of over-commercialization, is severely encroaching on the individual's right to privacy by crossing the boundaries of its freedom. Yet another observation of the Court which touched this aspect of violation of right to privacy of the

[87] the 200 th Report of the Law Commission on "Trial by Media: Free Speech Vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)

[88] Govind v. State of M.P. (1975)2 SCC 148, AIR 1975 S.C. 1378

[89] P.U.C.L. v. Union of India (1997)1 SCC 301, AIR 1997 S.C. 568

[90] AIR 1963 SC 1295

individuals is found in the judgment of the Andhra Pradesh High Court in **Labour Liberation Front v. State of Andhra Pradesh.** The Court observed: "Once an incident involving a prominent person or institution takes place, the media is swinging into action virtually leaving very little for the prosecution or the Courts to examine in the matter. Recently, it has assumed dangerous proportions, to the extent of intruding into the very privacy of individuals. Gross misuse of technological advancements and the unhealthy competition in the field of journalism resulted in obliteration of norms or commitments to the noble profession. The freedom of speech and expression, which is the bedrock of journalism, is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively".

The following observations of the Supreme Court in **R. Rajagopal and Another v. State of Tamil Nadu and Others**[91] are true reminiscence of the limits of freedom of press with respect to the right to privacy: 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. If he does so, he would be violating the right to privacy of the person concerned and would be liable to action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy". The ever-increasing tendency to use media while the matter is sub-judice has been frowned down by the Courts including the Supreme Court of India on the several occasions. In **State of Maharashtra v. Rajendra Jawanmal Gandhi**[92], the Supreme Court observed: "There is the 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".

The Hon'ble Supreme Court in the case of **Rajendra Sail v. Madhya Pradesh** High Court Bar Association and Others, observed that for rule of law and orderly society, a free responsible press and an independent judiciary are both dispensable and

[91] 1995 AIR 264
[92] 2005 (2) SCC 686

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 functioning orderly is to maintain the delicate balance between the two. The country cannot function without two of the pillars its people trust the most.[93]

With power comes responsibility. With great power comes great responsibility and therefore, the freedom of speech and expression under Article 19 (1) (a) of the Constitution of India correlates with a duty not to violate the law. If citizens and organizations are left absolutely free and unchecked, it will lead to conflict of rights and ultimately end in disorder and anarchy. The news Channels in a bid to enhance their viewer ship resort to sensationalized journalism. Sting operations are bound to come on the agenda. Performing a sting operation with an attempt to attack the personality, reputation and carrier, especially when no national interest or public money is involved, may be an exercise of the right of freedom of expression, but it hits at the privacy of some other individual. Therefore, while exercising such rights of speech and expression, one should keep in mind the fundamental right to dignity and privacy of the individual concerned as guaranteed under Article 21 of the Constitution of India. In a recent Judgment the Hon'ble Supreme Court has upheld the validity of the sting operation carried out by a leading news channel NDTV on a very well known and senior Advocate R. K. Anand. A Bench comprising of Justices B.N. Agrawal, G.S. Singhvi and Aftab Alam, in its judgment in the 'R.K. Anand' case, said: "*It is not our intent here to lay down any reformist agenda for the media. The norms to regulate the media and to raise its professional standards must come from inside." "Despite many faults", the Court pointed out that, "the telecast of the sting operation was in public interest and it has rendered important serviced to protect and salvage the purity of the course of justice*". Writing the judgment, Justice Alam said: "The programme may have any other fault or weakness but it certainly did not interfere with or obstruct the due course of the BMW [hit-and-run case] trial[94]. The programme telecast by NDTV showed to the people [the Courts not excluded] that a conspiracy was afoot to undermine the BMW trial.

[93] Dalei ,Pravesh and Nirala ,Surendra Kumar ; ting Operation vis-à-vis Right to Privacy by Media: A legal analysis in Indian Context, International Journal of Humanities and Applied Sciences (IJHAS) Vol. 2, No. 4, 2013 ISSN 2277 – 4386

[94] http://zeenews.india.com/tags/bmw-hit-and-run-case.html,visited on5,April 2014

What was shown was proved to be substantially true and accurate. The programme was thus clearly intended to prevent the attempt to interfere with or obstruct the due course of the BMW trial."Further the Court has also ruled out the plea of getting prior permission for the purpose of sting operation and said that, "Such a course would not be an exercise in journalism but in that case the media would be acting as some sort of special vigilance agency for the Court. On a little consideration, the idea appears to be quite repugnant both from the points of view of the Court and the media. It would be a sad day for the Court to employ the media for setting its own house in order; and media too would certainly not relish the role of being the snoopers for the Court."The Court further said: "Moreover, to insist that a report concerning a pending trial may be published or a sting operation concerning a trial may be done only subject to the prior consent and permission of the Court would tantamount to pre-censorship of reporting of Court proceedings. And this would be plainly an infraction under Article 19 (1)(a) of the Constitution."

Guidelines for conducting sting operations

In furtherance of the principles of self-regulation as contained in NBA's Code of Ethics and Broadcasting Standards and Specific Guidelines Covering Reportage, a member news channel may conduct a "sting operation", but only in conformity, with the following guidelines :

1. No sting operation shall be conducted except with the prior approval and under the supervision of the head of the editorial team of a news channel, who shall also, along with other person concerned, be responsible for all consequences ;

2. A sting operation may be conducted only if warranted in public interest;

3. A sting operation should be conducted only for exposing a wrong-doing;

4. A sting operation should not be used for gratuitously prying into peoples' private lives;

5. A sting operation may be resorted to only if there is no other effective overt means of collecting or recording the same information or news ;

6. In conducting a sting operation, a news channel shall not indulge in inducing a person to commit a wrongful act not otherwise contemplated by the person;

7. Resort shall not be had to sleaze or sex or any illegal act as a means for carrying-out a sting operation;

8. The entire recordings of a sting operation, including edited and un-edited, audio and video footage, must be preserved, as they are for a period of 90 days or for such other period as may be necessary in a given case ;

9. Recordings of a sting operation, including edited and un-edited, audio and video footage, shall not be tampered, manipulated, interposed, altered, distorted, morphed or otherwise doctored in any manner that may change the context, purport or meaning thereof

10. There must be concurrent and contemporaneous recording in writing of the various stages of progress of a sting operation by the person in-charge of it ; and such written record shall also be preserved for a period of 90 days or for such other period as may be necessary in a given case ;

11. A sting operation must not offend against the provisions of Section 5 of The Cable Television Networks (Regulation) Act 1995[95] and Rule 6 of The Cable Television Networks Rules 1994 relating to "Programme Code" or any other law in force for the time being, including Section 24 of the Prevention of Corruption Act, 1988 ; 12. A sting operation shall be telecast only if, and when there is ample evidence to prima facie demonstrate the culpability of a wrong-doer;

13. If a sting operation is found false or fabricated, all persons concerned with conducting the sting operation could be liable for punishment in act.

Normally a sting operation is carried out by agents acting undercover, that is, concealing the fact that they work for the authorities. he critical feature is that the agent is authorized to somehow promote or facilitate (using those terms broadly) the unlawful activity of others, who then are penalized for that crime (including attempted crime). We will use the terms "target" or "sting victim" to refer to the individuals who are thus caught and charged. Sting operations come in two basic types.[96]The first type has the agent pose as a participant in unlawful activity, such as a buyer or seller of illegal goods or services.[97]

[95] The Cable Television Networks (Regulation) Act 1995
[96] Most of the examples to follow are drawn from newspaper articles and judicial case reports.
[97] Among the best known recent cases are Abscam, in which members of Congress took bribes in exchange for influencing immigration authorities, Operation Greylord, in which Chicago judges took bribes in exchange for fixing cases.

Sting operations by various television channels are a subject of debate over media ethics with the number of news channels increasing day by day, one or other television channel conducts a sting operation across the country. Some target corrupt officials. Some other sting operations chase politicians in power. Some expose the wrong doings of public life. Many such operations invade private life of high and mighty. In an age of sensationalism the sting operations have become effective means of capturing the audience. The myriad hour, multi channel television boom is propelling the phenomenon of sting operations. It raises many ethical, moral and professional questions. The Tehelka expose which saw top BJP leaders[98] caught on cameras accepting bribe has become a controversy for alleged use of unfair means in the process of carrying out the sting operation. More recently, the sting operation that unraveled the cash for votes scam raised questions on parliamentary practice. The cash for questions scam brought to the notice of the world how our parliamentarians work. The sting operation that exposed the sex scandal of former Andhra Pradesh governor ND Tiwari revealed how vulnerable even the top leaders to this new journalistic weapon. The critics of sting operations often accuse this as an invasion of privacy. The sting operations have to be welcomed if they serve a public purpose whatever may be the motive behind conducting these operations. Should means justify the ends or ends justify the means. This is a long heard philosophical debate. I think both means and ends should be justifiable.

Given this debate, some broad conclusions can be drawn on the arguments and counterarguments over the sting operations by television channels. **First**, these sting operations should definitely serve a larger public purpose. People in power cannot escape public scrutiny in the name of right to privacy. Parliamentarians cannot get immunity from public scrutiny through media in the name of privileges. Moral and ethical dimensions of media are embedded in the larger public purpose the media operations serve. Sting operations for settling scores or targeting personal lives for sensational purposes or undermining some ones interests cannot be acceptable. Strict adherence to public cause and purpose should be the basis for any media sting operations.

Second, sting operations should be sparingly used. It cannot become a routine media practice as if covering a press conference. **Thirdly**, sting operations should be used only when it is impossible to collect information through normal journalistic

[98]Tehelka sting: How Bangaru Laxman fell for the trap". Retrieved 18 April2013

practices and the media organization or the concerned journalists should have exhausted these means. Suitable legal and regulatory mechanism should be in place to prevent misuse of such an effective tool in the hands of media to uncover the shadow society. The media should evolve its own code of conduct and self regulatory mechanism to standardize the practice. Professional methods of sting operations and the ethical edifice of this practice should form part of the training programmes of journalism schools and in house media training centre. There should be closer and effective scrutiny of sting operations to make it healthier and professionally sound.[99]Finding an acceptable Constitutional balance between free press and administration of justice is a difficult task in every legal system.

The privatization policy of the Government many industrial house are opening new television channels which compete for their existence. News reporting is now on commercial basis. Every channel wants to high up its TRP rating[100] to prove its supremacy over collecting and telecasting the news programme to the public as early as possible. Many news channels present crime related news in the sensational manner to increase their TRP and have also started exclusive crime news channels. They telecast the criminal cases involving high profile personality to attract more public attention. These crime news channels play the role of investigators and adjudicator especially regarding sensational/ high profile crimes about the guilt of the accused. Many accused are now using these channels to surrender themselves in a heroic way after giving long interviews to gain public sympathy and these channels live telecast these surrenders again and again or a day or two. Sometimes witnesses of such cases are traced by their news reporters to get their live version about the facts of the case without caring their impact on the trial of the cases.

This media trial has its pros and cons qua the fair trial to the accused. This right of fair trial of an accused is a legal right, which comes from Article, 21 of the Constitution of India and also from the various provisions of Code of Criminal Procedure. Sometimes "Media Trial" also invades the protection conferred upon the accused under Article 20(3) of the Constitution, against self incrimination. So the question now is whether the freedom of press/media should be absolute or there should be some rider on this freedom.

[99] http://indiacurrentaffairs.org/are-sting-operations-acceptable-%E2%80%93-prof-k-nageshwar,visited on 12 Novmber,2014
[100] timesofindia.indiatimes.com/home/sunday-times/...TRP.../11816.cms,visited on 9 may2013

The Apex Court **in Re. Hari Jai Singh in Re. - Vijay Kumar**[101] expressed serious concern about freedom of press being misused, while holding that the freedom of press is indispensable for the functioning of democracy. The Apex Court observed: "The protection cover of freedom of press must not be thrown open for wrong doings. Public order, decency, morality and such other things must be safeguarded. If a news paper publishes what is improper, mischievously false or illegal and abuses its liberty, it must be punished by the Court of law. 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 after dispassionate evaluation of the facts and information received by them and to be published as a news item. The presentation of news should be truthful, objective and comprehensive without any false and distorted expression". Thus freedom of press is not an unfettered freedom; it is under a duty to exercise it with a sense of responsibility by taking into consideration the provision of Article 19(2) of the Constitution of India.

In **State of Maharashtra vs. Jalga on Municipal Council** [102]the Apex Court observed that an accused cannot be convicted merely because anybody including press so desire. The press has right to publish Court proceedings but this right is not absolute one and is subject to two limitations. Firstly, it should not be contempt of Court and secondly, it should not prejudice the accused.

In **State vs. Mohd Afzal & others** [103]the Defence Counsel took the plea that the Police allowed the Media to take interview of Mohd. Afzal and the same were prominently telecasted for about 100days by various channels which caused prejudice to the accused. He further submitted that Media trial is anti thesis of the rule of law and results in miscarriage of justice. He further contended that pre-trial publicity is sufficient to cause prejudice and hatred against the accused and the presumption of innocence of every person till found guilty by a Court of Law is eroded. But the Hon'ble judges of Delhi High Court rejected this argument by observing that judges are trained, skilled and have sufficient experience to shut their minds receiving hearsay evidence or being influenced by the Media. But the Hon'ble judge lodged a caveat on this aspect of the matter by observing: It has indeed become a disturbing feature as is being noticed by us repeatedly that the accused persons, after their remand by the Magistrate, are brazenly paraded before the press and interviews are being allowed. Accused persons are exposed to public glare

[101] (1996) 6 SCC. Page 446
[102] AIR 2003, S.C.1659
[103] 2003(3) JCC 1669

through T.V. and in case where test identification parade or the accused person being identified by witnesses (as in the present case) arises, the case of the prosecution is vulnerable to be attacked on the ground of exposure of the accused persons to public glare, weakening the impact of the identification. Further, what is more fundamentally disturbing to our mind is the fact that the police custody is given by the Court to the investigation authorities on the premise that the accused is required for the purpose of investigation. This custody is not to be misused by allowing the media to interview the accused persons. The practice of allowing the media to interview the accused persons when they are in police custody under the order of the Court has therefore, to be deprecated."

Similarly in **State vs. Sushil Sharma**[104], while rejecting the plea of unfair trial due to Media Trial, the Hon'ble Court observed, "As far as the grievances of the appellant's counsel against the media publicity of the case is concerned we do not think that anything would turnaround this plea. We find that this is now becoming a main ground of challenge whenever some conviction takes place. We, however, feel that despite the fact that in this case the learned trial judge has also noticed in his judgment that this case had attracted lot of media attention but his decision is based on a fair, unbiased and unprejudiced analysis and assessment of the evidence before him. As far as parallel media trial of criminal cases is concerned , that takes place since these days media people are briefed on day to day basis by the police, representatives of the accused and even accused persons themselves also quite often speak before the cameras of various TV channels. In these circumstances media cannot be blamed for highlighting the facts, which are spoken to before the cameras by the representatives of the prosecution as well as the accused. We have also experienced that these days whenever media people highlight some crime the investigation agencies perform their functions with much more diligence and perfection. We, therefore, reject the argument that the appellant did not get a fair trial".

The Hon'ble Supreme Court also in case **R Bala Krishna Pillai vs. State of Kerala**[105] and also in case **Zee News V. Navjot Sandhu** [106] held that media interviews do not prejudice judges.But in **Kali Ram vs. State of H.P. reported in AIR**[107], the apex Court held that if a reasonable doubt arises regarding the guilt of accused, the benefit of that cannot be withheld from the accused. The Courts would not be justified in withholding that benefit

[104] 2007 (1) J.C.C. Page 765
[105] 2000(7) SCC page 129
[106] 2003(1) SCALE 113
[107] 1973, S.C. 2773

because the acquittal right have an impact on the law and order situation or create a diverse reaction in society or among those members of the society who believe the accused to be guilty. Guilt should have been established by the evidence on record.

In **M.P. Lohia vs. State of West Bengal**[108] the Apex Court observed "having gone through the record we find very disturbing fact, which we feel necessary to comment upon in the interest of justice. The death of Chandni took place on 23.10.2003 and the complaint in this regard was registered and the investigation was in progress. The application for grant of anticipatory bail was disposed of by the High Court of Calcutta on 13.12.2004 and the special leave petition was pending before this Court. Even then, an article, appeared in a magazine called Saga titled 'Doomed by Dowry' written by one Kokila Pooddar based on her interview of the family of the deceased giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that these type of articles appearing in the media would certainly interfere with the administration of the justice. We deprecate this practice and caution the publisher, editor and the journalist, who were responsible for the said article, against indulging in such trial by media where the issue is sub-judice. However, to prevent any further issue being raised in this regard, we treat this matter as closed and hope that the order concerned in journalism would take note of this displeasure expressed by us for interfering with the administration of justice". This judgment also clarifies that no comments can be made on the merits of the case or on any material, which is the subject matter of a case pending before a Court of law.

In October 2005 a news item was published in Times of India, New Delhi with the heading "Media Trial ends in Suicide". It was stated in that news that one person Naresh Pal working as a driver with Pusa Agriculture Institute committed suicide with his wife after leaving a suicide note which stated that a T.V. Channel was called by his niece who made allegation of rape against him although he was impotent. He could not face humiliation and ended his life along with his wife. Without going on truth the fact is that the allegation of niece was telecast on T.V. Channel, which gave publicity to her claim of being raped by her uncle. The channel in such cases must have asked the complainant to lodge a report with the police for proper investigation instead of defaming a person

[108] 2005 "Crl. J 1416

without ascertaining his views just to sensationalize the news. Recently, Sting operation of General Secretary of Indian Hockey Federation for accepting bribe which stirred the sport arena including Hockey Federation even this operation rocked the Parliament when many members of Parliament raised this issue because of poor performance of Indian Hockey Team. The Sports Minister of India also demanded resignation of Chairman of Indian Hockey Federation due to corruption shown in the sting operation.

Restrictions

In many acts, apart from Constitution of India, there are restrictions imposed on the media by the legislation:

(1) Sec.499, of Indian Penal Code, which provide as under: "Defamation: Whoever, by words either spoken or intended to be read or by signs or by visible representations, makes or published any imputation concerning any person intending any harm, or knowing, or having reason to believe that such imputation, will harm, the reputation of such person, is said except in case hereinafter excepted, to defame that person. There are, however, ten exceptions to this section.

(2) Sec. 327 of Code of Criminal Procedure 1973,which provides as under: 'Court to be open (1) the place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them; Provided that the presiding judge or magistrate may, if he thinks fit, order at any stage or any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in the room or building used by the Court.

(2) Notwithstanding, anything contained in sub-section (1), the inquiry in to and trial of rape or an offence under Section 376, Section 376A, Section376B, Section 376C or Section 376D of the Indian Penal Code shall be conducted in-camera;

Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to access to, or be or remain in, the room or building used by Court.(3) Where any proceedings are held under sub-section (2) it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court .

Section 22 of Hindu Marriage Act, Proceedings to be in camera and may not be printed or published (1) Every proceeding under this Act shall be conducted in Camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceedings except a judgment of the High Court or of Supreme Court printed or published with the previous permission of the Court.(2) If any person prints or publishes any matter in contravention of the provisions contained in subsection (1), it shall be punishable with fine, which may extend to one thousand rupees.

Section 14 Official Secrets Act: Exclusion of public from proceedings: In addition and without prejudice to any powers, which a Court may possess to order the exclusion of the public from any proceedings, if the course of proceedings before a Court against any person for an offence under this Act or the proceeding on appeal or in the course of trial of a person under this Act, application is made by the prosecution on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, all or any portion of the public shall be excluded during any part of hearing, the Court may make an order to that effect, but the passing of the sentence shall in every case take place in public .Another aspect of media trials which denies fair trial to the accused is the interview of the accused during police custody to the electronic media persons and the same were telecast for many days which focus public opinion against the accused. These interviews are self incrimatory and off end protection against the self incrimination which is provided to him under article 20(3) of the Constitution. Article 20(3): provided that no person accused of an offence shall be compelled to be a witness against himself. The Hon'ble Supreme Court [109] held that the concept of compelled testimony goes back to the stage of interrogation as per provisions of Article 20(3) of the Constitution. The Court denied the compelled testimony as evidence procured not merely by physical threat, physic torture, at spherical pressure, environmental coercion, over bearing and intimidators methods and the like not legal penalty for violation.

Public awareness

It is true that largely the media, especially Electronic Media is doing deplorable job of public awareness by exposing corruption prevailing at every step, in the public life and exposing commission of crimes, etc., but at the same time it should not cross its

[109] in Nandini Satyhy vs. D.L. Dhani repotted in AIR 1978 S.C.C. page 1025

limitations and should not get involved in trial by media persons. For the last many years, a new concept of 'sting operation' is on increase on almost every channel of Electronic Media to show something different for exposing corruption and social evils prevailing in the society. These telecasts of sting operations have also increased the TRP rating of the news channels. Tehlka.com was the first to telecast sting operation for exposing corruption in defence deals. Another sting operation was telecast which shows accepting of money by the then BJP President. After getting good public response and success of these sting operations which also increased the TRP rating of those news channels, every channel appointed special investigator equipped with sophisticated special equipments and hidden cameras to expose quack Doctors, showing corruption in Sales Tax Department, Corruption in Police and also corruption among political personalities including Members of Parliament who misused MPLAD Fund[110] and accepted money for asking questions in the Parliament. Due to these sting operations, these Members of Parliament were adjudged disqualified and their memberships were cancelled. Many public servants were removed from service and criminal cases as well departmental enquires were also initiated. Some sting operations were telecast to expose the poor service in Medical Colleges and Govt. hospitals, such exposures through Electronic Media play a major role in stirring public opinions and consciousness and forcing the Govt. and its officials to act diligently and in a transparent manner. This role of public awareness also thrust a heavy responsibility on Media to act without crossing the limits as mentioned above, otherwise an individual has to pay its price against whom the sting operation was telecast. One of such case is of Ms. Uma Khurana a teacher in Delhi Govt. School against whom a sting operation was telecast on 'Live India' a television News Channel on 30.08.2007 in which she was dubbed as racketeer of prostitution who was purportedly forcing a girl student in to prostitution. After this telecast she was beaten by the public at the gate of her school who also tore her clothes. Police sprung into action and saved her from public outrage and arrested her. Due to public outcry after seeing her sting operation, the Education Department of Delhi Administration hurriedly, first suspended her and later dismissed her from service. Later on, it was revealed that the girl who had been shown as a student and was allegedly being forced into prostitution by Ms. Uma Khurana was not a school girl but a budding journalist. The news of the sting operation widely published in almost every newspaper for months together. The Hon'ble Delhi High Court suo moto took cognizance of this fake

[110] Member of Parliament Local Area Development Scheme (MPLADS)

sting operation and issued notice to Delhi Administration and Delhi Police. Pursuant to the notice, the police told the Court that it was a stage managed episode prepared by one Virendra Kumar in conspiracy with Mr. Prakash Singh and Ms. Rashmi Singh and was shown as sting operation, because Virendra Kumar had some monetary dispute with Ms. Khurana. Police also gave clear chit to Ms. Uma Khurana and charged above said three persons who prepared and telecast the alleged sting operation. The Hon'ble Court observed in its order, "Such incident should not happen and false and fabricated sting operation directly infringing upon a person's right to privacy should not recur because of desire to earn more and to have higher TRP rating.""There is no doubt and there is no second opinion that 'truth' is required to be shown to the public in public interest and the same can be shown whether in nature of sting operation or otherwise but what we feel is that entrapment of any person should not be resorted to and should not be permitted."

"Sting operations showing acts and facts as they are truly and actually happening may be necessary in public interest and as a toll for justice, but a hidden camera cannot be allowed to depict something which is not true, correct and is not happening but has happened because of inducement by entrapping a person.""No doubt the media is well within its rightful domain when it seeks to use tools of investigative journalism to bring us face to face with the ugly underbelly of the society. However, it is not permissible to the media to entice and try to actively induce an individual into committing an offence, which otherwise he is not known and likely to commit. In such cases there is no predisposition.

If one were to look into our mythology even a sage like Vishwamitra succumbed to the enchantment of "Maneka". It would be stating the obvious that the media is not to test individuals by putting them through what one might call the "inducement test" and portray it as a scoop that has uncovered a hidden or concealed truth. In such case the individual may as well claim that the person offering inducement is equally guilty and a party to the crime that he/she is being accused of. This would infringe upon the individual's right to privacy.

While disposing this writ petition [111]the Hon'ble Court asked the Ministry of Information and Broadcasting to consider certain proposed guidelines mentioned in the order while examining whether a statute/or a code of conduct should be enacted for telecast of sting operation. Thus, the electronic media is playing an important role for the

[111] (Crl. No. 1175/2007),

good health of our democracy by exposing corrupt officials and other evils prevailing in the society by way of sting operations, but while doing so it must adhere to the limitations mentioned above.

Characteristics of online sting operations

Prior to the emergence of the Internet, sting operations had potential but specific targets. However, sting operations through the Internet aim at unspecified individuals without specific targets, even though it is believed that people with dangerous dispositions will be caught eventually In addition, Internet users can change their identity and tend to behave differently on the Internet due to Anonymity, one of the key characteristics of the Internet. Internet users can "adopt different personae and fantasize about doing acts that they would never do in real life". Thus, a desire or intention expressed online might not be "real." This means that essentially everyone on the Internet is a potential target for the sting operation by law enforcement officers at some level.

4.6 Electronic Media, Information Technology and its Implications

Their uncertainty is not unfounded. Face book itself has acknowledged that members' data may be used without consent: a joint document published with the Province of Ontario's Office of the Information and Privacy Commissioner states, "at any point in time and potentially without any notice... information from your profile and logs of your online activities may be used and disclosed in unexpected ways that can affect your privacy"[112]his process of commodifying information based on surveillance intensified dramatically in November 2007, when Face book introduced Beacon, an advertising program that allowed forty commercial websites to track online purchases of Face book users and broadcast them to members' social networks, a form of viral marketing. In addition to structural features, gender-based discourses in mainstream media have outlined limited roles for young women as agents. Instead, they have been depicted as passive consumers or misguided youth whose provocative photographs risk attract in gun wanted attention. In contrast, young men behind the creation of many popular Web 2.0sites (including YouTube, My space, and Face book) are celebrated as creative, entrepreneurial boy geniuses. These discourses emphasize that the emerging gender order in Silicon Valley is still decidedly male terrain. The economic imperatives driving Face book, although still developing, enable or constrain the actions of its members. It is thus not

[112] Cavoukian , Facebook 2007, p. 3

surprising that, on a commercial and advertising oriented website whose culture depends upon personal disclosure, the young women we interviewed, although enthusiastic about the social possibilities of Face book, did not see space for creating alternative messages. Our research points to the need for further enquiry into how young women construct their identities on SNS, how they define their personal privacy on SNS, how corporations and marketers target young women on SNS, and how eminent action groups can utilize SNS for change.

What kinds of computer related activities impinge on privacy?

Although Information and Communications Technologies (ICTs) have greatly enhanced our capacities to collect, store, process and communicate information, it is ironically these very capacities of technology which make us vulnerable to intrusions of our privacy on a previously impossible scale. *Firstly,* data on our own personal computers can compromise us in unpleasant ways — with consequences ranging from personal embarrassment to financial loss. *Secondly*, transmission of data over the Internet and mobile networks is equally fraught with the risk of interception — both lawful and unlawful — which could compromise our privacy. *Thirdly,* in this age of cloud computing when much of "our" data — our emails, chat logs, personal profiles, bank statements, etc., reside on distant servers of the companies whose services we use, our privacy becomes only as strong as these companies' internal electronic security systems. *Fourthly*, the privacy of children, women and minorities tend to be especially breakable in this digital age and they have become frequent targets of exploitation. *Fifthly,* Internet has spawned new kinds of annoyances from electronic voyeurism to spam or offensive email to 'phishing' — impersonating someone else's identity for financial gain — each of which have the effect of impinging on one's privacy.[113]Although there are a number of technological measures through which these risks can be reduced, it is equally important to have a robust legal regime in place which lays emphasis on the maintenance of privacy. This note looks at whether and how the Information Technology Act that we currently have in India measures up to these challenges of electronic privacy.[114]

[113] Prashant Iyengar,Privacy and the Information Technology Act — do we have the Safeguards for Electronic Privacy? http://cis-india.org/internet-governance/blog/privacy/safeguards-for-electronic-privacy

[114] The IT Act is only one of the various laws which safeguard citizens from violations of online privacy. In addition, in the domain of finance, for instance, various RBI regulations mandate strong security protocols with respect to data held by financial institutions. Since

What provisions in the IT Act protect against violations of privacy?

At the outset, it would be pertinent to note that the IT Act defines a 'computer resource'; expansively as including a "computer, computer system, computer network, data, computer database or software".[115] As is evident, this definition is wide enough to cover most intrusions which involve any electronic communication devices or networks — including mobile networks. Briefly, then IT Act provides for both civil liability and criminal penalty for a number of specifically proscribed activities involving use of a computer — many of which impinge on privacy directly or indirectly. These will be examined in detail in the following sub-sections. Intrusions into computers and mobile devices

- accessing
- downloading/copying/extraction of data or extracts any data
- introduction of computer contaminant[116];or computer virus[117]
- causing damage either to the computer resource or data residing on it
- disruption
- denial of access
- facilitating access by an unauthorized person
- charging the services availed of by a person to the account of another person,
- destruction or diminishing of value of information
- stealing, concealing, destroying or altering source code with an intention

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this is the subject of a different dispatch on banking and privacy which we have brought out, these regulations are omitted from this discussion.

[115] Section 2(k) of the IT Act defines 'computer' as any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network.

[116] Section 43 defines "computer contaminant" as any set of computer instructions that are designed— (a) to modify, destroy, record, transmit data or program residing within a computer, computer system or computer network; or (b) by any means to usurp the normal operation of the computer, computer system, or computer network;

[117] Similarly, "computer virus" has been defined in section 43 as "any computer instruction, information, data or program that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a program, data or instruction is executed or some other event takes place in that computer resource;

The Act provides for the civil remedy of "damages by way of compensation" for damages caused by any of these actions. In addition anyone who "dishonestly" and "fraudulently" does any of these specified acts is liable to be punished with imprisonment for a term of upto three years or with a fine which may extend to five lakh rupees, or with both.

Bangalore techie convicted for hacking government site (2009, Deccan Herald)[118]

In November 2009, The Additional Chief Metropolitan Magistrate, Egmore, Chennai, sentenced N G Arun Kumar, a techie from Bangalore to undergo a rigorous imprisonment for one year with a fine of Rs 5,000 under section 420 IPC (cheating) and Section 66 of IT Act (hacking).Investigations had revealed that Kumar was logging on to the BSNL broadband Internet connection as if he was the authorized genuine user and 'made alteration in the computer database pertaining to broadband Internet user accounts' of the subscribers.

The CBI had registered a cyber crime case against Kumar and carried out investigations on the basis of a complaint by the Press Information Bureau, Chennai, which detected the unauthorized use of broadband Internet. The complaint also stated that the subscribers had incurred a loss of Rs 38,248 due to Kumar's wrongful act. He used to 'hack' sites from Bangalore as also from Chennai and other cities, they said.

Children's privacy online

As computers and the Internet become ubiquitous children have increasingly become exposed to crimes such as pornography and stalking that make use of their private information. The newly inserted section 67B of the IT Act (2008) attempts to safeguard the privacy of children below 18 years by creating a new enhanced penalty for criminals who target children.

The section firstly penalizes anyone engaged in child pornography. Thus, any person who "publishes or transmits" any material which depicts children engaged in sexually explicit conduct, or anyone who creates, seeks, collects, stores, downloads, advertises or exchanges this material may be punished with imprisonment up to five years (seven years for repeat offenders) and with a fine of upto Rs. 10 lakh.

[118] Section 66 of the IT Act. Anon, 2009. Bangalore techie convicted for hacking govt site. Deccan Herald. Available at: http://goo.gl/jCvAh. , Accessed March 29, 2011

Secondly, this section punishes the online enticement of children into sexually explicitly acts, and the facilitation of child abuse, which are also punishable as above. Viewed together, these provisions seek to carve out a limited domain of privacy for children from would-be sexual predators. The section exempts from its ambit, material which is justified on the grounds of public good, including the interests of "science, literature, art, learning or other objects of general concern". Material which is kept or used for bona fide "heritage or religious purpose" is also exempt.

In addition, the newly released Draft Intermediary Due-Diligence Guidelines, 2011[119]require 'intermediaries'[120]to notify users not to store, update, transmit and store any information that is inter alia, "pedophilic" or "harms minors in any way". An intermediary who obtains knowledge of such information is required to "act expeditiously to work with user or owner of such information to remove access to such information that is claimed to be infringing or to be the subject of infringing activity". Further, the intermediary is required to inform the police about such information and preserve the records for 90 days.

Electronic Voyeurism

Although once regarded as only the stuff of spy cinema, the explosion in consumer electronics has lowered the costs and the size of cameras to such an extent that the threat of hidden cameras recording people's intimate moments has become quite real. Responding to the growing trend of such electronic voyeurism, a new section 66E has been inserted into the IT Act which penalizes the capturing, publishing and transmission of images of the "private area"[121]of any person without their consent, "under circumstances violating the privacy"[122] of that person. This offence is punishable with imprisonment of upto three years or with a fine of upto Rs. two lakh or both.

[119] The Information Technology (Due Diligence observed by Intermediaries Guidelines) Rules, 2011

[120]].'Intermediary' has been defined very expansively under section 2(w) of the Act to mean, with respect to any electronic record, "any person who on behalf of another person receives, stores or transmits that record, or provides any service with respect to that record and includes telecom service providers, network service providers, Internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes

[121] Private area' has been defined in section 66E as "the naked or undergarment clad genitals, pubic area, buttocks or female breast".

[122] Defined as "circumstances in which a person can have a reasonable expectation that (i) he or she could disrobe in privacy, without being concerned that an image of his or her private area was being captured or (ii) any part of his or her private area would not be visible to the public regardless of whether that person is in a public or private place". See explanation to Section 66E.

Phishing – or Identity Theft

The word 'phishing' is commonly used to describe the offence of electronically impersonating someone else for financial gain. This is frequently done either by using someone else's login credentials to gain access to protected systems, or by the unauthorized application of someone else's digital signature in the course of electronic contracts. Increasingly a new type of crime has emerged wherein SIM cards of mobile phones have been 'cloned' enabling miscreants to make calls on others' accounts. This is also a form of identity theft. Two sections of the amended IT Act penalize these crimes:

Section 66C makes it an offence to "fraudulently or dishonestly" make use of the electronic signature, password or other unique identification feature of any person. Similarly, section 66D makes it an offence to "cheat by person" [123] by means of any 'communication device'[124] or 'computer resource'.Both offences are punishable with imprisonment of upto three years or with a fine of upto Rs. one lakh.

Mumbai Police Solves Phishing scam[125]

In 2005, a financial institute complained that they were receiving misleading emails ostensibly emanating from ICICI Bank's email ID. An investigation was carried out with the emails received by the customers of that financial institute and the accused were arrested. The place of offence, Vijaywada was searched for the evidence. One laptop and mobile phone used for committing the crime was seized. The arrested accused had used open source code email application software for sending spam e-mails. He had downloaded the same software from the Internet and then used it as it is. He used only VSNL to spam the e-mail to customers of the financial institute because VSNL email service provider does not have spam box to block the unsolicited emails. After spamming e-mails to the institute customers he got the response from around 120 customers of which 80 are genuine and others are not correct because they do not have debit card details as

[123] Cheating by personation" is a crime defined under section 416 the Indian Penal Code. According to that section, "a person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is." The explanation to the section adds that "the offence is committed whether the individual personated is a real or imaginary person". Two illustrations to the section further elaborate its meaning: (a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation (b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

[124] Communication device" has been defined to mean "cell phones, personal digital assistance (sic) or combination of both or any other device used to communicate send or transmit any text, video, audio or image".

[125]2005. Cyber Crime Cell, Mumbai: Case of Phishing. Mumbai Police. Available at: http://www.cybercellmumbai.com/case-studies/case-of-fishing [Accessed March 23, 2011].

required for e-banking."

The customers who received his e-mail felt that it originated from the bank. When they filled the confidential information and submitted it the said information was directed to the accused. This was possible because the dynamic link was given in the first page (home page) of the fake website. The dynamic link means when people click on the link provided in spam that time only the link will be activated. The dynamic link was coded by handling the Internet Explorer once lick event and the information of the form will be submitted to the web server (where the fake website is hosted). Then server will send the data to the configured e-mail address and in this case the e-mail configured was to the e-mail of the accused. All the information after phishing (user name, password, transaction password, debit card number and PIN, mother's maiden name) which he had received through the Wi-Fi Internet connectivity of Reliance.com was now available on his Acer laptop.This crime was registered under section 66 of the IT Act, sections 419, 420, 465, 468 and 471 of the Indian Penal Code and sections 51, 63 and 65 of the Indian Copyright Act, 1957 which attract the punishment of three years imprisonment and fine upto Rs 2 lac which the accused never thought of.

Spam and Offensive Messages

Although the advent of e-mail has greatly enhanced our communications capacities, most e-mail networks today remain susceptible to attacks from spammers who bulk-email unsolicited promotional or even offensive messages to the nuisance of users. Among the more notorious of these scams is/was the so-called "section 409 scam" in which victims receive e-mails from alleged millionaires who induce them to disclose their credit information in return for a share in millions.

Hoax E-mails [126]

In 2009, a 15-year-old Bangalore teenager was arrested by the cyber crime investigation cell (CCIC) of the city crime branch for allegedly sending a hoax e-mail to a private news

[126] Hafeez, M., 2009. Crime Line: Curiosity was his main motive, say city police. Crime Line. Available at: http://mateenhafeez.blogspot.com/2009/05/curiosity-was-his-main-motive-say-city.html [Accessed March 23, 2011].

channel. In the e-mail, he claimed to have planted five bombs in Mumbai, challenging the police to find them before it was too late.According to police officials, at around 1p.m. on May 25, the news channel received an e-mail that read: "I have planted five bombs in Mumbai; you have two hours to find it." The police, who were alerted immediately, traced the Internet Protocol (IP) address to Vijay Nagar in Bangalore. The Internet service provider for the account was BSNL, said officials.

Minor Hoax Spells Major Trouble

- Sixteen-year-old Rakesh Patel (name changed), a student from Ahmedabad, sent an e-mail to a private news channel on March 18, 2008, warning officials of a bomb on an Andheri-bound train. In the e-mail, he claimed to be a member of the Dawood Ibrahim gang. Three days later, the crime investigation cell (CCIC) of the city police arrested the boy under section 506 (ii) for criminal intimidation. He was charge-sheeted on November 28, 2008.
- A 14-year-old Colaba boy sent a hoax e-mail to a TV channel in Madhya Pradesh, three days after the July 26, 2008, Ahmedabad bomb blasts. He claimed that 29 bombs would go off in Jabalpur. He was picked up by officers of the anti-terrorism squad (ATS) who, with the help of the MP police, were able to trace the e-mail to a cyber café in Colaba. Status: No FIR was registered. The Cuffe Parade police registered a non-cognizable (NC) complaint against him, and the boy was allowed to go home after the police gave him a "strict warning".
- Shariq Khan, 18, was arrested in Bhopal on July 26, 2006, for sending out three e-mails claiming to be a member of the terrorist organization, which the police believed was behind the 7/11 train bombings. He was arrested by the Bhopal police. Later, the ATS brought the boy to Mumbai and also booked him for a five-year-old unsolved case where an unknown accused had sent e-mail warnings to the department of Atomic Energy (DAE) in 2001.
- Status: The police filed a charge-sheet against Shariq who claimed that he had sent the e-mails for fun. Trial is pending in a juvenile Court. Shariq is presently out on bail in Bhopal.
- On February 26, 2006, a 17-yearold student from Jamnabai Narsee School called an Alitalia flight bound to Milan at 2 a.m. telling them there was a bomb on board. He wanted to stop his girlfriend from going abroad. She was one of the 12 students

on their way to attend a mock United Nations session in Geneva. Status: After being grilled by the police, he was arrested, but let out on bail.

Lawful Interception and monitoring of electronic communications under the IT Act

In addition to violations of privacy by criminal and the mischievous minded, electronic communications and storage are also a goldmine for governmental supervision and surveillance. This section provides a brief overview of the provisions in the IT Act which circumscribe the powers of the state to intercept electronic communications.

The newly amended IT Act completely rewrote its provisions in relation to lawful interception. The new section 69 dealing with "power to issue directions for interception or monitoring or decryption of any information through any computer resource" is much more elaborate than the one it replaced, In October 2009, the Central Government notified rules under section 69 which lay down procedures and safeguards for interception, monitoring and decryption of information (the "Interception Rules 2009"). This further thickens the legal regime in this context.

Unlawful Intercept

In August 2007, Lakshmana Kailash K., a techie from Bangalore was arrested on the suspicion of having posted insulting images of Chhatrapati Shivaji, a major historical figure in the state of Maharashtra, on the social-networking site Orkut. The police identified him based on IP address details obtained from Google and Airtel – Lakshmana's ISP. He was brought to Pune and detained for 50 days before it was discovered that the IP address provided by Airtel was erroneous. The mistake was evidently due to the fact that while requesting information from Airtel, the police had not properly specified whether the suspect had posted the content at 1:15 p.m. or a.m.Taking cognizance of his plight from newspaper accounts, the State Human Rights Commission subsequently ordered the company to pay Rs 2 lakh to Lakshmana as damages[127].The incident highlights how minor

[127] Holla, A., 2009. Wronged, techie gets justice 2 yrs after being jailed. Mumbai Mirror. Available at: http://www.mumbaimirror.com/index.aspx?page=article&sectid=2&contentid=2009062520090625031445786810374 83 [Accessed March 23, 2011].

privacy violations by ISPs and intermediaries could have impacts that gravely undermine other basic human rights [128].

In addition to section 69, the Government has been empowered under the newly inserted section 69B to "monitor and collect traffic data or information generated, transmitted, received or stored in any computer resource".

"Traffic data" has been defined in the section to mean “any data identifying or purporting to identify any person, computer system or computer network or any location to or from which communication is or may be transmitted.” Rules have been issued by the Central Government under this section (the “Monitoring and Collecting Traffic Data Rules, 2009”) which are similar, although with important distinctions, to the rules issued under section 69.

Thus, there are two parallel interception and monitoring regimes in place under the Information Technology Act. In the paragraphs that follow, we provide an overview of the regime of surveillance under section 69 — since they are more targeted towards the individual, and consequently the threats to privacy are more severe — while highlighting important differences in the rules drafted under section 69.

Who may lawfully intercept?

Section 69 empowers the “Central Government or a state government or any of its officers specially authorized by the Central Government or the state government, as the case may be” to exercise powers of interception under this section. Under the Interception Rules 2009, the secretary in the Ministry of Home Affairs has been designated as the "competent authority", with respect to the Central Government, to issue directions pertaining to interception, monitoring and decryption. Similarly, the respective state secretaries in charge of Home Departments of the various states and union territories are designated as "competent authorities" to issue directions with respect to the state government.[129]

[128] See also Nanjappa, V., 2008. 'I have lost everything'. Rediff.com News. Available at: http://www.rediff.com/news/2008/jan/21inter.htm [Accessed March 23, 2011].

[129] By contrast, rules framed under Section 69B designates only the Secretary to the Government of India in the Department of Information Technology under the Ministry of Communications and IT as the “competent authority” to issue orders of interception.

	Central Government	State/Union Territory
Ordinary Circumstances	Secretary in the Ministry of Home Affairs	Secretary in charge of Home Departments of State
Emergency	Head or second senior most officer of security and law enforcement	Authorized officer not below the rank of Inspectors General of Police

However, an exception is made in cases of emergency, either

- in remote areas where obtaining prior directions from the competent authority is not feasible or
- for 'operational reasons' [130]where obtaining prior directions is not feasible.

In such cases it would be permissible to carry out interception after obtaining the orders of the Head or second senior most officer of security and law enforcement at the central level, and an authorized officer not below the rank of Inspector General of Police at the state or union territory level. The order must be communicated to the competent authority within three days of its issue, and approval must be obtained from the authority within seven working days, failing which the order would lapse.

Where a state/union territory wishes to intercept/monitor or decrypt information beyond its territory, the competent authority for that state must make a request to the competent authority of the Central Government to issue appropriate directions.

Under what circumstances a direction to intercept may be issued?

Purposes for which interception may be directed

Under section 69, the powers of interception may be exercised by the authorized officers "when they are satisfied that it is necessary or expedient" to do so in the interest of:

- sovereignty or integrity of India,
- defense of India,

[130]It is unclear what these "operational reasons" could mean. The text of the rules provide no useful guidance

- security of the state,
- friendly relations with foreign states or
- public order or
- preventing incitement to the commission of any cognizable offence relating to above or
- for investigation of any offence.

Under section 69B, the competent authority may issue directions for monitoring for a range of "cyber security"[131] purposes including, inter alia, "identifying or tracking of any person who has breached, or is suspected of having breached or being likely to breach cyber security".

Contents of direction

The reasons for ordering interception must be recorded in writing.[132]In the case of a direction under section 69, in arriving at its decision, the competent authority must consider alternate means of acquiring the information other than issuing a direction for interception.[133] The direction must relate to information sent or likely to be sent from one or more particular computer resources to another (or many) computer resources.[134] The direction must specify the name and designation of the officer to whom information obtained is to be disclosed, and also specify the uses for which the information is to be employed.[135]

Duration of interception and periodic review

Once issued, an interception direction issued under section 69 remains in force for a period of 60 days (unless withdrawn earlier), and may be renewed for a total period not exceeding 180 days.[136] A direction issued under section 69B does not expire automatically through the lapse of time and theoretically would continue until withdrawn.

[131] "Cyber security breach" is defined as meaning "any real or suspected adverse event in relation to cyber security that violates an explicitly or implicitly acceptable security policy resulting in unauthorized access, denial of service, disruption, unauthorized use of a computer resource for processing or storage of information or changes to date, information without authorization". Rule 2(f) of the Monitoring and Collecting of Traffic Data Rules 2009.
[132] Rule 7 of the Interception Rules 2009; Rule 3(3) of the Monitoring and Collecting of Traffic Data Rules 2009
[133] Rule 8 of the Interception Rules 2009
[134] Rule 9 of the Interception Rules 2009
[135] Rule 10 of the Interception Rules 2009;
[136] Rule 11 of the Interception Rules 2009

Within seven days of its issue, a copy of a direction issued under either section 69 or section 69B must be forwarded to the review committee constituted to oversee wiretapping under the Indian Telegraph Act.[137] Every two months, the review committee is required to meet and record its findings as to whether the direction was validly issued in light of section 69(3)[138]. If the review committee is of the opinion that it was not, it can set aside the direction and order destruction of all information collected.[139]

What powers of interception do they have?

The competent authority may, in his written direction "direct any agency of the appropriate government to intercept monitor or decrypt or cause to be intercepted or monitored or decrypted any information generated, transmitted, received or stored in any computer resource".[140]

Accordingly, the subscriber or intermediary or any person in charge of the computer resource is must, if required by the designated government agency, extend all facilities, equipment and technical assistance to:

- provide access to or secure access to the computer resource generating, transmitting, receiving or storing such information; or
- intercept, monitor, or decrypt[141] the information, as the case may be; or
- Provide information stored in computer resource.

The intermediary must maintain records mentioning the intercepted information, the particulars of the person, e-mail account, computer resource, etc., that was intercepted, the particulars of the authority to whom the information was disclosed, number of copies of the information that were made, the date of their destruction, etc.[142] This list of requisitions received must be forwarded to the government agency once every 15 days to

[137] Rule 22 of the Interception Rules 2009
[138] Ibid

[140] Section 69 of the IT Act
[141] The intermediary is required to assist in the decryption only to the extent that the intermediary has control over the decryption key. See Sub-Rule 13(3) of the Interception Rules 2009. Rule 17 enjoins the holder of a decryption key to provide decryption assistance when directed to by the competent authority
[142] Rule 16 of the Interception Rules 2009

ensure their authenticity.[143]In addition, a responsibility is cast on the intermediary to put in place adequate internal checks to ensure that unauthorized interception does not take place, and extreme secrecy of intercepted information is maintained.[144]

How long can information collected during interception are retained?

Interception rules require all records, including electronic records pertaining to interception to be destroyed by the government agency "in every six months except in cases where such information is required or likely to be required for functional purposes". In the case of the Monitoring and Collecting of Traffic Data Rules 2009, this period is nine months from the date of creation of record. In addition, all records pertaining to directions for interception and monitoring are to be destroyed by the intermediary within a period of two months following discontinuance of interception or monitoring, unless they are required for any ongoing investigation or legal proceedings. In the case of Monitoring Rules, this period is six months from the date of discontinuance.

What penalties accrue to intermediaries and subscribers for resisting interception?

Section 69 stipulates a penalty of imprisonment upto a term of seven years and fine for any "subscriber or intermediary or any person who fails to assist the agency" empowered to intercept.

Data Protection under the IT Act

Data Retention Requirements of 'Intermediaries': Section 67C of the amended IT Act mandates 'intermediaries'[145] to maintain and preserve certain information under their control for durations which are to be specified by law, any intermediary who fails to retain such electronic records may be punished with imprisonment up to three years and a fine.

Liability for body-corporate under section 43A

The newly inserted section 43A makes a start at introducing a mandatory data protection regime in Indian law. The section obliges corporate bodies who 'possess, deal or handle'

[143] Rule 18 of the Interception Rules 2009

[144] Rule 20 of the Interception Rules 2009; Rules 10 & 11 of the Monitoring and Collecting of Traffic Data Rules 2009. Failure to maintain secrecy of data may attract punishment under Section 72 of the Information Technology Act.

any ‘sensitive personal data’ to implement and maintain ‘reasonable’ security practices, failing which they would be liable to compensate those affected by any negligence attributable to this failure. It is only the narrowly-defined ‘body corporate’[146] engaged in ‘commercial or professional activities’ that are the targets of this section. Thus government agencies and non-profit organizations are entirely excluded from the ambit of this section. [147]

“Sensitive personal data or information” is any information that the Central Government may designate as such, when it sees fit to. The “reasonable security practices” which the section obliges body corporate to observe are restricted to such measures as may be specified either “in an agreement between the parties” or in any law in force or as prescribed by the Central Government. By defining both “sensitive personal data” and “reasonable security practice” in terms that require executive elaboration, the section in effect pre-empts the Courts from evolving an iterative, contextual definition of these terms.

Mphasis BPO Fraud: 2005[148]

In December 2004, four call centre employees, working at an outsourcing facility operated by MphasiS in India, obtained PIN codes from four customers of MphasiS’ client, Citi Group. These employees were not authorized to obtain the PINs. In association with others, the call centre employees opened new accounts at Indian banks using false identities. Within two months, they used the PINs and account information gleaned during their employment at MphasiS to transfer money from the bank accounts of CitiG roup customers to the new accounts at Indian banks.

By April 2005, the Indian police had tipped off to the scam by a U.S. bank, and quickly

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[146] Section 43A defines "'body corporate" as any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities;

[147] This does not necessarily mean that these entitles are exempt from taking reasonable care to safeguard information that they collect, maintain or control – only that remedies against the government must be sought under general common law, rather than under the IT Act.

[148] Anon, 2005. The MphasiS Scandal – And How it Concerns U.S. Companies Considering Offshore BPO. Carretek. Available at: http://www.carretek.com/main/news/articles/MphasiS_scandal.htm [Accessed March 29, 2011]. See also Anon, 2005. MphasiS case: BPOs feel need to tighten security. Indian Express. Available at: http://www.expressindia.com/news/fullstory.php?newsid=44856 [Accessed March 29, 2011].

identified the individuals involved in the scam. Arrests were made when those individuals attempted to withdraw cash from the falsified accounts, $426,000 was stolen; the amount recovered was $230,000.

Draft Reasonable Security Practices Rules 2011[149]

In February 2011, the Ministry of Information and Technology, published draft rules under section 43A in order to define "sensitive personal information" and to prescribe "reasonable security practices" that body corporate must observe in relation to the information they hold.

Sensitive Personal Information: Rule 3 of these Draft Rules designates the following types of information as 'sensitive personal information[150]':

- password;
- user details as provided at the time of registration or thereafter;
- information related to financial information such as Bank account / credit card / debit card / other payment instrument details of the users;
- physiological and mental health condition;
- medical records and history;(vi) Biometric information;
- information received by body corporate for processing, stored or processed under lawful contract or otherwise;
- call data records;

This however, does not apply to "any information that is freely available or accessible in public domain or accessible under the Right to Information Act, 2005".

[149] The Information Technology (Reasonable security practices and procedures and sensitive personal information) Rules, 2011. Available at http://www.mit.gov.in/sites/upload_files/dit/files/senstivepersonainfo07_02_11.pdf, last accessed February 15th, 2011.

[150] Rule 5 of the Draft Rules

They and "any person" holding sensitive personal information are forbidden from "keeping that information for longer than is required for the purposes for which the information may lawfully be used"[151]

Mandatory Privacy Policies for body corporate

Rule 4 of the draft rules enjoins a body corporate or its representative who "collects, receives, possess, stores, deals or handles" data to provide a privacy policy "for handling of or dealing in user information including sensitive personal information". This policy is to be made available for view by such "providers of information".[152] The policy must provide details of:

- Type of personal or sensitive information collected under sub-rule (ii) of rule 3;
- Purpose, means and modes of usage of such information;
- Disclosure of information as provided in rule 6 .

Prior Consent and Use Limitation during Data Collection

In addition to the restrictions on collecting sensitive personal information, body corporate must obtain prior consent from the "provider of information" regarding "purpose, means and modes of use of the information". The body corporate is required to "take such steps as are, in the circumstances, reasonable"[153]to ensure that the individual from whom data is collected is aware of :

- the fact that the information is being collected; and
- the purpose for which the information is being collected; and
- the intended recipients of the information; and
- the name and address of :

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[151] This is perhaps a bit vague, since the potential 'lawful uses' are numerous and could be inexhaustible. It is unclear whether "lawful usage" is coterminous with "the uses which are disclosed to the individual at the time of collection". In addition, this rule is framed rather weakly since it does not impose a positive obligation (although this is implied) to destroy information that is no longer required or in use.

[152]."Provider of data" is not the same as individuals to whom the data pertains, and could possibly include intermediaries who have custody over the data. We feel this privacy policy should be made available for view generally – and not only to providers of information. In addition, it might be advisable to mandate registration of privacy policies with designated data controllers.

[153] One wonders about the convoluted language used here when a simpler phrase like "take reasonable steps" alone might have sufficed - reasonableness has generally been interpreted by courts contextually. As the Supreme Court has remarked, "`Reasonable' means prima facie in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know. See Gujarat Water Supply and Sewage Board v. Unique Erectors (Guj) AIR 1989 SC 973

- the agency that is collecting the information; and
- the agency that will hold the information.

During data collection, body corporates are required to give individuals the option to opt-in or opt-out from data collection.[154] They must also permit individuals to review and modify the information they provide "wherever necessary".[155] Information collected is to be kept securely[156], used only for the stated purpose [157] and any grievances must be addressed by the body corporate "in a time bound manner".[158]

Unlike "sensitive personal information" there is no obligation to retain information only for as long as is it is required for the purpose collected.

Limitations on Disclosure of Information

The draft rules require a body corporate to obtain prior permission from the provider of such information obtained either "under lawful contract or otherwise" before information is disclosed.[159] The body corporate or any person on its behalf shall not publish the sensitive personal information. Any third party receiving this information is prohibited from disclosing it further.[160] However, a proviso to this sub-rule mandates information to be provided to 'government agencies' for the purposes of "verification of identity, or for prevention, detection, investigation, prosecution, and punishment of offences". In such cases, the government agency is required to send a written request to the body corporate possessing the sensitive information, stating clearly the purpose of

[154] Sub-Rule 5(7).

[155] Sub-Rule 5(6). It is unclear what would count as a 'necessary' circumstance and who would be the authority to determine such necessity.

[156] Sub-Rule 5(8).

[157] Sub-Rule 5(5).
[158] Sub-Rule 5(9).
[159] Sub-Rule 6(1) There are two problems with this rule. First, it requires prior permission only from the provider of information, and not the individual to whom the data pertains. In effect this whittles down the agency of the individual in being able to control the manner in which information pertaining to her is used. Second, it is not clear whether this information includes "sensitive personal information". The proviso to this rule includes the phrase "sensitive information", which would suggest that such information would be included. This makes it even more important that the rule require that prior permission be obtained from the individual to whom the data pertains and not merely from the provider of information.

[160] Sub-Rule 6(4).

seeking such information. The government agency is also required to "state that the information thus obtained will not be published or shared with any other person".[161]

Sub-rule (2) of rule 6 requires "any information" to be "disclosed to any third party by an order under the law for the time being in force." This is to be done "without prejudice" to the obligations of the body corporate to obtain prior permission from the providers of information.[162]

Reasonable Security Practices

Rule 7 of the draft rules stipulates that a body corporate shall be deemed to have complied with reasonable security practices if it has implemented security practices and standards which require:

- a comprehensive documented information security program; and
- Information security policies that contain managerial, technical, operational and physical security control measures that are commensurate with the information assets being protected.

In case of an information security breach, such body corporate will be "required to demonstrate, as and when called upon to do so by the agency mandated under the law, that they have implemented security control measures as per their documented information security program and information security policies".

The rule stipulates that by adopting the International Standard IS/ISO/IEC 27001 on "Information Technology – Security Techniques – Information Security Management System – Requirements", a body corporate will be deemed to have complied with reasonable security practices and procedures.

[161] This is a curious insertion since it begs the question as to the utility of such a statement issued by the requesting agency. What are the sanctions under the IT Act that may be attached to a government agencies that betrays this statement? Why not instead, insert a peremptory prohibition on government agencies from disclosing such information (with the exception, perhaps, of securing conviction of offenders)?

[162] This sub-rule does not distinguish between orders issued by a court and those issued by an administrative/quasi-judicial body.

The rule also permits "industry associations or industry clusters" who are following standards other than IS/ISO/IEC 27001 but which nevertheless correspond to the requirements of sub-rule 7(1), to obtain approval for these codes from the government. Once this approval has been sought and obtained, the observance of these standards by a body corporate would deem them to have complied with the reasonable security practice requirements of section 43A.

Penalties and Remedies for breach of Data Protection

Civil Liability for Corporate:As mentioned above, anybody corporate who fail to observe data protection norms may be liable to pay compensation if:

- it is negligent in implementing and maintaining reasonable security practices, and thereby
- causes wrongful loss or wrongful gain to any person;[163]

Claims for compensation are to be made to the adjudicating officer appointed under section 46 of the IT Act. Further, details of the powers and functions of this officer are given in succeeding sections of this note.

Criminal liability for disclosure of information obtained in the course of exercising powers under the IT Act

Section 72 of the Information Technology Act imposes a penalty on "any person" who, having secured access to any electronic record, correspondence, information, document or other material using powers conferred by the Act or rules, discloses such information without the consent of the person concerned. Such unauthorized disclosure is punishable "with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both."

[163] "Wrongful loss" and "wrongful gain" have been defined by Section 23 of the Indian Penal Code. Accordingly, "Wrongful gain" is gain by unlawful means of property which the person gaining is not legally entitled. "Wrongful loss"- "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled." The section also includes this interesting explanation "Gaining wrongfully, losing wrongfully- A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of property". Following this, it could be possible to argue that the retention of data beyond the period of its use would amount to a "wrongful gain

Criminal Liability for unauthorized disclosure of information by any person of information obtained under contract

Section 72A of the IT Act imposes a penalty on any person[164] (including an intermediary) who:

- has obtained personal information while providing services under a lawful contract and
- discloses the personal information without consent of the person,
- with the intent to cause, or knowing it is likely to cause wrongful gain or wrongful loss[165]
- Such unauthorised disclosure to a third person is punishable with imprisonment upto three years or with fine upto Rs five lakh, or both.

Whom to call? Adjudicatory Mechanism and Remedies under the IT Act

As mentioned above, the IT Act provides for both the civil remedy of damages in compensation (Chapter IX) as well as criminal penalties for offences such as imprisonment and fine (Chapter XI). In general, claiming a civil remedy does not bar one from seeking criminal prosecution and ideally both should be pursued together. For clarity, in the sections that follow, we will be discussing the two procedures separately.

Civil Damages and Compensation

Whom to approach?

Section 46 of the IT Act empowers the Central Government to appoint "adjudication officers" to adjudicate whether any person has committed any of the contraventions described in Chapter IX of the Act, and to determine the quantum of compensation payable. Accordingly, the Central Government has designated the secretaries of the Department of Information Technology of each of the states or union territories as the "adjudicating officer" with respect to each of their territories.[166]

[164] Section 3(39) of the General Clauses Act defines a person to include "any company or association or body of individuals whether incorporated or not". An interesting question here would be whether the State can be considered "a person" so that it can be held liable for unauthorized disclosure of personal information. In an early case of Shiv Prasad v. Punjab State AIR 1957 Punj 150, the Punjab High Court had excluded this possibility. However, the case law on this point has not been consistent. In Ramanlal Maheshwari v.Municipal Committee, the MP High Court held that the Municipal Council could be treated as a 'person' for the purpose of levying a fine attached to a criminal offence. Statutory corporate bodies (such as the proposed UID Authority of India) have been held to be 'persons' for purposes of law . See Commissioners, Port of Calcutta v. General Trading Corporation, AIR 1964 Cal 290. Here under the Calcutta Port Act, Port Commissioners were declared to be a "body corporate", and hence were held to be a 'person'.

[165] Information Technology Act,2000

[166] See G.S.R.240(E) New Delhi, the 25th March, 2003 available at < http://www.mit.gov.in/content/it-act-notification-no-240>

However, a pecuniary limit has been placed on the powers of adjudicating officers, and they may only adjudicate cases where the quantum of compensation claimed does not exceed Rs. five crores. In cases where the compensation claimed exceeds this amount, jurisdiction would vest in the "competent Court", under the Code of Civil Procedure.[167]

Section 61 of the Act bars ordinary civil Courts from jurisdiction over matters which the adjudicating officers have been empowered to decide under this Act.

When must a complaint be filed?

The Limitation Act provides that a suit must be filed within three years from when the right to sue accrues.[168]

What is the procedure?

Section 46 and the rules framed under that section provide elaborate guidelines on the procedure that is to be followed by the adjudicating officer. Thus, the adjudicating officer is required to give the accused person "a reasonable opportunity for making representation in the matter". Thereafter, if , on an inquiry, "he is satisfied that the person has committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section."

In order to carry out their duties adjudicating officer have been invested with the powers of a civil Court which are conferred on the cyber appellate tribunal.[169] Additionally, they have the power to punish for their contempt under the Code of Criminal Procedure.

Rules framed under the section provide further details on the procedure that must be followed and provide for the issuance of a "show cause notice", manner of holding enquiry, compounding of offences, etc.[170]

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[167] See Section 46(1A).

[168] Schedule I, Part X of the Limitation Act "Suits for which there is no prescribed period."

[169] The powers of the Cyber Appellate Tribunal under Section 58 include the powers of (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents or other electronic records; (c) receiving evidence on affidavits; (d) issuing commissions for the examination of witnesses or documents; (e) reviewing its decisions; (f) dismissing an application for default or deciding it ex parte.

[170] Information Technology (Qualification and Experience of Adjudicating Officers and Manner of holding Enquiry) Rules, 2003 [GSR 220(E)] Available at <http://cca.gov.in/rw/resource/notification-gsr220e.pdf?download=true>.

Section 47 provides that in adjudging the quantum of compensation, the adjudicating officer shall have due regard to the following factors, namely:

- the amount of gain of unfair advantage, wherever quantifiable, made as a result of the default;
- the amount of loss caused to any person as a result of the default;
- the repetitive nature of the default.

Where must a complaint be filed and in what format?

The complaint must be made to the adjudicating officer of the state or union territory on the basis of location of computer system, computer network. The complaint must be made on a plain paper in the format provided in the Performa attached to the rules.[171]

In case the offender or computer resource is located abroad, it would be deemed, for the purpose of prosecution to be located in India.[172]

How long does the process take?

The Rules direct that the whole matter should be heard and decided "as far as possible" within a period of six months.[173]

How much does it cost?

The Rules stipulates a variable fee payable by a bank draft calculated on the basis of damages claimed by way of compensation

a) Upto Rs. 10,000	10% ad valorem rounded off to nearest next hundred
b) From 10001 to Rs.50000	Rs. 1000 plus 5% of the amount exceeding Rs.10,000 rounded off to nearest next hundred
c) From Rs.50001 to Rs.100000	Rs. 3000/- plus 4% of the amount exceeding Rs. 50,000 rounded off to nearest next hundred

[171] Ibid Rule 4(b).

[172] Section 75.

[173] Ibid, Rule 4(k).

d) More than Rs. 100000 Rs.5000/- plus 2% of the amount exceeding Rs. 100,000 rounded off to nearest next hundred

Appeals to the Cyber Appellate Tribunal and the High Court

The Act provides for the Constitution of a Cyber Appellate Tribunal to hear appeals from cases decided by the adjudicating officer. Within 25 days of the copy of the decision being made available by the adjudicating officer, the aggrieved party may file an appeal before the Cyber Appellate Tribunal.

Section 57 provides that the appeal filed before the cyber appellate tribunal shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal. Section 62 gives the right of appeal to a high Court to any person aggrieved by any decision or order of the cyber appellate tribunal on any question of fact or law arising out of such order. Such an appeal must be filed within 60 days from the date of communication of the decision or order of the Cyber Appellate Tribunal.

Can contraventions be compounded (compromised) with the offender?

Except in the case of repeat offenders, contraventions may be compromised by the adjudicating officer or between the parties either before or after institution of the suit. Where any contravention has been compounded the IT Act provides that "no proceeding or further proceeding, as the case may be, shall be taken against the person guilty of such contravention in respect of the contravention so compounded".[174]

Criminal Penalties

The process described above applies to "contraventions" under Chapter IX of the Act. In addition to being liable to pay compensation, in the cases falling under section 43, such offenders may also be liable for criminal penalties such as imprisonment and fines.[175] This

[174] Section 63 of the Act.

[175] Prior to amendment in 2008, contraventions listed in Section 43 were only liable to be compensated by damages through civil proceedings. Thus in 2007, the Madras High Court annulled an FIR lodged in a police station which listed an activity mentioned in 43(g). See S. Sekar vs The Principal General Manager < http://indiankanoon.org/doc/182565/> This position has however been changed with the new Section 66 which makes all actions listed in Section 43 an offence when committed with dishonest or fraudulent intent. Thus an FIR can be lodged with respect to these activities as well.

sub-section of this paper deals with the procedure to be followed with respect to the criminal offences set out under Chapter XI of the Act[176] .

Whom to approach? Who can take cognizance of offences and investigate them?

Section 78 of the IT Act empowers police officers of the rank of Inspectors and above to investigate offences under the IT Act. Many states have set up dedicated cyber crime police stations to investigate offences under this Act.[177] Thus, for example, the State of Karnataka has set up a special cyber crime police station responsible for investigating all offences under the IT Act with respect to the entire territory of Karnataka.[178]

When must a complaint be lodged?

Although there is no time limit prescribed by the IT Act or the Code of Criminal Procedure with respect to when an FIR must be filed, in general, Courts tend to take an adverse view when a significant delay has occurred between the time of occurrence of an offence and it's reporting to the nearest police station.

The Code of Criminal Procedure forbids Courts from taking cognizance of cases after three years "if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years". Where either the commission of the offence was not known to the person aggrieved, or where it is not known by whom the offence committed, this period is computed from the date on which respectively the offence or the identity of the offender comes to the knowledge of the person aggrieved.[179]

What is the procedure?

No special procedure is prescribed for the trial of cyber offences and hence the general provisions of criminal procedure would apply with respect to investigation, charge sheet, trial, decision, sentencing and appeal.

[176] for example, see sections 2.2 to 2.5 I.T.Act,2000

[177] An incomplete list of cyber crime cells of police in different states can be viewed at <http://infosecawareness.in/cyber-crime-cells-in-india

[178] Home and Transport3 Secretariat, Notification no. HD 173 POP 99 Bangalore, Dated 13th September 2001 Available at < http://cyberpolicebangalore.nic.in/pdf/notification_1.pdf>.visited on 25,April 2014

[179] Sections 468 and 469 of the Code of Criminal Procedure, 1973.

Can offences be compounded?

Offences punishable with imprisonment of upto three years are compoundable by a competent Court. However, repeat offenders cannot have their subsequent offences compounded. Additionally, offences which "affect the socio-economic conditions of the country" or those committed against a child under 18 years of age or against women cannot be compounded. [180]

4.7 Human Rights in cyber space

Cyberspace is the virtual communicative space created by digital technologies. It is not limited to the operation of computer networks, but also encompasses all social activities in which digital information and communication technologies (ICT) are deployed. It thus ranges from computerized reservation systems to automated teller systems and smart cards. With the 'embedding' of digital facilities in more and more objects (from microwave ovens to jogging shoes), these acquire intelligent functions and communicative capacities and begin to create a permanent virtual life-space. [181]The issue of the governance of cyberspace emerges in many current ICT-debates at different levels.

There is the staunch anarchistic position that considers cyberspace a totally new and alien territory where conventional rules do not apply. For those holding this cyber-libertarian view no governance is the best governance. But, however attractive this approach may seem, if more people are to use cyberspace this is likely to need public and corporate policymaking. This is equally the case if cyberspace is to be protected against unprecedented opportunities for criminal activity. Moreover, cyberspace technology does create a virtual reality, but this is not altogether de-linked from politics in the real world.Opposed to cyber-anarchy are those governments who would want a strict regime for activities in cyberspace in order to control not only the pornographers, and neo-Nazis but also the copyright pirates or just anybody who holds politically subversive aspirations. Then there are the cyberspace citizens who feel they can best police themselves and who

[180] Section 77A of the Information Technology Act,2000

[181] Cees J. Hamelink ,Human Rights in Cyberspace, the International Journal for Communication Studies,p.231

discuss among themselves a variety of forms of self regulation ranging from Parent Control software to Cyber Angels, Codes of Conduct and Netiquette.

Cyberspace is perceived by the digital settlers as the last ‘electronic’ frontier, but cyberspace also colonizes our non-virtual reality and lest it totally controls daily life it needs to be governed by norms and rules. A re-current question is whether cyberspace gives rise to new forms of democratic [electronic] governance, which are less-territory based, less hierarchical, more participatory, and demand new rules for political practice.

Whatever position one may take regarding future governance of cyberspace, it can not be denied that in any case (moral) choices have to be made and are being made since inevitably the proliferation of cyberspace technologies implies like all technological development a confrontation with moral issues on different levels.

These relate to -among others- choices about the way the technology will be designed; choices among possible applications and the responsibility for certain applications; choices about the the introduction and the use of applications. They also address issues such as the unequal distribution of harm and benefit of applications among social actors; the control over technology and its administration; and the uncertainty about the future impacts of technology.

The specific question that concerns me here is whether the current international human rights regime can provide us with meaningful moral and legal guidance for the solution of these moral choices.

A first issue that emerges concerns the observation that the human rights regime is firmly embedded in modernist, Enlightenment thought that seems to collide with the view that cyberspace is "a manifestation of the postmodern world" .Characteristic of the modern world are the physical categories, such as location, gender, ethnicity, appearance, from which cyberspace seems to liberate us. There is a pragmatic answer to this question. Even if the international human rights regime is affected by the flaws of modernity in today’s reality the regime is more noted for its violations than its respect, and the world would undoubtedly be a safer place for the world’s majority if its provisions were implemented. Moreover, cyberspace itself it solidly rooted in and connected with the forces of modernity. It originates with the military establishment (that created the predecessor of the

Internet) and is strongly promoted by the world's leading financial and industrial corporations.It seems however necessary to expand the discussion with a conceptual critique of the conventional human rights discourse. The real significance of human rights standards can only be uncovered if a number of theoretical inadequacies are addressed and remedied. Conventional theories on human rights imply limitations to the understanding of human rights that erode the effective implementation of the very basic claims they enunciate. These theories are characterized by their exclusive emphasis on individual rights; their limited interpretation of the concept 'freedom'; their limited understanding of the concept 'equality'; their limited scope for 'horizontal effect'; and their lack of institutional consideration.

Horizontal effect

Conventional human rights thinking mainly focuses on the vertical state/citizen relation and the basic moral standards almost exclusively focus on the political sphere. This ignores the possibility that concentration of power in the hands of individuals can be as threatening as state power. Whenever citizens pursue different economic interests, individual human rights will be under serious threat. Citizens also need to be protected against each other. A concept like of equality should therefore be extended to all those (socio-economic and cultural) spheres that are essential to human emancipation and self-development. Beyond the concern to realize equal voting rights in democratic societies, for example, the need to create equal participation in cultural life, should receive similar emphasis. Human rights cannot be realized without involving citizens in the decision-making processes about the spheres in which freedom and equality are to be achieved.

The idea of human rights has thus to extend to the social institutions (the institutional arrangements) that would facilitate the realization of fundamental standards. This moves the democratic process beyond the political sphere and extends the requirement of participatory institutional arrangements to other social domains. It claims that also culture and technology should be subject to democratic control.

This is particularly important in the light of the fact that current democratization processes (the "new world order" processes) tend to delegate important areas of social life to private rather than to public control and accountability. Increasingly large volumes of social

activity are withdrawn from public accountability, from democratic control, and from the participation of citizens in decision-making.

The People's Communication Charter

The recognition of individual rights under international law was thus linked with the notion that individuals also have duties under international law. This was eloquently expressed in 1947 by Mahatma Gandhi in a letter to the director of UNESCO about the issue of human rights. Gandhi wrote, "I learnt from my illiterate but wise mother that rights to be deserved and preserved came from duty well done".

The People's Communication Charter articulates essential rights and responsibilities that ordinary people have in relation to their cultural environment. It represents an attempt to redress some of the weaknesses inherent in the conventional human rights regime. It aspires to a democratic and sustainable organization of the world's communication structures and information flows. It is abundantly clear that these great ideas cannot be simply implemented by drafting and revising a text. The text constitutes merely a point of reference for a much needed civil activism that targets what arguably is a very central social domain.

The People's Communication Charter is an initiative of the Third World Network (Penang, Malaysia), the Centre for Communication & Human Rights (Amsterdam, the Netherlands), the Cultural Environment Movement (USA), the World Association of Community Radio Broadcasters (AMARC), and the World Association for Christian Communication.

The Charter provides the common framework for all those who share the belief that people should be active and critical participants in their social reality and capable of governing themselves. The People's Communication Charter could be a first step in the development of a permanent movement concerned with the quality of our cultural environment.

The movement should not be seen by those who work in the mass media as a populist intervention with their professional independence. It should rather be welcomed as a creative alliance between media producers and consumers against those commercial forces that are more intent on generating profits than on informing people properly. If we want to

apply human rights standards to relations in cyberspace this requires the active responsibility on behalf of those who are concerned.

From the beginning it was clear that the Charter should not be seen as an end in itself. It intends to provide the basis for a permanent critical reflection on those worldwide trends that determine the quality of our lives in the third millennium. The Charter has now been adopted by a growing number of organizations and individuals around the world and several activities inspired by the Charter are planned for the coming years, among them an international tribunal on violations of the Charter's rights. To-day the Web site of the Charter[182] is the place where such events and the progress in widening support for the PCC is made public. The core themes of the movement concern:

1. Communication and human rights: Communication and information services should be guided by respect for fundamental human rights.

2. The public domain. Communication resources (such as airwaves and outer space) belong to the "commons"; they are public domain and should not be appropriated by private parties.

3. Ownership. Communication and information services should not be monopolized by governments or business firms.

4. Empowerment. People are entitled to the protection of their cultural identity and to the development of their communicative capacities.

5. Public accountability. Providers of communication and information services should accept public accountability for the quality of their performance.

The cultural environment is ultimately not only shaped by governments and media moguls, but in important ways by the clients of the system. We need a critical debate on the use of the international human rights regime as instrument of moral guidance. Ultimately, all depends upon the commitment of people themselves to shaping humane governance for our future in cyberspace.

[182] In August 1997, for example, the Charter was displayed at the famous Dokumenta exhibition at Kassel, Germany. The text was discussed and signed by many visitors.

CHAPTER-V

Implication of commercialization and commodification of press and media on the welfare society

Chapter-V : Implication of commercialization and commodification of press and media on the welfare society

Information and Communication Technology (ICTs) allow users to participate in a rapidly changing world in which work and other activities are increasingly transformed by access to varied and developing technologies. ICT tools can be used to find, explore, analyze, exchange and present information responsibly and without discrimination. ICT can be employed to give users quick access to ideas and experiences from a wide range of people, communities and cultures.[1] Commercialization of media is the commercial promotion of goods, services, companies and ideas, usually performed by an identified sponsor, and performed through a variety of media. Marketers see advertising as part of an overall promotional strategy. Other components of the promotional mix include publicity, public relations, personal selling, and sales promotion. And advertisements are the representatives of their brand and producers which work for promotion of the product just like a salesman. As we see the advertisements, we may also be able to "see through" them to broader social and cultural realities. We can note three contexts for these documents.

First of all, they are selling tools and reflect the business needs of the corporations that pay for them. Posing the questions about purposes and methods will give us insights into the role of advertising in business.

Second, advertisements are cultural indicators, though distorted ones.

Finally, bear in mind that ads emerge from a professional culture of the advertising industry and suggest the aspirations and anxieties of the men who create them.

As for as history of Advertisement and commercialization is concern it evolved during late 17th century when the most common form of advertising was by word of mouth. Wall or rock painting for commercial advertising is another manifestation of an ancient media

[1] http://en.wikipedia.org/wiki/Information_and_communication technologies, visited on 5th April2010

advertising form, which is present to this day in many parts of Asia, Africa, and South America. For instance, the tradition of wall paintings can be traced back to Indian rock-art a painting that goes back to 4000 BC. As printing developed in the 15th and 16th century, advertising expanded to include handbills. In the 17th century advertisements started to appear in weekly newspapers in England[2]. The ways of advertisements changed with the time so that the presentation as previous advertisements was informative types with the information regarding product only and nothing more than that. But with the time ways of presentation of advertisements get changed. When we say ways of advertisements then we can see various methods as print media, voice promotions through radio and visuals by way of hoardings, billboards and street advertisements, also through TV commercials with the time. There are various new ways came with Internet and nowadays some persons are using their body for advertisements to fulfill their needs and for getting name and fame by way like this the advertisement industry is going through spontaneous change.

The late 1980s and early 1990s saw the introduction of cable television that's Pioneering the concept of the music video, ushered in a new type of advertising: the consumer tunes in for the advertisement, rather than it being a byproduct or afterthought. As cable (and later satellite) television became increasingly prevalent, "specialty" channels began to emerge, and eventually entire channels, such Home Shopping Network and Shop TV, devoted to advertising merchandise, where again the consumer tuned in for the advertisement.

Today, innovations as "guerrilla" promotions, which involve unusual approaches such as staged encounters in public places, giveaways of products such as cars that are covered with brand messages, and interactive advertising where the viewer can respond to become part of the advertising message. This reflects an increasing trend of interactive and "embedded" ads, such as via product placement, having consumers vote through text messages, and various innovations utilizing social networking sites.

And nowadays a trend is emerging that of ads on the body parts, as one student used his forehead for ad to fill his college fee and some pregnant women used their stomach for

[2] J Natarajan,History of Indian Journalism,jain book pub.2003p.25

advertisement of infant meal's advertisement. So there are lot of developments occurred in promotion of product in the market and they are now entering directly to the society, home, family, mind and heart of the person.

Basic analytic concepts: Advertisers always concentrate on the targeted audience and analyze their advertisements on various ground and find the answer that they are fulfilling the need of the targeted consumer or not. Hence they go for certain definite concepts and make the advertisement according to that. Presupposition and relevance: Advertisements are always on the prior assumptions and also see the relevance of any advertisement and test it on the basis of certain criteria, like trends in society or the product is meeting with the needs of the consumer at the present time or not so advertisers can make an ad according to the present day scenario. As when Bisleri was entering the Indian market for the first time, they directly related their name with clarity because they know no body will come automatically to buy water, since till that time the sale of packaged drinking of water was like finding life on Mars.

Organization within advertisements: Since a criterion is decided for the components of advertisements so as for the institutions used in the advertisement and one cannot use unnecessary institution and organizations in an ad because in that condition people cannot correlate the ad with the reality.

Names used in advertising: Names are also playing an important role in promotion of any product because there are many products in the market and person want that one with which he can feel himself in ease, so according to the place and people to whom we are concerned are the deciding factors during the use of names in any aid. e.g. the new ad of Cadbury is totally targeting the rural part of India hence they are using Amitabh Bachchan with miss Palanpur who is a Cow in place of a girl.

Media and the internet are agents of globalization; both generate the sense of a closer world, one that can be previewed by clicking on the appropriate link. Increasingly throughout the 1990s to the present, the internet has facilitated transactions between suppliers. Media is not only a mirror of the society but also an instrument of political, economical, cultural, social change. Its main aim is to spread noble ideas of the people and the expression, thought, perception, feelings and other aspects .It must expose social evils and help the eradication of discrimination, inequality, race, colour, gender and other

sources of violence. This is the period of Information Explosion and this age is considered as the Age of Information this growing trend has made the involvement of youth, men, women and children in shaping their life patterns as well as providing a better outlook of socialization pattern. Communities globally are becoming quickly linked through communications and commerce.

5.1 Commodificationis of media

Commodification is the process of transforming things valued for their use in to marketable products that are valued for what they can bring in exchange. This can be seen, for example, in the process of turning a story that friends enjoy in to a film or a novel to be sold in the marketplace. Commodification is the transformation of goods and services, as well as ideas or other entities that normally may not be considered goods.[3]How does the human act of communication become a product produced for a profit? Spatialization is the process of overcoming the constraints of geographical space with, among other things, mass media and communication technologies. For example, television over comes distance by bringing images of world event to every part of the globe and companies increasingly use computer communication to organize business on a worldwide basis.

In the United States, we recognize a commodity as something that is in demand; as a product that is desired; as a good that is mass-produced and can often times be purchased. This understanding of a commodity does not seem to raise any sort of ethical or moral issues at first glance; however, when we realize that our broad definition surprisingly includes the human body – due to the fact we live in a time where pornography and advertising are far too prevalent – I believe we are forced to question not only our understanding of the concept, but more importantly the role this commodification of the human body plays in reiterating gender stereotypes and gender inequality.

5.2 Emerging aspects of Commercialize Media

The strength and importance of media in a democracy is well recognized. Article 19(1)(a) of the Indian Constitution, which gives freedom of speech and expression includes within its ambit, freedom of press. The existence of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly mixed society

[3] Karl Polanyi , "The Self-Regulating Market", Economics as a Social Science, 2nd edn, 2004,p.40

like India. Media is not only a medium to express once feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agenda. The pivotal role of the media is its ability to mobilize the thinking process of millions. But in today's highly commercialized market, the press is losing its main focus. [4]Newspapers came to India during the colonial period serving as an instrument for colonising and proselytising on one hand and the struggle for independence on the other hand. This heritage of publishing not for money but to advocate social transformation was carried over into postcolonial India. The first Prime Minister of independent India, Jawaharlal Nehru argued that the press should work hand in hand with the political avant-garde to advance the nation in the making. According to his views, news papers had the power to shape society and he saw them as an instrument apt for spreading modernity and reconfiguring social identities pertaining to class, gender, caste, occupation and religion. For at least 40 years the ideology of a 'progressive' press provided the blueprint for defining and understanding journalistic tasks. Even without direct political control, it promoted an excessive closeness between the government and the press.

The publication business was implicated heavily between 1975 and 1977 when Indira Gandhi imposed censorship that lasted for 15 months. Retrospectively this intervention marks a watershed in Indian publishing. The years following the declaration of the State of Emergency saw the beginning of a steep and continuing rise in circulation figures and a profound transmutation of news ideologies, turned to commercial interests. The factors advancing these changes were political and social as well as economic. Harassment during the emergency as well as the new popularity of the Hindu nationalist movement heightened political awareness and left people craving information. Growing literacy and increased purchasing power of consumers further boosted circulation figures. Most importantly economic transformation triggered radical revisions in business culture. The 1980s saw the State of Emergency was imposed by Indira Gandhi between 1975 and 1977, thus suspending civil liberties and allowing her to rule by decree. During this period the freedom for political mobilization was heavily impacted and may oppositional activists imprisoned. First movement away from a state regulated economy. A dramatic 'u-turn' occurred between 1991 and 1996 when a set of radical economic reforms turned India into a place that wholeheartedly embraced market economy. The reforms led to swift economic

[4] http://usmemoirs.blogspot.in/2008/09/commercialization-of-journalism-in.html,visited on 15,march 2014

growth and rapid globalization. As a corollary the print business experienced sky rocketing revenue from private advertisements. Companies enhanced the quality of newspapers through the import of advanced technology for printing and distribution and adopted new aggressive forms of marketing. In the emerging neo-liberal environment, money-making began to supersede political propaganda for news-making.

There is a fundamental thematic re orientation with newspapers moving away from their strong focus on politics, to include more and more news about the culture, industry ,consumer goods, the media, business, education and health. These themes are covered in an ever growing number of supplements that prove to be extremely popular with readers and advertisers. The introduction of new themes is paralleled by new writing styles. Soft news and creative writing are encouraged and rewarded. This has implications for political reporting, which remains the prime subject of debate in the main pages. Like everything else, politics needs to be sold to the reader. It should introduce matters of the state in an interesting, engaging and reader friendly way. Such instructions motivate journalists to experiment with the ways they portrait leaders, moving away from a mere citation culture to produce articles that use the narration of context to draw attention to political dynamics.

A new brand of journalism has developed which I call 'enterprising journalism'. Sometimes, good news will literally walk through the front door. But, more often than not, the best stories require a lot of research and digging. Some call this muckraking. Others call it investigative journalism. Regardless of what you want to call it, the proper term is "enterprise journalism."[5]

This means to create something to have a story. You make things readable and sellable, though the content is minimal. There is also the practice of going around at random asking everyone what he has to say on a current issue. This is not news. It is a means to fill the pages. What is needed instead are pieces full of information content, organized in a logical way and reaching a logical conclusion.[6] However, what appears to some as a decline in 'fact finding' and the invention of random sensations is for others an acknowledgement of the 'perceptivity' of news, which allows journalists and companies consciously to define their goals. Guided by the idea that the publication of news is

[5] https://bfranklinjournalism.wordpress.com/2011/03/23/citizen-journalism-101-enterprise-journalism/ visited on 24 may 2014
[6] Journalist, Times of India 14.2.2000

creative invention, the selection of articles is not informed by notions of 'completeness' but determined by images of what might interest the reader and what serves the company's policies. Adopting new themes and styles does not necessarily mean to give up the idea that newspapers should be informative and critical. Take, for example, the opinion of a journalist who works in a features section of the Times of India called the Lucknow Times: Lucknow Times is a supplement to the newspaper because it is supposed to be different than the paper. It might talk about the same things, but it does so in a different way: reader-friendly language, upbeat, pointing at the beauty of life instead of just talking about the negative side . Of course the instruction from the head office in Delhi is that it should be light and easy, but we do try to go deep and also tackle serious issues, but in a reader-friendly way. It is not so much a question of what you write but how you write.

Here the journalist is seen as a creative agent, who is experimenting with language in order to convey information. The reporter becomes a writer in his own right. This is recognized also by the increasing use of by-lines in the English-language press. By crediting authors, report erase moved on from a position as conduits to being recognized as individuals who make a difference. Under the aegis of a commercialized press the freedom and the pressure to produce unexpected perspectives can be turned against politicians who today have little bearing on the financial operations of the news company. The management does not encourage critical debate. However, it is much more likely to accept it when it does not infringe on its financial dealings with advertisers. Hence, political debate finds a new arena, following the need to translate the notion of infotainment into a writing practice that satisfies journalists' desire to offer political and social analysis while also complying with policies designed to maximise profit, beyond dumping down This interpretation that sees journalists as active agents and authors of political reflection –admits the adversaries of a profit driven publishing business – stands in contrast to a tendency in media analysis to dismiss infotainment as the sellout of serious political debate. Negative evaluation of news making in the information age has gained strength since the late 1990swhen the effects of political decisions to progressively privatize media – especially in Europe – became apparent. Scholars observe a process of Americanization, dubbed also as tabloidization that significantly impacts on the political process .The spectacle have replaced serious political debate. The audience's are addressed as consumers instead of citizen's .At times the demonizing of private media is mixed with nostalgia for the (lost) benefits of the public broadcasting system.

Commercialisation is the sell-out of the public-service ethos of journalism .which is idealized in the Habermasian senses an area for interest free deliberations produced by the public for the public. Yet, there is also acknowledgement of the deficits of public broadcasting. They are illustrated in the demands for more social responsibility, inclusiveness and transparency in state managed television as a platform for quality reporting and public education. Infotainment is identified as a major force driving the sell-out of serious information. It diverts the attention of the masses from 'real' political issues narcotizing them through soft stories and spectacle. Unlike most other studies, which focus mostly on western news media, has attempted a broader global perspective. He believes that the global proliferation of infotainment promoted by media moguls – foremost the Murdoch Empire – has serious political consequences. Feel-good journalism is a deceitful influence diverting attention from the inequalities of the neo-liberal order. Infotainment is an instrument of neo-liberal imperialism attempting global dominance. Thus conceptualizes localization as a top down movement through which a core ideology (originating from the West) is transferred into a vernacular medium. The argument echoes the debate of global 'culture synchronization'. Champions of this position have diagnosed a flattening out of cultural diversity through the continuing spread of western ideologies, commodities and technologies. It has been described in a theory of media imperialism that identifies the USA as the main exporter of media products, exercising pressure on local economies to adapt to the 'dominant' model

It remerges in more recent works on the Anglo-Saxon media nexus against this argument stand a vast number of empirical studies detailing processes of cultural diversification through the re-appropriation of global influences in local contexts, as part of what could be called the 'globalization' debate. Scholars from cultural studies and media anthropology have depicted the multi-directional processes of reinterpretation realized through local appropriations of globally available media products fundamental critique and revision of this concept is formulated by Boyd-Barrett Thus is aware of this position. He takes note of recent debates about the persistence of cultural diversity and the equivocal nature of infotainment However, the summary of more positive studies on infotainment remains a short interlude that bears no connection to the overall thesis that the global spread of infotainment promotes a 'false global "feel good" factor' .The Indian case study in particular treats local culture as a vessel appropriated by the Murdoch

Empire to spread its influence while disguising the colonizing impetus of the expansion. My aim is not to rekindle the homogenization versus diversification debate.

The impact of commercialization has been a matter of considerable debate and many different claims have been made in different contexts. According to many media sources, the past experience and state of mind of the person subjected to advertising may determine the impact that advertising has. Children under the age of four may be unable to distinguish advertising from other television programs; hence there are different advertisements for various age grouped peoples.

The same advertising techniques used to promote commercial goods and services can be used to inform, educate and motivate the public about non-commercial issues, such as AIDS, political ideology, energy conservation, religious recruitment, and deforestation. Persons in need are advertising themselves for getting help e.g. advertisements for blood or body organs for the poor or needy.

Negative Effects:

As there are some positive effects of ads similarly some negative effects are also there, certain products use a specific form of advertising known as "Custom publishing". This form of advertising is usually targeted at a specific segment of society, but may also "draw" the attention of others e.g. the ads of Alcohol, Cosmetics, Gambling, Tobacco etc. these ads are made only for the elder ones but since TV is a common thing in houses so these can also be noticed by children and anybody can assess the results.

This is a fundamental principal long established that the freedom of speech and of the press which is secured by the Constitution does not confer on absolute right to seek or publish without responsibility ever one may choose. In India media is always misused by political parties for the purpose of misrepresentation many politicians particularly in south India Where they have started private channel either on their name or on their relatives. Jaya TV, Surya TV etc are good examples. Advertisements of India Shining, spiritualistic image making of political leaders are very common practice over Indian media. There are at least three major media traditions in modern India – that of a diverse, pluralistic and relatively independent press; of the manipulated-misused, state-controlled radio and television; and that of many autonomous, small media out fits of various subaltern groups

and their organizations. These traditions are so diverse, their histories, functions and roles in society and politics so divergent, and the rules of the game pertaining to the radically different that any attempt to speak in a generalized way of the 'media' in India today and locating it in 'democracy' appears far-fetched. The face of Indian media has been fast changing with the growth of the Internet, the phenomenal rise of satellite and cable networks, the continuing growth of regional press, despite various challenges and the blurring of lines between news and entertainment, But there is a sort of 'crises in the present media due to processes of commercialization, mercerization and commoditization. This has led some to present a pessimistic view of the media, to emphasize the ascendancy of 'infotainment' over'serious' reportage and analysis of politics. It is also often remarked that the quality of'serious' political journalism is steadily declining, with a dilution substantive political content to the detriment of the democratic process. An opposite view asserts not that there is too little serious politics in the media, but too much. This is seen as a kind of information overload that bores audiences and diminishes public interest. Still others have argued that media is an elitist bourgeois construct, reflecting essentially bourgeois interests and values and conditions of existence and can thus never serve the genuine interests of the people as a whole.[7] Despite its Democratic façade, it is said that the media remains exclusive, and people as a whole feel no real involvement in a process which appears to give them power but in reality does not. There was also a fresh context, shaped by the rising politics of communal mobilization.[8].

Human Rights of Women and Media

The 1995 Fourth World Conference on Women in Beijing, China propelled international concern and action on the role of media in perpetuating women's subordination as well its importance in advancing women's rights. The Beijing Platform for Action (BPFA) gave an overview of problems and issues surrounding women and the media and spelled out specific strategies for governments, media organizations, non-government organizations and other civil society actors. It called for: women's increased participation in and access

[7] Naveen Kumar Mishra, Governmental Threats for Media Freedom: Comparative Study of Asian Countries

[8] A significant study by Arvind Rajagopal, Politics after Television: Religious Nationalism and the Reshaping of the Indian Public(Cambridge University Press) shows how atone level the national television created a single visual regime, right across the country, for the first time. At another level, the Congress party wanted to seize this advantage. However, by playing the Hindu card, it was the Hindu Right that succeeded in changing the terms of political debate, of authoritarian populism, more suited to the brave new world of economic liberalization.

to media and new information and communication technologies (ICTs); b) promotion of a balanced and non-stereotyped representation of women in the media. [9]

More than four years later, Women Watch, an initiative of the United Nations to assess progress and obstacles on BPFA held an online-discussion. The discussion concluded that there have been few improvements in media portrayal of women both in advertising and news coverage. Women still scarcely occupy decision-making positions in media organizations. Technological developments have made women's images in media more complex and contributed to unattainable social expectations surrounding women's beauty and abilities. However, it also noted that women and media monitoring groups have made some contributions in promoting positive images and role of women in media[10].

In relation to the World Summit on the Information Society (WSIS) that will be held in Geneva in December 2003 and in Tunis in 2005, the Commission recommended the integration of gender perspectives in all aspects of the Summit. It recognized the need to address inequalities that prevent women from gaining equal access to opportunities and benefits in media and the emerging knowledge and information society. One way to do this is to ensure the participation of women, gender equality experts and women information and communication technologies experts in the WSIS.

The media promotes and reflects the current mainstream culture's standards for body shape or size and importance of beauty. The media reflect images of thinness and link this image to other symbols of prestige, happiness, love and success for women.
Barbie®, a mannequin and a supermodel, doesn't have the correct proportions to be an actual person. If a woman actually had the proportions of an average mannequin she wouldn't be healthy enough to have her period each month. . In the United States, 90 percent of all girls ages 3-11 have a Barbie® doll, an early role model with a figure that is unattainable in real life.

In the United States, an analysis of the evening news programs in 2002 showed an

[9] Carolina Rodriguez Bello , Women and media , WHRnet ,Wednesday, 01 October 2003 00:00

[10]In the 47th Session of the UN Commission on the Status of Women in March 2003 affirmed the importance of women's access to and participation in the media and ICTs to women's empowerment. The CSW called on governments, United Nations bodies, international financial institutions and civil society to continue mainstreaming gender perspectives and ensuring women's full participation in national policies, legislation, programmes, and regulatory and technical instruments in all areas of communications. The session also looked into the growing sexual exploitation of women through the traditional media and through new technologies and called for more research on the impact of media and ICTs on women and girls.

average percentage of 14 percent female protagonists, compared to 86 percent males. National Security Advisor Condoleezza Rice led the top 10 with 45 appearances, followed by Senator Hillary Clinton (27) and the First Lady, Laura Bush (20). On women working within media.[11] In the 1995 report by Margaret Gallagher for UNESCO, women are not a significant part of the media workforce. In Asia women are 21 percent of the total media workforce. In Latin America they are 25 percent. In Southern Africa they are 27 percent. In Western Europe and the United States they are 35 percent. Worldwide, women are 79 percent of all part-time workers in the news media.[12] According to the Gallagher report, in Japan, women are only 8 percent of media employees; in India and Malawi, they are 12 percent; and in Argentina and Mozambique, women are 16 percent of the media workforce. In Africa, women are 8 percent of broadcasting managers and 14 percent of managers in the print media. In Latin America, the figures are 21 percent for broadcasting and 16 percent for print.

Woman and commercialization of media

While coming to the role of women in media it's narrow. Women contribute half of the total population in our country 35% contribute in media and anchoring them daily. Women are gradually providing this worth and making and indelible mark in the media world sweeping out in various roles they as reporters, writers, news analyzers in print and broadcast media, anchoring, compeering programmers and effective discussions. 20%of our country population are youths they are fully mobilized by media ,but coming to women they do not know how women are shown the representation of her in media is wrongly shown as sexual objects, glamour dolls, skimpily dressed, villains and shown violent which may lead the society to intimate relationships as well as make gaze over media . Media targets women, in advertising specifically as consumers of world.[13]

In this context television is massively projected as an effective role of depicting and distorting women in the fold of commoditization of her body parts which is the biggest violation of human rights which is a growing trend. Women are portrayed as a

[11] worldwide statistics by the International Women's Media Foundation, 2001 (IWMF) available on www.iwmf.org,visited on 15 may 2014

[12] An Unfinished Story: Gender Patterns in Media Employment, Paris: UNESCO, 1995

[13] https://ericanicolebullington.wordpress.com/2011/08/18/commercialization-of-women-in-media-evolving-with-the-times/,visitd on 12 April,2013

'commodity' in the media.[14]The importance of media has gone to an wider extend of providing basic information , knowledge, reality, socialization, shaping the perception of the individual as well as gains a way leading the country towards its up gradation as a whole. Women and media play a vital role now days. Media which influences all sets of people through Newspaper, Television, Films, and others had provided a wider social change. But does not had changed the pattern of women no it has not she is considered as an object sexual harassment, glamour doll, oppressed, depicted and distorted one. She has been portrayed daily in the media as commoditized object of advertising her body to sell the products of all MNC[15] and local companies. It could also say one of the marketing trends of female bodies of male gaze. Media treating women is narrow. On films as well as in the press and the broadcasting media women are typically under-represented and cannot go further than the confines of home and family. These are all considered a factorial form of media where she is treated as an inferior sex and inferior status where she is not socially, economically and culturally portrayed. It has portrayed stereotypical sensational images of women accompanying the body of politic in the media. Due to various efforts of Feminists they are coming forward to make the issues come out of from them and struggle for their freedom.

Commodification of women in Advertisements

Advertisement is one of the prominent roles in the television most of the television channels run out of advertisements only. It plays huge target of attacking and struggling. Why women are used in advertisement? Women goal is to attract on man. So her body is executed as an advertisement where male gaze would be there and the product would be sold out easier. In India 75% of women in television are commoditized in advertisement where she plays a glamorous, skimpily dressed, sexual objects, sexy dolls, etc. Whereas men are shown for advertising cars, business, jobs, laptops companies (Acer, HCL, Sony) and job websites like Monster.com, Times job.com. For advertising large bind of fashionable jewels, which shows the symbol of Indian of marriage? Some advertisements like cooking in the kitchen related with Vim Bars, Maggi, Sunflower oil, etc. LIC, Bajaj alliance insurance which project women as alone for safety policies when husband is not there you have an insurance it shows women cannot be without men and for her security she needs it. Like serials, advertisements depict women in a glamorous manner. Being fair

[14] http://www.thehindu.com/news/national/stop-commodification-of-women-nirmala-tells-media/article6625133.ece ,visited on 03 May 2015
[15] Multi National Corporations

is now a days claimed by various unfair women where, Fair and Lovely, Fair Ever focus women should be fair then only they could get a handsome gay. Many of the innocent girls seeing these advertisements get cheated daily. Million of vulnerable girls spend more time to beautify themselves. Advertising frequently commodities women body into eroticized zone like hair, face, leg and breast which shows the exploiting of women sexuality. Women and their bodies sell all items of food, clothing, cars, computers, inner garments. Men products like cigarettes, liquor, and briefs women models are used as glamour dolls. Women used as glamour girls before the camera which make the males gaze over thousand of teen ages are stacked to it .This is also a part of television which involve young youth of boys and girls to make videos and music albums which are now days very popular. The most popular songs of the olden decades are remained by mindless and heartless people by nostalgic melodies giving vulgar and violent twists for the youth now days. The music videos where women who involve in it are shown as bare and half naked bodies to attract men with a role purpose of selling it. So, whenever a video is released its subscription and the dealership go high. The music industry has such an impact on youth by making women as a sexual object in touching her privacy as well as making out a tantalizing choreography which is a low level degradation of sexual abuse. These kinds of music albums would just mislead the youth to have intimate relationships and indulge in casual sex. Most of these albums make women skimpily dressed and make them turn and twist their body to make males gaze and cover the audience to hold their seats.

When youth see these types of videos separately they involve in sexual abuses. Melody Queen Asha Bhonsle has said Remixing old melodies and then making women dance atrociously, ruins the aesthetics of the music and the dance Women portrayal in film media. It could be said without women there is no cinema at all. From the early beginning of cinema she is own as on centre part of attraction. Most of women shown in India films are depicted as gently, heartless, ruthless, subservient, often women are used a village girl or a city dweller. Women in cinema start with an object of love and ends in marriage. All films which as shown are oriented with her and she is used as a colourful splash to the storyline. From the 1980 this trend is ongoing and showing women as glamorous from Madhu Balla to Rani Mukarjee, Simran to Shrya, Amal to Dimple Kapadia, Aishwarya to Katreena kaif where they are all used as sexual objects in India cinema who are expressing their lips and wiggle their hips to the audience.

Human Rights perspective on women in media

As for as human rights is concern Various laws has been enacted by our parliament and commissions has been formed even though it has formulated various laws and acts .According to human rights perspective it is considered as a sexual abuse where women are not given their rights to execute their freedom ,liberty, expression and other forms. As well as the media focuses mostly on various issues and not considering women as a counterpart at all. Only few channels focus on women and that to on religious, horoscopes, cookery, fashion and beautification. Some of the daily also focus women as cover page photos and articles where she is abusely dressed to attract their subscribers they also focus the teenagers to get stickked to it .But it does not say all channels are alike many channels focus on women issues, problems faced by them which could be expressed in the field of media. Where NHRC[16] makes a major role of receiving complaints regarding women issues as well as the NCW also receives complaints regarding the sexual abuses which take place in media and in other parts of the country where it takes a particular responsibility in filing cases as well as asking reports from the concerned government regarding this Various Acts and reports representing.

Women issues in Media

Portrayal of women in media has been big concern it was during 1975 it was noted by the Committee On the Status Of Women, it stated out certain recommendation in avoiding the portrayal of women should be stopped out. Later during 1986 the indecent Representation of women (prohibition) Act was introduced its main aim is to provide proper regulation of representation of women in media. It prohibits indecent representation of women through advertisements, books, writing, paints, and figures or in any other manner. Section 4 of this Act[17] ; prohibits the sale, hire, production, distribution, circulation, sending by post any book, pamphlet, slide, film, writing, drawing, painting, etc which contains indecent representation of women in any forms.[18].The Prasar Bharathi (Broadcasting Corporation of India) Act 1990 lays down its powers and functions, the need to inform and stimulate the national consciousness in regard to the status and

[16] www.nhrc.nic.in,visited on15 sep. 2014
[17] The indecent Representation of women (prohibition) Act,1986
[18] The National perspective plan for women (1988-2000) explain that the media should project women in unorganized sectors as workers not merely performing duties of mother or daughter. Advertisements displaying women as women as sex symbols and using them for sales promotion should be seriously discouraged. It either felt that it was equality necessary not to convey sex linked division of labor or women predilections with feminine per suit through conventional and traditional stereotypes women programmes should be telecasted at least one hour in a day. Awareness with regard to problems of women in unorganized section is necessary for both men and women. Media and the programmers should be a flexible one.

problem of women, paying special attention to the up liftmen of women. Doordarshan plays an important role and a powerful instrument to speed the message of and assist in the overall improvement in the status of women, the government used this facility wisely and well. Beijing platform for action, It was highlighted in Beijing conference that lack of gender issues and can find stereotyping gender can be found in public and private, local, national and international media. Print and electronic media in most confines do not provide a balance picture of woman deserve life and contribution to society in a changing world.

The Global Media Monitoring Project (GMMP)

It is the representation of women and men in mass-media. On 16 February 2005, hundreds of women and men in 76 countries around the world participated in the third GMMP, 13000 news items on TV, radio and in magazines were monitored various professionals in media where involved in this. To India it electronic media organizations across English and regional electronic media was monitored. The report submitted on 2005 stated out that the survey which was taken in 76 countries from 1995 till now 17% of news devoted to women and marginally during 2000 it became 18% , between 2000-2005 it has increased from 18% to 21%. The overall representation of women is low participation is due to the news which are linked with perceptions of women status in the society as a whole[19].Women view is not considered was important as men. In India 35% of anchors are women its compared with 21% of overall countries specifically in television its 14% to 17% of women in news are projected as women shown in news does not have specified occupation that women in education and Government employees. Only 5% have gender challenging, stereotypes and 91% do not highlight either gender equality or in equality.

National Commission for Women

National Commission for women has suggested modifications in the Act and elaborates upon ways to strength the in it and make it workable so that the objectives can be achieved. The NCW recommended that section 2 (b) of the act be modified to read as Derogatory representation of women means the depiction in any manner of the figure of a women, has form of body or any part thereof in such a way as to have the effect of being derogatory to, or denigrating, women and is also likely to deprive, corrupt or endanger. This definition says depiction of women in, any manner of her body or any part thereof

[19] The galobal media monitoring project,2006

would amount to indecent or derogatory representation if it has the tendency to make women as a sexual object. The tendency to present a woman as a sexual commodity for man pleasure or to glorify women subordination to man as an attribute to womanhood or the effect of being indecent or being derogatory, to order igniting a women or it is likely, to deprave, corrupt or injure public morality or morals. The latest reports of NCW has accomplished that women who are abused in media are now days increasing a lot.[20]

To understand the role which the media should be playing in India we have to first understand the historical context. India is presently passing through a transitional period in its history, transition from feudal agricultural society to modern industrial society. This is a very painful and agonizing period in history. The old feudal society is being uprooted and torn apart, but the new, modern, industrial society has not yet been entirely established. Old values are crumbling, everything is in turmoil. We may recollect the line in Shakespeare's play Macbeth: "Fair is foul and foul is fair".[21] What was regarded good earlier e.g. the caste system is regarded bad today (at least by the enlightened section of society), and what was regarded bad earlier, e.g. love marriage, is acceptable today (at least to the modern minded persons). One is reminded of Firaq Gorakhpuri's Urdu couplet:

"Har zarre par ek qaifiyat-e-neemshabi hai

Ai saaqi-e- dauraan yeh gunahon ki ghadi hai"

In a marvel of condensation this sher (couplet) reflects the transitional age. Zarra means particle, qaifiyat means condition, e means of, neem means half, and shab means night. So the first line in the couplet literally means "Every particle is in a condition of half night". Urdu poetry is often to be understood figuratively, not literally. So this line really means that (in the transitional age) everything is in flux, neither night nor day, neither the old order nor the new. Also, in the middle of the night if we get up we are dazed, in a state of mental confusion, and so are people in a transitional age. Justice Markandey Katju, Chairman, Press Council of India, argues that the media has a very important role to play

[20]www.ncw.nic.in,visited on25 April 2015

[21] Justice Markandey Katju, (former Judge, Supreme Court of India), Chairman, Press Council of India ,The Role the Media should be playing in India,The Hindu,New Delhi,2011

in helping the country make the transition from an old feudal society to a modern industrial one quickly, and without much pain.

In the second line, saaqi is the girl who fills the wine cup, but she is also the person to whom one can confide the innermost thoughts in one's mind. The poet is imagining a girl, to whom he is describing the features of the transitional era. 'Yeh gunahon ki ghadi hai', i.e. it is the time of sin. In this transitional age it is a 'gunahon ki ghadi' from both points of view. From the point of view of people of the old, feudal order it is a sin to marry according to your choice, and particularly outside one's caste or religion, it is a sin to give education to women, it is a sin to treat everyone as equal. At the same time, from the point of view of modern minded people the caste system is a sin, denying education to girls is a sin, and love marriage is quite acceptable. Thus old and new ideas are battling with each other in the transitional age. It is the duty of all patriotic people, including the media, to help our society get over this transition period quickly and with less pain. The media has a very important role to play in this transition period, as it deals with ideas, not commodities. So by its very nature the media cannot be like an ordinary business. If we study the history of Europe when it was passing through its transition period, i.e. from the 16th to the 19th Centuries, we find that this was a terrible period in Europe, full of turbulence, turmoil, revolutions, wars, chaos, social churning and intellectual ferment. It was only after passing through this fire that modern society emerged in Europe. India is presently going through this fire. We are passing through a very painful period in our history. Historically, the print media emerged in Europe as an organ of the people against feudal oppression. At that time the established organs were all in the hands of the feudal despotic authorities (the king, aristocrats, etc). Hence the people had to create new organs which could represent them. That is why the print media became known as the fourth estate. In Europe and America it represented the voice of the future, as contrasted to the established feudal organs which wanted to preserve the status quo. The media thus played an important role in transforming feudal Europe to modern Europe.

In the Age of Enlightenment in Europe the print media represented the voice of reason. Voltaire attacked religious bigotry and superstitions, and Rousseau attacked feudal despotism. Diderot said that "Man will be free when the last king is strangled with the entrails of the last priest". Thomas Paine proclaimed the Rights of Man, and Junius (whose

real name we still do not know) attacked the despotic George III and his ministers.[22] Louis XVI, while in the Temple prison saw books by Voltaire and Rousseau in the prison library and said that these two persons have destroyed France. In fact what they had destroyed was not France but the feudal order. In the 19th Century the famous writer Emile Zola in his article 'J' Accuse' accused the French Government of falsely imprisoning Captain Dreyfus in Devil's Island only because he was a Jew. In my opinion the Indian media should be playing a role similar to the progressive role played by the media in Europe during the transitional period in Europe. In other words, the Indian media should help our country get over the transition period and became a modern industrial state. This it can do by attacking backward, feudal ideas and practices e.g. casteism, communalism and superstitions, and promoting modern scientific and rational ideas. But is it doing so? In my opinion a large section of the Indian media (particularly the electronic media) does not serve the interest of the people, in fact some of it is positively anti-people.

There are three major defects in the Indian media which I would like to highlight.

The media often diverts the attention of the people from the real issues to non issues. The real issues in India are socio-economic, the terrible poverty in which 80% of our people are living, the massive unemployment, the price rise, lack of medical care, education, and backward social practices like honour killing and caste oppression and religious fundamentalism etc. Instead of devoting most of its coverage to these issues the media focuses on non issues like film stars and their lives, fashion parades, pop music, disco dancing, astrology, cricket, reality shows, etc.

There can be no objection to the media providing entertainment to the people, provided this is not overdone. But if 90% of its coverage is related to entertainment, and only 10% to the real issues facing the nation (mentioned above) then there is something seriously wrong with the media. The whole question is of proportion. In the Indian media the sense of proportion has gone crazy. Entertainment got 9 times the coverage that health, education, labour, agriculture and environment together got. Does a hungry or unemployed man want entertainment or food and a job? To give an example, I switched on the T.V. yesterday and what did I see? Lady Gaga has come to India, Kareena Kapoor standing next to her statue in Madame Tussand's, tourism award being given to a business

[22] Will Durant's 'The Story of Civilization: Rousseau and Revolution'.p234

house, Formula one car race etc. etc. What has all this to do with the problems of the people?

Many channels show cricket day in and day out. Cricket is really the opium of the Indian masses. The Roman Emperors used to say "If you cannot give the people bread give them circuses". This is precisely the approach of the Indian establishment, duly supported by our media. Keep the people involved in cricket so that they forget their social and economic plight. What is important is not poverty or unemployment or price rise or farmers suicides or lack of housing or healthcare or education, what is important is whether India has beaten New Zealand (or better still Pakistan) in a cricket match, or whether Tendulkar or Yuvraj Singh have scored a century. The Indian media so much hyped up the cricket match at Mohali between India and Pakistan that it became a veritable Mahabharat War!

Enormous space is given by our media to business, and very little to social sectors like health and education. Most media correspondents attend the film stars, fashion parades, pop music, etc. and very few attend to the lives and problems of workers, farmers, students, sex workers, etc. Where then do these millions of displaced peasants go? They go to cities where they became domestic servants, street hawkers, or even criminals. It is estimated that there are 1 to 2 lac adolescent girls from Jharkhand working as maids in Delhi. Prostitution is rampant in all cities, due to abject poverty.

In the field of health care, it may be pointed out that the number of quacks in every city in India is several times the number of regular doctors. This is because the poor people cannot afford going to a regular doctor. In rural areas the condition is worse. The government doctors posted to primary health centre usually come for a day or two each month, and run their private nursing homes in the cities the rest of the time.

In 'Shining' India, the child malnutrition figures are the worst in the world. According to U.N. data, the percentage of underweight children below the age of 5 years in the poorest countries in the world is 25 per cent in Guinea Bissau, 27 per cent in Sierra Leone, 38 per cent in Ethiopia, and 47 per cent in India. The average family in India is consuming 100 kilograms of food grains less than it did 10 years ago.[23]

[23] see P. Sainath's article 'Slumdogs and Millionaires, available at www.Thehindu.com, visited on,23 June 2012

The media often divides the people: Whenever a bomb blast takes place anywhere in India (whether in Bombay or Bangalore or Delhi or anywhere) within a few hours most T.V. channels starts showing that an e-mail or SMS has been received from Indian Mujahideen or Jaish-e-Muhammad or Harkat-ul-Jihad-e-Islam claiming responsibility. The name will always be a Muslim name. Now an e-mail or SMS can be sent by any mischievous person who wants communal hatred. Why should they be shown on T.V. screens, and next day in print (the T.V. news at night often sets the agenda for the print media news next morning)? The subtle message being sent by showing this is that all Muslims are terrorists or bomb throwers. In this way the entire Muslim community in India is demonized, when the truth is that 99 per cent people of all communities are good, whether they are Hindus or Muslims or Sikhs or Christians, and of whatever caste, region or language.

To remedy this defect in the media I have done two things (1) I propose to have regular meetings with the media (including electronic media) every two months or so. These will not be regular meetings of the entire Press Council, but informal get-togethers where we will discuss issues relating to the media and try to resolve them in the democratic way, that is, by discussion, consultation and dialogue. I believe 90% problems can be resolved in this way (2) in extreme cases, where a section of the media proves incorrigible despite trying the democratic method mentioned above; harsher measures may be required.[24].

It may be objected that this is interfering with the freedom of the media. There is no freedom which is absolute. All freedoms are subject to reasonable restrictions, and are also coupled with responsibilities. In a democracy everyone is accountable to the people, and so is the media.

5.3 Privatization of Media

Commercialism is also increasingly making inroads into the traditionally serious and staid Indian press, which is copying US-style sensational journalism, with its emphasis on entertainment-oriented news agendas. The managerial approach to running editorial operations, most acutely seen in the Times of India, is symptomatic of how commercialism is affecting Indian newspapers .Justice P.B. Sawant, Chairman of the Press

[24] In this connection I(Justice M. Katju) have written to the Prime Minister requesting him to amend the Press Council Act by bringing the electronic media also under the purview of the Press Council (which may be renamed the Media Council) and by giving it more teeth e.g. power to suspend government advertisements, or in extreme cases even the licence of the media houses for some timeAs Goswami Tulsidas said 'Bin bhaya hot na preet' This, however, will be resorted to only in extreme cases and after the democratic method has failed.

Council of India, admitted: 'The true role of the press is relegated to the background and the press has become the handmaid of the proprietors, advertisers and the lobbying interests — whether political, economic or other, including foreign interests' .The growing commodification of information can adversely affect the public service dimension of the media. The egalitarian potential of the mass media remains hugely unexplored in India, home to the world's largest number of poor people. Apparently, the government is still committed to a socially relevant agenda for its electronic media. There has been a five-fold increase in the number of transmitters in the past decade — from 200 in 1987 to 1,000 in 1997 (Doordarshan,1997: 4) and national broadcasters, the government says, must concentrate on 'priority areas of national concern' like 'eradication of illiteracy, environmental protection, healthcare, agriculture and rural .

5.4 Commercialization of Media

"A process by which media structures and contents come to reflect the profit seeking goals of media industries and are governed by market considerations"[25] The Importance of the Study The need for public service broadcasting has never been greater. The proliferation of channels has fuelled many wants and fulfilled some needs, but has left gaps which should be filled by a public service broadcaster. This is because commercial television broadcasting conducted by privately owned satellite channels target the relatively affluent urban market as they can only air their programmes through a cable operator. Similarly the private radio stations would target the up market, more than urban radio listener. The private channel must primarily deliver an audience, rather than being a vehicle for delivering new ideas, information and education to its viewers and listeners of the basic objectives of the public broadcasting system should be to strengthen the democratic process by providing information, promoting debate and discussion on all vital issues and providing a platform for interaction between the common man and policy maker. Market forces cannot be expected to take care of these objectives. This reinforces the need for a public service broadcaster which would take care of these objectives and also promote a common national outlook by providing shared experiences. In addition, such a broadcasting system is also expected to promote and foster a diverse culture of the country. What is commercial

[25] Jolly, Vijay K.(1997) :Commercializing New Technologies: Getting from Mind to Market;Harvard Business School Press, 2009.

broadcasting? Commercial broadcasting is the practice of broadcasting for profit. This is normally achieved by interrupting normal programming to air advertisements, also commonly called 'commercials' in this context. This is the dominant type of broadcasting in the United States and other countries such as most of Latin America[26]. It is also common elsewhere, but usually exists alongside public broadcasting where programming is largely funded by government or public donations. In an hour of broadcast time on a commercial broadcast outlet, typically ten to twenty minutes are devoted to advertising. Advertisers pay a certain amount of money to air their commercials, usually based upon the popularity or ratings of a station network. This effectively makes commercial broadcasters more answerable to advertisers than the public, which is a major criticism of commercial radio and television.

Commercial encroachment can also limit the role of the news as a source of information about issues of public importance, one of the key functions of the media in democratic society Commercial speech in the form of news can have a format similar to other news segments, but the intent differs. However, Habermas distinguishes between advertising and editorial areas of speech. He assigns a subordinate role to the former, arguing that advertising effectiveness rests on the strength and the quality of the latter. As soon as advertising becomes dominant in the news, the quality of the editorial side deteriorates because "its 'promotion' and 'exploitation' goes beyond advertising; it invades the process of 'public opinion' by systematically creating news events or exploiting events that attract attention. This distinction is important for the current study because the dual nature of news media as sources of information for public discourse and as business vehicles to generate profits leads to symbiotic combinations of strategic and communicative actions. Theory of communicative action, public discourse makes democracy possible, and it is created for common understanding and agreement on public issues .But the goal of strategic action is influence, not understanding. Strategic action means obtaining private financial gains from the public sphere. Habermas's theory shows that the use of commercial speech and its framework of strategic action exploit public discourse, with consequent deception of the public. This leads to loss of trust in the media and harms democracy.. This usually involves a TV news story in which a local company is both star and beneficiary: Its name, spokespersons, product brands, or other company-specific

[26] Hilmes, Michele (2004). "The Origins of the Commercial Broadcasting System of the United States". Jahrbuch Medien und Geschichte p: 73–81

identifiers are shown or discussed on-screen and the company is portrayed in a generally positive context. This category includes all video news releases (VNRs).

Product placement

For a company to get its products onto a news set or into the hands of an on-camera reporter is a coup. Placements have demonstrable persuasive effects" by increasing recognition and the "strength of association" when a person encounters a brand seen on TV.

Stealth Advertising

The Commercialization of Television News Broadcasts in Canada obvious in them and their news value is either limited or non-existent. The stories belonging to the fourth category, news framing of business, by definition might overlap with actual news stories, but all the stories which potentially might belong to this category were analyzed individually in order to determine whether a story was significant news or a staged pseudo-event. Usually, there is a broad agreement in the industry about what counts as commercially influenced material. Puts it: "The litmus test is: Who will benefit from the story—the source or the reader?" However, more stringent and precise academic evaluations—mutually exclusive content analysis categories, in-depth interviews and inter subjective agreement among the news directors on what a business story is—were applied to avoid confusing promotional materials with business stories of general interest. Framing News frames are "conceptual tools which media and individuals rely on to convey, interpret and evaluate information" . The key goal of the news is to convey information of public interest, which is distinct from promoting the financial interests of individual businesses. However, it is also important to explore whether financial interests can be integrated into issues of public interest without explicit intent. Open-ended interviews can probe this question.[27]

The tools, which were adapted from previous studies, were also used to analyze frames in the newscasts. We checked whether a commercially influenced story was reported in a well- recognized television news format and raised an issue of public interest. Whether leads, source and quote selections, shots, logos, concluding statements and other framing devices emphasized commercial content of a story and finally, whether a report contained

[27] Chernov, Gennadiy. (2010). Stealth advertising: The commercialization of television news broadcasts in Canada. Global Media Journal -- Canadian Edition, 3(2). 31-48.

mostly neutral or affective, positively biased information and comments about commercial content .Twentieth-century managerialists have created five major forms of manipulative, one-dimensional communication: commercialized mass communication (produced by business elites); Soviet state propaganda(produced by the communist apparatchiks); fascist propaganda (produced by far right corporatist alliances); 'development' communication' (produced by third world Westernized elites); and 'social democratic' communication. The latter has spawned variety of 'political correct nesses' within PSB and educational institutions. The New World Order that emerged in the 1990sappears to be bringing in its wake a shift to a globally commercialized communication network, which represents a particular form of one dimensionality. Whether communicative alternatives to this new closure can or will be built remains to be seen. An alternative model would presumably entail some form of institutionalized dialogue which facilitates a free exchange of ideas (and conflict between contending positions) and a process whereby collective decisions can be made on the basis of alternatives thrown up by the debates and conflicts. The dialogical/dialectical process would also need to be seen as ongoing, that is all decisions need to be seen as temporal, contextually-bound, 'tentative' and open to ongoing challenge and re-evaluation. Hence, the public sphere was the creation of are evolutionary middle-class minority (of urbanized, educated, propertied men). All other social interests were excluded, including plebeians, peasants, and women and, of course, the feudal aristocracy and clergy. It is possible that social dialogues (public spheres) that facilitate an un manipulated sharing of ideas and the formation of citizen-driven decision-making may be a pipe-dream. Contemporary notions of citizenship involve non-discriminatory access to membership, democratic participation in social decision-making for all members and reciprocal rights and duties that are equal for all members. But this raises a number of problems. First, today's societies are demographically huge, (involving millions of citizens), making it difficult to see how one could organize real, unrestricted dialogical participation (as opposed to pseudo participation). Today's societies have also become extremely complex, involving a plethora of interest groups, ethnicities, creeds, etc. homogeneous populations are increasingly hard to find. This raises a number of issues. For example, if decision-making is by way of majority voting, how is 'difference' accommodated? How are minorities (at best) given a real 'voice'? And how (at worst) are they protected from the tyranny of majoritarianism? How does one create the spaces for'difference'? How are individual liberties protected against infringements generated by collective decision-making and/or surveillance which has been legitimated by collective decision-making? Global information capitalists will be compelled (by their need to

produce profits and coordinate their global interests) to continually expand the world's digital communication networks.

5.4.1 News Commercialization

UNESCO alluded to the commercialization of news when it wrote: [28]The news has become commercial product... important developments in the countryside are pushed aside by unimportant, even trivial news items, concerning urban events and the activities of personalities. ews is no longer about reporting timely occurrences or events, it is now about packaged broadcast or reports sponsored or paid for by interested parties. By this practice individuals, communities, private and public organizations, local governments, state governments and ministries, gain access to the mass media during news time for a prescribed fee. News commercialization operates at two levels. At the institutional level: where charges are 'officially' placed for sponsored news programmes.

At the individual journalist level: News commercialization also operates at the level of individual journalists. This occurs when a journalistor group of journalists makes monetary demands to cover an event or report the event.

5.5 COMMDIFICATION OF MEDIA

History of Commodification in American Journalism news became a commodity in the nineteenth century. Broad social trends of urbanization, immigration, industrialism, and consumerism created a demand for local news in newspapers, rather than for political news from distant capitals[29] .The steam press made huge circulations possible for the first time and allowed newspapers to take advantage of economies of scale With a few pace-setting dailies in New York reducing their price from 6 cents to a penny in the 180s, a new mass market was born. This also was a time when the boundaries among books, magazines, and newspapers were quite porous in terms of their content, distribution, and packaging, paving the way for the "commodification of writing and the fluid circulation of text among genres that is characteristic of the media today. The telegraph was another important technological development for journalism. Now news was not only more diverse than ever, but it could be transmitted instantaneously .There was a sense now in which the news never stopped and had to be continually managed, foreshadowing the round-the clock news operations we know today. Unfortunately,

[28] http://www.ec.ubi.pt/ec/03/html/omenugha-oji-news-commercialization.html,visited on12may2013
[29] Sandra Borde ,Journalism as Practice: MacIntyre, Virtue Ethics and the Press, Routledge New Yark 2010,p10

traditional news media have lagged behind the innovation trend. For example, the Project for Excellence in Journalism found that 62 percent of Web journalists reported newsroom cuts in 2004—a greater level of cutbacks than any other news media that year. In the United States, we recognize a commodity as something that is in demand; as a product that is desired; as a good that is mass-produced and can often times be purchased. This understanding of a commodity does not seem to raise any sort of ethical or moral issues at first glance; however, when we realize that our broad definition surprisingly includes the human body – due to the fact we live in a time where pornography and advertising are far too prevalent – I believe we are forced to question not only our understanding of the concept, but more importantly the role this commodification of the human body plays in reiterating gender stereotypes and gender inequality. His presumption of media effects is easy to understand. It makes common sense that anything that consumes so much money and time must have some impact on our lives. It has been proven that the portrayals created in vehicles, such as advertising and pornography, directly lead to unhappiness with our bodies. In the recent history of the Greek media, one can observe three phases of development. The first was in the mid-1980s and affected the news paper market. The second came in the late 1980s due to the deregulation of the state broadcasting monopoly, which resulted in the creation of numerous private, national and local television channels and radio stations. In themid-1990s, there was also an expansion in the magazine sector, and a proliferation of new magazines (from 400 to 800). In the 1990s, Greek newspapers faced the biggest challenge in the history: increasing competition from electronic media and the need to harness the publishing tools offered by new technologies. However, the political affiliation of newspapers is always manifest in periods of intense political contention, especially election periods

5.5.1 VIOLENCE COMMODIFICATION

The commodification of violence has occurred for centuries, even millennia. The simple fact is: violence is a highly popular, entertaining and profitable commodity. Normally, however, various formal and informal controls regulate the amount and extremity of such violence that is consumed. With the advent of the Internet, however, this has all changed.[30] It is important to note, however, that the concept of the 'commodification of violence' is not a new phenomenon but has occurred for thousands of years. Most Ancient

[30] Samuel Slater The Commodification of Violence on the Internet: An analysis of 166 websites containing commodified violence Internet Journal of Criminology ©2005 Www.internetjournalofcriminology.com

Civilizations had some form/s of commodified violence. Ancient Greek and Roman cultures embraced violent spectator sports such as wrestling and Gladiatorial combat. Initially used for religious meaning and purpose, such games eventually developed to be enjoyed by the masses and frequently had combatants fighting to the death. Indeed, by the 1stCentury A.D. the Roman Gladiatorial games have been described as a 'national obsession', with the opening of the Coliseum involving 100 days of entertainment including the slaughter of 11,000 animals and contests between 10,000 gladiators . Public torture and Such as domestic violence, violence associated with anti-social behaviour, rape and murder.This is generally due to the serious literary, artistic, sporting, political or scientific nature of some of it (such as news reporting or boxing), or the fictional or 'non-serious' nature of the rest (such as comedic violence on TV). [31]Executions of criminals in the Middle-Ages in Britain were considered a public spectacle and were attended and enjoyed by many. This time also saw hunting and prize-fighting develop as popular entertainment and sport, with the remnants of such commodified violence within today's society and culture. This brief historical overview serves to highlight how the commodification of violence is a phenomenon that has existed for centuries. However, it is within the twentieth century that commodified violence became accessible to far more people than ever before. This is due to the development of mass media and Information Communications Technologies (ICTs).

Here, ICTs such as cinematic movies, television, radio, video cassettes and the Internet (along with books and newspapers), make the commodification of violenceeasier and cheaper, and also distributable to far larger markets and audience cyber violence' describes the 'violent impact of the cyber activities of another upon an individual or a social or political grouping. Whilst such activities do not have to have a direct physical manifestation, the victim nevertheless feels the violence of the act and can bear long-term psychological scars as a consequence' However, most writers, and governance approaches, emphasis the need to control 'established' concerns such as abusive images of children, hate and pornography online. They fail to recognize the problems that can be associated with the huge impact the Internet has on retailing materials such as commodified violence, which are generally regarded as more socially and culturally acceptable.

[31] Internet Journal of Criminology ©2005 www.internetjournalofcriminology.com

5.6 Role of Media

The media promotes superstitions :As I have already mentioned, in this transitional age, the media should help our people to move forward into the modern, scientific age. For this purpose the media should propagate rational and scientific ideas, but instead of doing so a large section of our media propagates superstitions of various kinds. Indian media was often promoting "superstitions" and "other backward ideas" thereby diverting attention from the "real issues", Press Council of India Chairman Justice Markandey Katju on Thursday said the freedom of the media cannot be regarded as "always good".[32]

It is true that the intellectual level of the vast majority of Indians is very low; they are steeped in castism, communalism, and superstitions. The question, however, is whether the media should try to lift up the intellectual level of our people by propagating rational and scientific ideas, or whether it should go down to that low level and seek to perpetuate it?

In Europe during the Age of Enlightenment the media (which was only the print medium at that time) sought to uplift the mental level of the people and change their mindset by propagating ideas of liberty, equality and fraternity and rational thinking. Voltaire attacked superstitions, and Dickens criticized the horrible conditions in jails, schools, orphanages, Courts, etc. Should not our media be doing the same?

At one time courageous people like Raja Ram Mohan Roy wrote against sati, child marriage, purdah system etc. (in his newspaper 'Miratul Akhbar' and 'Sambad Kaumudi'). Nikhil Chakraborty wrote about the horrors of the Bengal Famine of 1943. Munshi Premchand and Sharat Chandra Chattopadhyaya wrote against feudal practices and women's oppression. Manto wrote about the horrors of Partition.

But what do we see in the media today?

Many T.V. channels show astrology. Astrology is not to be confused with astronomy. While astronomy is a science, astrology is pure superstition and humbug. Even a little common sense can tell us that there is no rational connection between the movements of the stars and planets, and whether a person will die at the age of 50 years or 80 years, or

[32] http://archive.indianexpress.com/news/media-promotes-superstition-katju/945230/,visited on 15 May2012

whether he will be a doctor or engineer or lawyer. No doubt most people in our country believe in astrology, but that is because their mental level is very low. The media should try to bring up that level, rather than to descend to it and perpetuate it. Many channels mention and show the place where a Hindu god was born, where he lived, etc. Is this is not spreading superstitions. I am not saying that there are no good journalists at all in the media. There are many excellent journalists. P. Sainath is one of them, whose name should be written in letters of gold in the history of Indian journalism. Had it not been for his highlighting of the farmers suicides in certain states the story (which was suppressed for several years) may never have been told. But such good journalists are the exceptions. The majority consists of people who do not seem to have the desire to serve the public interest.

CHAPTER-VI

Judicial response towards Media and Media Trial

CHAPTER VI:

JUDICIAL APPROACH ON FREEDOM OF MEDIA AND MEDIA TRIAL

JUDICIAL APPROACH ON FREEDOM OF MEDIA AND MEDIA TRIAL

6.1.1 Judicial Approach on freedom of media in general

6.1.2. Judicial Approach on Constitutionality of Freedom of media in general

6.1.3. Judicial Approach on Freedom of media and its Dimension

6.2 Judicial **Approach on Restrictions of freedom of media**

6.2.1 Contempt of Court

6.2.2 Defamation

6.2.3 Right to Privacy

6.2.4 Sedition

6.3. Constitutionality of sting operation

6.3.1 Sting Operation

6.4 **Judicial Approach on media trial**

6.4.1 Pre- trial and During trial

JUDICIAL APPROACH ON FREEDOM OF MEDIA AND MEDIA

CHAPTER VI:

JUDICIAL APPROACH ON FREEDOM OF MEDIA AND MEDIA TRIAL

6.1.1 Judicial Approach on freedom of media

The basic idea of freedom of speech and expression is as old as the human civilization. In India, before independent there was no Constitution al or statutory guarantee of individual or media freedom. At the most some English common law

freedom could be taken by the press as was observed by the privacy council –the Apex Court of for India then in- the following words[1] :

'The freedom of the journalist an ordinary part of the freedom of the subject and to whatever length the subject may go, so also may one journalist apart from states his privilege is no other and no higher. The range of his assertions, his criticism or his comments is a wide as, and no wider than, that of any other subject.

The freedom of media though not expressly stated in Article 19(1)(a) of the Constitution as such has been put on a high pedestal by judicial interpretation thereby vindicating the view of Dr. B.R. Ambedker expressed in Constituent Assembly[2]. In a service of directions from 1950 onwards, the Apex Court has ruled that the freedom of media i.e. press is implicit in the guarantee of freedom of 'speech and expression', and therefore freedom of media by judicial interpretation, can now be regarded as one of the fundamental right guaranteed by the Constitution of India. ,

The importance of the freedom of press in democracy like India was time and again recognized, stated, re-stated and confirmed by the Apex Court despite the fact that the Art. 19(1)(a) does not contain any specific enumeration of this freedom. As and when called upon to do so, the Court have annulled the legislative instruments and administrative actions which seek to impinge on the freedom of media i.e. press because it was recognized that this freedom is absolutely imperative for the system of parliamentary democracy envisaged in the Constitution.[3]

Indeed, as no freedom is absolute and has to subject to reasonable restrictions, the freedom of media also is subject to reasonable restriction and regulation but those restrictions must squarely fall within one or more heads of restriction specified in Art. 19(2) of the Constitution of India and must be reasonable and not excessive or disproportional. The procedure and the manner of imposition of the restriction or regulation, on the freedom press has also to be just, fair and reasonable. The validity of the restriction is of justifiable. How the judiciary in the country has been supportive of

[1]. Channing Arnold V. Emperor, AIR 1914 P.C. 114 at 117 as cited in K.D. Gaur, Constitutional rights and freedom of media in India, 36 JILI, pp. 429-452 (1994)

[2]. The Architect of the Indian Constitution, Dr.Ambedkar, in his brief reply to the criticism about the "omission" to include freedom of press as a fundamental right said: "the Press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The Editor of Press or its Manager are all citizens and, therefore, when they chose to write in newspapers, they are merely exercising their right of expression" and, therefore, no special mention of the freedom of press was necessary in Part-III of the Constitution.

[3]. Justice G.S. Singhivi, Role of Media in Indian Democracy, Protection under19(1)(a)and Abuse of such freedom, IJFJS (2009)

protection of this right can be illustrated by reference of some leading judicial pronouncement classified (I) In general (II) on media trial.

6.1.2. Judicial Approach on Constitutionality and Freedom of media in general

Soon after the Constitution of India come into force the Apex Court was required to examine whether the restriction could be imposed outside the scope of clause (2) of Art. 19[4]. In **Romesh Thappar vs. State of Madras**[5] is one of earliest case in which the Supreme Court laid down an important principle and giving restrictive interpretation of clause (2) of Art. 19 said that if the law being applied is not sectioned by the Constitution, it must be held to be wholly unconstitutional and void. In other words, what the Court said was that the clause (2) of Art. 19 having allowed the imposition of restriction on the freedom of speech and expression for specified purpose, any law imposing restriction which are capable of being applied to causes beyond the express purpose cannot be held to be Constitution al or valid to any extent.

Again the Supreme Court of India in May, 1950 had to resolve the tension between freedom of expression and censorship. In **Brij Bhushan V. state of Delhi** [6], section 7(1)(c) of The east Punjab safety Act, 1949, provide for submission of material of scrutiny it the government was satisfied that such action was necessary for the purpose of preventing or combating any activity pre-judicial to public safety or the maintenance of public order. The Court declared the statutory provision in question unConstitution al on the ground that the restrictions imposed were outside the preview of Article 19(2), which did not include public order as a permissible head of restriction.

The Parliament was, however, quick to react, Article 19(2) was amended by the Constitution (First Amendment) Act 1951, with retrospective effect on 18th June, 1951. The substituted Article 19(2) then read as follows:

> "(2) Nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law impose reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with

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[5]. AIR 1950 SC124

[6] AIR 1950 SC 129

foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence."

Thus, freedom of press was further curtailed and further restrictions' were permitted to be imposed on the freedom of speech and expression and generally speaking on Freedom of Press – in the interest of security of State, friendly relations with foreign states, public order and even for incitement to an offence. However, the Parliament also provided that the restrictions to be imposed by any such law must be "reasonable". The Supreme Court expressed its doubt whether the First Amendment could be enacted with retrospective effect but did not rule on the point[7].

After the Constitution (First Amendment) Act, the decisions of the Punjab and Patna High Courts could no longer be regarded as good law in as much as the amendment expressly permitted imposition of reasonable restrictions under the head of incitement to an offence[8].

Thus, it is seen that the amendment of Article 19(2) by the Constitution (First Amendment) Act 1951 curtailed the freedom of the press because it enlarged the existing heads of permissible restrictions by adding "friendly relations with foreign state, public order, and incitement to an offence". However, the inclusion of the word 'reasonable' before restrictions on the exercise of the right of freedom of speech and expression was a significant gain for the defenders of freedom of press.

Aggression by China on 20th October, 1962 appears to have prompted the Parliament to once again amend Article 19(2) by the Constitution (Sixteenth Amendment) Act in 1963. By the said amendment a further restriction was introduced and another head of restriction, "sovereignty and integrity of India", was added to clause (2) of Article 19 but this time only with prospective effect[9].

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[7] Madhu Limaye Vs. Sub Divisional Magistrate, AIR 1971 S.C.2486 at 2491

[8] State of Bihar Vs. Shailabala Devi,AIR 1952 SC 329

[9] Article 19(2) of the Constitution at present reads as follows:"(2) Nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

6.1.3. Judicial Approach on Freedom of media and its Dimension

The Democracy is based on essentially on freedom of debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people, by the people and for the people it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligent exercise his right of making a choice, free and general discussion of public matter is absolutely essential[10].The apex Court of India has contribute a lot to develop the law and expansion of freedom of speech and expression and declared that it includes right to receive, collect, disseminate information propagate, freedom of press[11]. The freedom of speech and expression has been given paramount importance by the Supreme Court and it has given landmark judgments to develop the dimension of freedom of media and declared that the following rights and freedom of media is a species of freedom speech and expression: .

The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia,[12] In this case Ram Manohar Lohia, the respondent, was the general secretary of the Socialist Party of India. The Uttar Pradesh Government had enhanced the irrigation rates for water supplied to farmers from canals. The Socialist Party decided to start an agitation against this hike. As such, the respondent addressed two public meetings in Farrukhabad, wherein he instigated the audience not to pay the enhanced irrigation rates to the Government.

Subsequently, he was arrested. The respondent filed a petition before the High Court for a writ of *habeas corpus* on the ground inter alia, that section 3 of the Uttar Pradesh Special Powers Act, 1932 (Act XIV of 1932), under which he was prosecuted for delivering the speeches, was void under the Constitution .

The impugned section 3 reads as follows:-

"Whoever, by word either spoken or written, or by signs or by visible representations, or otherwise, instigates, expressly or by implication any person or class of persons not to pay or to defer payment of any liability, and whoever does any act, with intent or knowing it to be likely that any words, signs or visible representations containing such instigation shall thereby be communicated directly or indirectly to any person or class

[10] Maneka Gandhi Vs. Union of India ,AIR 1978 SC 5976(Justice P.N.Bhagwati)
[11] Dinesh Trivedi Vs. Union of India ,1977,4 scc 306,Association for Democratic Reforms Vs. Union of India AIR 2001Del.137
[12] 1960 SCR 821

of persons, in any manner whatsoever, shall be punishable with imprisonment which may extend to six months, or with fine extending to Rs. 250 or with both."

The Supreme Court held that even though all the grounds specified in Article 19(2) of the Constitution on the basis of which reasonable restrictions on the right to freedom of speech can come under public order, yet the term is distinct from the other terms and must be ordinarily read to mean public peace, safety and tranquility and not national upheavals such as revolution, civil strife and war, affecting the security of the State.

The Court held that the limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order.

The Court said that it would be incorrect to argue that since instigation by a single individual not to pay taxes might ultimately lead to a revolution resulting in destruction of public order, that instigation must have a proximate connection with public order. No fundamental right can be restricted on such hypothetical and imaginary consideration.

The acts prohibited under section 3 of the Act cannot be said to have any proximate or foreseeable connection with public order sought to be protected by it. Thus, that section being violation of the right to freedom of speech guaranteed by Article 19(1)(a) of the Constitution , was struck down by the Court as unconstitutional . As such, the prosecution of the respondent under that section was declared to be void.

The Freedom of Press does not merely end with the printing of the newspaper or journal. For this right to be meaningful, it must have a capacious content. It is essential that people should have access to the news and views. Freedom of circulation is, therefore, essential to the effective exercise of the Freedom of Press. Indeed without circulation, publication would be of little value[13]. In a democracy, great emphasis is laid on the freedom of the Press and the sanctity of its role as an independent, fearless body voicing popular feelings and opinions. Mahatma Gandhi on the role of the Press said, "One of the objects of a newspaper is to understand the popular feeling and give expression to it; another is to arouse among the people certain desirable sentiments; the third is fearlessly

[13] Sakal Papers (P) Ltd. v. Union of India, AIR 1962 Sc 305)

to expose popular defects."We can say India has the distinction of being the world's largest democracy and we can take rightful pride in that great achievement. The experience of some of our neighbors' shows that it is indeed a big feat; however, great vigil is required to sustain democracy. The Legislature, an independent Judiciary and Free Press are three of the essential pillars on which it rests. They have to play their roles fairly and in public interest to uphold our basic national objective of secularism, democracy and socialism. In **Sakal Papers (P) Ltd. v. Union of India**[14], the Supreme Court annulled the Newspaper (Price and Page) Act, 1956. The apex Court held that the freedom of the Press could be interfered with by the government indirectly, even by enacting laws which did not directly impose any restriction on that freedom on the ground of security of the state or the like.

This Act was framed to prevent unfair competition among newspapers through price-cutting. Empowered by this Act, the central government issued the Daily Newspapers (Price and Page) Order, 1960, whereby the number of pages published by a newspaper was made to depend upon the price charged to the readers, so that a newspaper could not increase the volume of its publication without raising its price. The government vindicated its stand by saying that such a regulation was essential to protect the smaller newspapers from unfair competition with bigger ores. Moreover, it wanted to prevent concentration of ownership in the hands of a few commercial groups of newspapers. The Supreme Court, however, turned down the contentions of the government and observed as follows:

(a) The fixation of a minimum price for the number of pages which a newspaper is entitled to publish would deter a class or section of its readers from purchasing such newspaper (because of the higher price) and thus curtail its circulation;

(b) Limiting the number of subscribers of a newspaper is an infringement of the freedom of the Press, guaranteed by Article 19(1)(a), even though it is effected through a schedule of rates;

(c) The volume of circulation of a newspaper cannot be curtailed for the purpose of protecting or promoting smaller newspapers or for suppressing unfair practices by other newspapers or for prevention of monopolies.

[14]AIR 1962 SC 305

Mudholkar, J. said: "The right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen. Freedom of speech can be restricted only in the interest of the security of the state, friendly relations with foreign stats, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public".

It was further observed that "while there is no immunity to the Press from the operation of the general laws, it would not be legitimate to subject the Press to laws which take away or abridge the freedom of speech and expression or adopt measures calculated or intended to curtail circulation and thereby narrow the scope of dissemination of opinion".

Express Newspapers (Private) Ltd. v. Union of India[15] In this case Certain newspaper establishment filed petitions challenging the Constitution al validity of the Working Journalist (Condition of Service) and Miscellaneous Provisions Act, 1955 and the legality of the decision of the Wage Board, taken under section 9 of the Act.

The Act aims to regulate the conditions of service of working journalists and other persons employed in newspaper establishments. Section 9 of the Act laid down the principles that the Wage Board had to adhere to while fixing the rates of wages of working journalists.

The petitioners claimed that the provisions of the impugned Act violated their fundamental rights under Articles 19(1)(a), 19(1)(g), 14 and 32 of the Constitution . They also contended that the decision of the Wage Board fixing the rates and scales of wages was arrived at without taking into consideration the capacity of the newspaper establishment to pay the same. This was a heavy financial burden on the newspaper industry and was against the principles of natural justice.

The Court upheld the Constitution al validity of the impugned act with the exception of section 5(1)(a)(iii) which infringed section 19(1)(g) of the Constitution

D.P. Mishra v. Kamal Narain Sharma, [16]

It was published in a daily newspaper 'Mahakoshal' that the appellant was guilty of a corrupt practice under section 123(4) of the Representation of the People Act, 1951.

[15] 1959 SCR 12
[16] AIR 1971 SC 856

A notice was issued to the editor, publisher and printer of the newspaper, Shukla, to show because why he should not be named under section 98 of the Act.

At the hearing before the High Court, Shukla admitted that he was the registered printer, publisher and editor of the newspaper at the relevant time. But, he claimed that he had left the entire management of the newspaper with Tarangi and the he had no knowledge about the publication until the election petition was filed. On hearing further evidence, the High Court accepted Shukla's plea.

The Supreme Court, confirming the High Court's order, held that although section 7 of the Press and Registration of Books Act, 1867, raises a presumption that a person whose name is printed in a copy of the newspaper is the editor of every portion of that issue, the same could be rebutted by evidence. Thus, the appeal filed by Mishra was dismissed.

In **K.K. Birla V. The Press Council**[17], S.S. Chadha, J., said that the concept of freedom of Press cannot be put in any narrow straitjacket. It is a living concept and cannot be confined in any narrow limits, which restricts its growth.

In *Maneka Gandhi V. Union of India,*[18]

By an order dated July 7, 1877, the passport dated June 1, 1976 of a journalist (the petitioner) was impounded "in public interest". The Government of India, "in the interests of general public" refused to give her the reasons for its decision. As such, she (the journalist) filed a writ petition under Article 32 of the Constitution on the grounds that it violated Articles 14, 19 and 21 of the Constitution. In its counter-affidavit, the respondent stated that the petitioner's passport was impounded as her presence was likely to be required before a Commission of Inquiry. The Court held that "any procedure which permits impairment of the Constitution al right to go abroad without giving a reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence there is, in the present case, clear infringement of the requirement of Article 21. Even when the statute is silent, the law may make an implication and apply the principle of *audi alteram partem."* The Court further held, "the right to go abroad cannot be said to be part of the right of free speech and expression as it is not of the same basic nature and character as freedom of speech and expression. It is true that going abroad may be necessary in a given case for exercise of the right of freedom of speech and expression but that does not make it

[17] ILR 1976 Del 753,
[18] (1978) I SCC 248

an integral part of the right of free speech and expression." It went on to hold that, "the right to go abroad cannot be treated as part of the right to carry on trade, business, profession or calling guaranteed under Article 19(1)(g). The right to go abroad is clearly not guaranteed under any clause of Article 19(1) and section 10(3)(c) of the Passports Act, 1967, which authorizes imposition of restrictions on the right to go abroad by impounding of passport cannot be held to the void as offending Article 19(1)(a) or (g) as its direct and inevitable impact is on the right to go abroad and not on the right of free speech and expression or the right to carry on trade, business, profession or calling."

The Court, on examining the facts, found that "a good enough reason has been shown to exist for impounding the passport of the petitioner by the order dated July 7, 1977." And so the Court thought it fit not to interfere with the impugned order.

In Re: S. Mulgaokar[19]***,*** The present matter relates to a publication in the Indian Express newspaper of December 13, 1977, in which the following sentence about the supposed code of judicial ethics assumed to have been drafted by some Judges of the Supreme Court appeared: "So adverse has been the criticism that the Supreme Court judges, some of whom had prepared the draft code, have disowned it." The letter mentioning that a code of ethics was drafted was sent by the then Chief Justice of India, M.H. Beg, to the Chief Justice of various High Courts.

Justice Krishna Iyer made the following observations: "The first rule in this branch of contempt power is a wise economy of use by the Court of this branch of its jurisdiction. The Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the judges, where the attack is calculated to obstruct or destroy the judicial process. The Court is willing to ignore, by a majestic liberalism, trifling and venial offences.

"The second principle must be to harmonise the Constitution al value of free criticism, the fourth estate included, and the need for a fearless curial process and its presiding functionary, the judge. A happy balance has to be struck, the benefit of the doubt being given generously against the judge slurring over marginal deviations but severely proving the supremacy of the law over pugnacious, vicious, unrepentant and malignant condemners, be they the powerful press, gang-up of vested interests, veterean columnists or Olympian establishmentarian.

[19] AIR 1978 SC 727 ,

"The third principle is to avoid confusion between personal protection of a libeled judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not contempt; the latter is, although overlapping spaces.

"Because the law of contempt exists to protect public confidence in the administration of justice, the offence will not be committed by attacks upon the personal reputation of individual judges as such.

"The fourth functional cannon which channels discretionary exercise of the contempt power is that the fourth estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the Court, including the highest Court..

"The fifth normative guideline for the judges to observe in this jurisdiction is not to be hypersensitive even where distortions and criticism overstep the limits, but to deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude…

"The sixth consideration is that, after evaluating the totality of factors, if the Court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream".

When this matter was taken up, the contempt proceedings were dropped without calling upon the counsel for the respondent. As the Court did not hear the parties concerned, it refrained from making any comments with regard to the article in question written by A.G. Noorani. Accordingly, the proceedings were dropped.

In the case of **Bennett Coleman Company vs. Union of India**[20] the Supreme Court once again came to the aid of the freedom of press. It held that freedom of press entitles newspapers to achieve any volume of circulation and 'freedom lies both in circulation and in content.' Newspapers have the right to determine their pages, their circulation and the new editions which they can bring out within the quota of newsprint allotted to them. The Court also recognized that the main source of income for the newspaper is from advertisements which are not only a source of revenue but also one of the factors for circulation. The Court

[20] AIR 1972 SC 106

ruled that loss of advertisement seriously affects the circulation of the newspaper and, therefore, restraints on advertisements would affect the fundamental right under Article 19(1) (a). Indeed a newspaper does not have any Constitution al right to obtain advertisements from the Government but at the same time it must be remembered that the Government cannot use this power or privilege to give advertisements to favour one set of newspapers or to show its displeasure against another section of the press. It cannot be permitted to use the power over large funds at its disposal to muzzle the press and the funds must be used in a reasonable manner consistent with the object of the advertisement.

Freedom of the Press has been held to entitle a newspaper the right to publish its own views or the views of its correspondents concerning what may be the burning topic of the day. This right is not confined to newspapers and periodicals but includes pamphlets, leaflets, hand-bills and every sort of publication, affording a vehicle of information and opinion. The judiciary on the whole has endorsed freedom of Press. What could be the reason? A close analysis would indicate that one of the main considerations for judicial solicitude is that freedom of the press embraces a variety of rights. The right guaranteed is not merely the individual right of the proprietor of the newspaper, or the editor or the journalist to print and publish the newspaper. It includes within its capacious content the collective right of the community; the right of citizens to read and to be informed. In substance, it is right of the public to know. The Right to Know has been spelled out by the Supreme Court from the guarantee of free speech in Article 19(1) (a) in its path-breaking **judgment in S.P. Gupta vs. Union of India**[21]. "To restrict substantially the rights of speech, Press, assembly and voting, however, is to cut the arteries that feed the heart of the democratic model.[22]" Jawaharlal Nehru had said, "I have no doubt that even if the government dislikes the liberties taken by the Press and considers them dangerous, it is wrong to interfere with the freedom of the Press. By imposing restrictions you do not change anything; you merely suppress the public manifestation of certain things, thereby causing he idea and thought underlying them to spread further. Therefore, I would rather have a completely free Press with the dangers involved in the wrong use of that freedom than, a suppressed or regulated Press. In *New* **York Times v. U.S**.[23] the Court held that it was a right to have free access to sources of information.

[21] AIR 1982 SC 149
[22] M. Glenn Abernathy in 'Civil Liberties under the Constitution' 1977, p. 352
[23] 1971 403 US 713

The scope of the freedom of Press was broadened in **Maneka Gandhi v. Union of India**[24] , P.N. Bhagwati, J., held that there are no geographical limitations to the freedom of speech and expression guaranteed under Article 19(1)(a) and this freedom is exercised not only in India but also outside India. If State action impedes the citizens' freedom of expression in any country in the world, it would violate Article 19(1) (a) as much as it restrained such expression within the country.

The right to freedom of speech and expression can have meaning only if the right to travel abroad is ensured and without it, freedom of speech and expression would be limited by geographical constraint. Preventing anyone from going abroad to communicate his ideas or share his thoughts and views with others or to express himself in any other from, would be direct interference with the freedom of speech and expression. "The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction".

In **Indian Express Newspapers v. Union of India**[25], the Court held that freedom of Press must be considered as the "basic structure" of the Constitution.

In **Cricket Association of Bengal v. Doordarshan**, [26]The Cricket Association of Bengal in March, 1993 offered Doordarshan two alternatives regarding telecast of cricket matches-either DD creates host broadcaster signal and undertakes live telecast of all matches or some other party creates host broadcaster signal and DD purchases the rights to telecast the said signal in India. DD asked CAB to indicate the amount of royalty it expected if the rights were given to DD exclusively for India without the Star TV getting it. CAB informed that it would charge $800,000. DD then sent its bid as host broadcaster for a sum of $333,000 (Rs. 1 crore). The amount being much less than expected, CAB entered into an agreement with World Production Establishment which represented TWI for telecasting all the matches and gave TWI sole and exclusive right to sell and exploit other ways of exhibiting the tournament. CAB, under this agreement, was to receive $550,000 as guaranteed sum. On hearing of this; DD informed CAB that it would not telecast the matches by paying TWI TV rights fee. CAB wrote to DD, that the amount offered by DD was uneconomical and moreover, since they were given to understand that DD was not interested in increasing that offer, they had entered into a contract with TWI.

[24] AIR 1978 SC 597
[25] , AIR 1986 SC 515
[26]

However, if DD did not telecast the matches, the people of India would be deprived. As such, CAB made TWI agree for a co-production with DD. DD was however, not agreeable to CAB's offer.

Thus, the controversy between DD and CAB was with regard to the terms for the telecasting of the matches. It was held that "broadcasting media is affected by the free speech right of the citizens guaranteed by Article 19(1)(a). This is also the view expressed by all the Constitution al Courts whose opinions have been referred to in the body of the judgment. Once this is so, monopoly of this medium (broadcasting media), whether by Government or by an individual body or organization is unacceptable. Clause (2) of Article 19 does not permit a monopoly in the matter of freedom of speech and expression as is permitted by clause (6) of Article 19 vis-à-vis the right guaranteed by Article 19(1)(g).

"The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This cannot be provided by a medium controlled by a monopoly-whether the monopoly is of the State or of any other individual, group or organization. As a matter of fact, private broadcasting stations may perhaps be more prejudicial to free speech right of the citizen than the Government controlled media. The broadcasting media should be under the control of the public as distinct from Government. This is the command implicit in Article 19(1)(a). It should be operated by a public statutory corporation or corporations, as the case may be, whose Constitution and composition must be such as to ensure its/their impartiality in political, economic and social matters and on all other public issues. It/they must be required by law to present news, views and opinions in a balanced way ensuring pluralism and diversity of opinions and views. It/they must provide equal access to all the citizens and groups to avail of the medium." The Court held the 'airways' or 'electromagnetic' spectrum to be public property for the enjoyment of citizens' fundamental right to freedom of speech and expression under Article 19 (1)(a) of the Constitution and not the private property of the government.

As observed in **Romesh Thappar v. State of Madras**,[27] the freedom of speech and of the Press does not confer an absolute right to speak or publish, without responsibility, whatever one may choose or an unrestricted or unbridled licence that gives immunity for every possible use of language and prevents punishments for those who abuse this freedom. Article 19(2) specifies the areas with respect to which this freedom can be curtailed. These are security of the State, friendly relations with foreign States, public order, decency or morality, contempt of Court, defamation, incitement to an offence and sovereignty and integrity of India.

These restrictions, however, must "not be far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order". In **Superintendent, Central Prison v. Ram Manohar Lohia**[28], the Supreme Court annulled section 3 of the Uttar Pradesh Special Power Act which punished a person, even if he incited a single person not to pay or defer the payment of government dues. The Court held: "We cannot accept the argument of the learned Advocate General that instigation of a single individual not to pay tax or dues is a spark which may in the long run ignite revolutionary movement, destroying public order. We can only say that fundamental rights cannot be controlled on such hypothetical and imaginary consideration".

As the freedom of the Press is included in the freedom of speech and expression and is a fundamental right guaranteed by Article 19(1) (a) of the Constitution, any person aggrieved by the infringement of this right can approach the Supreme Court under Article 32 or a High Court under Article 226 of the Constitution. In ***Romesh Thappar v. State of Madras,***[29] the Court held that the printer, publisher or editor of a newspaper may bring a petition for appropriate relief to quash an order which imposes a ban on the entry of their journal in a state or other local area.

However, the Constitution also provides for suspension of fundamental rights during an emergency declared under Article 352. Article 358 suspends the operation of Article 19 during the emergency period, i.e., it allows the State to make any law in contravention of Article 19 only during the pendency of the Proclamation of Emergency. Yet, as mentioned **in** ***Makhan Singh v. State of Punjab***,[30] laws made prior to the coming into operation of the Proclamation of Emergency are not protected from the challenge of

[27] AIR 1950 SC 124
[28] AIR 1960 S.C. 633,
[29] AIR 1950 SC 124,
[30] AIR 1988 SC 1705

unconstitutionality on the ground of contravention of Article 19(2). Any law or order made after the Proclamation of Emergency cannot be challenged during the pendency of the Emergency. In **Amadavalasa Co-op. Society v. Union of India,**[31] the Court observed that the effect of Article 358 was to remove the shackles of Article 19 on the legislative and executive powers. The validity of any law or Act of the legislature and the executive, passed or done during the Emergency, inconsistent with the fundamental rights cannot be challenged either during the continuance of the Emergency or thereafter. But as soon as the Emergency period is over, the laws passed during the period become inoperative to the extent to which they conflict with the fundamental rights guaranteed under Article 19.

Article 359 authorizes the President to issue an order whereby the right to move any Court for the enforcement of the fundamental rights remains suspended. On June 26, 1975 Internal Emergency was declared in India by the then Prime Minister Indira Gandhi.

"After 28 years of struggling to make liberty a reality, India's impoverished millions are confronted by mass arrests and censorship as Prime Minister Indira Gandhi fights to stay in power". This was published on July 7, 1975 in the U.S. News and World Reports, New York, under the heading - 'How Freedom was lost in Democratic India'.

Perhaps, the worst to be hit during the period was the media. Indira Gandhi herself proposed at a meeting held on July 26, 1975 that the Press Council be abolished, news agencies be fused into one, advertisement policy be reviewed, housing facilities given to journalists be withdrawn and foreign correspondents not willing to fall in line be deported.

The points discussed in meetings held by Indira Gandhi and others in July and August, 1975 are as follows:

1. A law of libel to prevent scurrilous, malicious and mischievous writings in newspapers and journals should be considered by the Law Ministry in consultation with the Ministry of Information and Broadcasting.
2. The Press Council should be allowed to die its natural death.
3. Necessary action on the report of the Fact Finding Committee on newspaper economics; and copy of the report to be sent to the Law Minister.
4. Delinking of editorial policy of newspapers vis-à-vis disffusion of ownership.

[31] AIR 1976 SC 958,

5. The organization of news agencies needs re-structuring. The advisability of constituting a public sector corporation with one agency each for –

   (i) Indian newspapers and journals, and

   (ii) Foreign journals should be considered.

6. The policy of giving advertisement and printing work by DAVP and public sector undertakings should be reviewed.

7. A review of facilities including the allotment of government quarters given to the journalists.

8. A review of the policy relating to the allocation of newsprint.

9. Review of the functioning of the Audit Bureau of Circulation.

10. Publicity should be given to the speech of Shri Gadgil in Parliament through TV/Radio.

11. A series of talks/articles on democracy/civic sense and discipline should be published through All India Radio, TV and Press, the inhouse magazines of the public and private sector undertaking should also be utilized for this purpose.

12. Infiltration of the news agencies, namely, 'Hindustan Samachar' and 'Samachar Bharati', by communal elements should be assessed and necessary action taken.

13. A vigilant eye should be kept on some language magazines and periodicals like 'Sarita' and 'Kalpna'. The latter is published from Hyderabad.

14. Action should be taken against such objectionable foreign journals which are being sent directly to the readers in India. Particular attention was drawn to the 'Calling India' published by Anant Singh of Toronto (Canada).

15. Foreign correspondents refusing to furnish undertakings and submit writings for pre-censorship should be deported.

16. Care and imagination should be exercised in enforcing censorship so that no undue harassment is caused to the journalists. Censorship regulations should be enforced in all states. Violation of censorship by some newspapers in Tamil Nadu should be looked into. The chief censor should visit Tamil Nadu, Jullundur and some other states to satisfy him, that the censor officers have understood the spirit of censorship and are enforcing the censorship order.

17. An informal advisory group of editors should be constituted for advising the Information and Broadcasting Ministry in the enforcement of censorship[32].

Rule 48 of the Defence and Internal Security of India Rules authorized the pre-censorship of all matters or any specified class of matters, by the Central Government as well as by State Governments. These orginal censorship powers were circumscribed by the following considerations:

(i) Defence of India

(ii) Civil defence

(iii) Public safety

(iv) Maintenance of public order

(v) Sufficient conduct of military operations.

On June 26, 1975, the first day when the Proclamation of Emergency became effective, the Cabinet approved a proposal to impose pre-censorship and an order under Rule 48 of the then Defence of India Rules, 1971 was issued which listed the subjects faking within the scope of pre-censorship. This order was subsequently expanded to include additional subjects[33].

On September 9, 1975, Indira Gandhi, addressing a conference of All India Radio station directors, said on the credibility of All India Radio, "Quite honestly, I don't understand what it (credibility) means. Who has credibility? The Newspapers, who had day in and day out printed falsehood?"

Indira Gandhi ordered for censorship under the Defence and Internal Security of India Rules. On the day before the formal declaration of Emergency, the government resorted to blatant means to prevent publishing of newspapers on June 26. Power supply to newspaper offices was cut. Most newspapers in Delhi, therefore, failed to bring out their editions on June 26, 1975.

TV, too, was under similar pressures. Attempts were made to build mass support for Indira Gandhi and Sanjay Gandhi.

The film 'Bobby' was telecast from the Delhi TV Centre on February 6, 1977 at 5 p.m. instead of the scheduled film 'Waqt' at 6 p.m. It was believed that this was done to

[32]. Appendix to the White Paper on Misuse of Mass Media, during the Internal Emergency, August, 1977.
[33]. White Paper on Misuse of Mass Media during the Internal Emergency, August, 1977.

prevent people from going to Jayaprakash Narayan's meeting at the Ramlila Grounds as 'Bobby' was a very popular film.

The circumstance in which the substitution of the film took place lend weight to this allegation[34].

As regards films, several guidelines issued for censorship led to confusion in the minds of film makers. The movie, 'the entire President's Men', which depicted the Watergate scandal, was banned in India. 'Aandhi' which was cleared in January 1975 by the Board of Film Censors went through difficult times. It was believed that the heroine had a similarity to Indira Gandhi. In July 1975, the film was suspended for two months and on October 1, 1975, its producer was issued a notice to show cause why the film should not be banned. Ultimately, a revised version of the film was cleared on March 24, 1976[35].

It would be apposite here to quote the words of Faiz Ahmad Faiz :

"*My tablet and my pen,*

My two cherished treasures

Are snatched from me.

But does it matter?

For, I have dipped my fingers

In the blood of my heart.

My tongue they sealed

But does it matter?

For, I have placed a tongue

In every link of chain

That fetters me."

On March 23, 1977, in the 'Houston Post', appeared the following words:

"With the resignation of Indira Gandhi as Prime Minister of India, democracy has triumphed. By their votes the people of India reclaimed their freedoms and their rights.

[34]. White Paper on Misuse of Mass Media during the Internal Emergency.
[35]. White Paper on Misuse of Mass Media during the Internal Emergency, August, 1977.

And by their votes, they brought down every major architect of Gandhi's totalitarian regime the Prime Minister who had changed the Constitution to suit her purpose, the Information Minister who had clamped censorship on the Press, the Law Minister who designed the Ordinances that stripped the Indians of their civil liberties, and the Defence Minister who was her unpopular son Sanjay's closest ally".

In case of ***Subhash Chand v. S.M. Aggarwal***[36]the petitioner, Subhash Chand, along with his mother, Shakuntala, and brother, Lakshman, were found guilty of killing Sudha Lakshman's wife. S.M. Aggarwal, the Additional Sessions Judge, who tried the case, sentenced all the three accused to death. He, then, submitted the record for confirmation of the death sentences to the Delhi High Court.

While the matter was subjudice, the respondent, S.M. Aggarwal gave interviews to the Press and Doordarshan on the merits of the case. As a result, public opinion was built up against the accused, and even before the Delhi High Court could confirm the sentences, an atmosphere of prejudice was created against the accused in the mind of the general public. Counsel for the respondent, Ram Jethmalani, contended that section 4 of the Contempt of Courts Act rendered the publication privileged. Section 4 reads: *"Fair and accurate report of judicial proceedings not contempt.*—Subject to the provision contained in section 7, a person shall not be guilty of contempt of Court for publishing the fair and accurate report of judicial proceeding or any stage thereof."

The Court refuting this contention observed, "Reading section 4 with provisions of section 7 of the Contempt of Courts Act, 1971, it is clear that what is meant by the words 'judicial proceeding' is day-to-day proceedings of the Court. Assuming, though not granting that it is capable of a wider construction, it only permits a publication of 'fair and accurate report of a judicial proceeding'. The media reports under consideration certainly do not represent a fair and accurate report thereof. It is absolutely a one-sided picture."

The Court further observed, "The whole episode took shape in a manner that it undoubtedly created an atmosphere of prejudice which is amply borne out by the demonstrations that were held after the decision of the case by this Court, and we can neither ignore nor overlook such development. We are, therefore, of opinion that the conduct of the respondents is neither permitted by law nor by justice and in the case of respondent No. 1, apart from the fact that such a conduct on his part is disapproved by

[36] 1984 Cr LJ 481 (Del)

law, we are of the opinion that his conduct is also violation of judicial propriety which for long has become a necessary adjunct of the office which the judges are holding. The least that can be said is that the conduct of the respondents verges on contempt."

"In Ancient Greek drama, tragedy frequently results, not from the conflict between right and wrong, but from the conflict of two rights, both equally moral and important, but apparently irreconcilable. A typical example of this painful dilemma is the tension between the media and the Courts in the field of contempt of Court. The media invokes the invaluable right of free speech. The Courts rest their authority and power upon the right to independent justice"[37]. Both these rights are, however, not absolute and should be exercised reasonably and in good faith. As observed in **Romesh Thappar v. State of Madras**[38], the freedom of speech and of the Press does not confer an absolute right to speak or publish, without responsibility, whatever one may choose or an unrestricted or unbridled licence that gives immunity for every possible use of language and prevents punishments for those who abuse this freedom. Article 19(2) specifies the areas with respect to which this freedom can be curtailed. These are security of the State, friendly relations with foreign States, public order, decency or morality, Contempt of Court, defamation, incitement to an offence and sovereignty and integrity of India.

But these restrictions must "not be far-fetched, hypothetical or problematical or too remote in the chain of its relation" with the restriction. In **Superintendent, Central Prison v. Ram Manohar Lohia**[39] , the Supreme Court annulled section 3 of the Uttar Pradesh Special Powers Act which punished a person, even if he incited a single person not to pay or defer the payment of government dues. The Court held, "We cannot accept the argument of the learned Advocate General that instigation of a single individual not to pay tax or dues is a spark which may in the long run ignite revolutionary movement, destroying public order. We can only say that fundamental rights cannot be controlled on such hypothetical and imaginary consideration".

"In order that the restriction may be valid, three conditions have to be fulfilled. First, the restriction must be imposed by law. Executive fiats or orders are not permissible.

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[37]. Soli J. Sorabjee, Media and the Law of Contempt, Mass Media in India 1979-80.
[38] AIR 1950 SC 124
[39] AIR 1960 SC 633

Second, the restriction imposed by the law has to be under one or more of the heads mentioned above and none other. And third, the restriction must be reasonable, that is, it must not be excessive or disproportionate, having regard to the object of the legislation"[40].

On the other hand, the judiciary's powers, too, cannot be exercised without caution and reason. As was held in **Ambard v. Attorney General for Trinidad and Tabago** by the Privy Council in 1946, "Justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and respectful, though outspoken comments of ordinary men".

This clearly puts forth the fact that judges have no general immunity from criticism of their judicial conduct, as long as it is genuine and made in good faith and without any *mala fide* intentions or motives. In **E.M.S. Namboodiripad v. T.N. Nambiar**,[41] the Supreme Court observed that the freedom of speech shall always prevail except where contempt of Court is manifested, mischievous or substantial. In this case, Namboodiripad at a Press conference, made some remarks on the judiciary. He tried to justify his stand by saying that he was only expressing a Marxist philosophy. However, the Court held him guilty of contempt of Court. The right to freedom of speech and expression, though essential in a democracy, is not an absolute right and cannot be considered as mollifying the law of contempt of Court, nor does it absolve one for attacking the judges or Courts. Mathew, J., in his dissenting judgement in **Nambiar v. Namboodiripad** observed, "We should leave it to the people of this country to decide whether the system of administering justice in Courts has the defects alleged and requires change.

Soli J. Sorabjee, in his article – 'Media and the Law of Contempt' – made the following observation : "*There is no reason why the public should be kept in the dark about the true state of the judiciary, a consequence which would inevitably follow if a journalist or any other person is deterred by the present application of the contempt laws. The doctrine that truth is no defence clearly inhibits Press freedom and journalistic activity. The Press would hesitate when it ought to make comments in the public interest. A freedom as cherished as the freedom of the Press cannot be made dependent upon the over sensitiveness of judges".*

In case of P.N. *Duda v. P. Shiv Shanker*[42] P. Shiv Shankar who was the Minister of Law, Justice and Company affairs delivered a speech before a meeting of the Bar

[40]. Soli J. Sorabjee, Media and the Law of Contempt, Mass Media in India, 1979-80.
[41] AIR 1970 SC 2015,
[42] , AIR 1988 SC 1208

Council of Hyderabad on November 28, 1987 which contained certain derogatory passages against the Supreme Court. P.N. Duda, who was an advocate practicing in the Supreme Court drew the Court's attention to the speech. In the speech, Shiv Shanker attributed the Court with partiality towards the affluent sections and used extremely intemperate and undignified language. P. Shiv Shanker himself was once a judge of the High Court before he resigned and took to politics.

P.N. Duda, in his petition presented to the Attorney General/Solicitor General for consent under section 15 of the contempt of Courts Act, 1971 had expressed his apprehensions about the possible outcome of his request. He expressed his lack of confidence in their judgment and their ability to discharge their duties objectively and impartially. As such, the Attorney-General declined to exercise his functions under section 15 of the Act. The Supreme Court too, on the same grounds, dismissed the petition.

In **Hamdard Dawakhana v. Union of India**[43], In this case Petitions were filed under Article 32 of the Constitution questioning the Constitution al validity of the Drug and Magic Remedies (Objectionable Advertisement) Act, (XXI of 1954). The petitioners, Hamdard Dawakhana and another, alleged that soon after the Act came into force, they faced difficulties with regard to publicity of their products as the authorities raised objections to their advertisements. The Drugs Controller said that they had contravened section 3 of the Act and asked Hamdard Dawakhana to recall their products sent to Bombay and other States. The Drugs Controller also stopped the sale of 40 of their products and raised objections to the advertisements of the other drugs.

The petitioners contended that advertisement is a means by which freedom of speech and expression under Article 19(1)(a) is exercised and the restrictions imposed by the impugned Act are not covered by Article 19(2). They further claimed that the Act and the rules made there under impose arbitrary and excessive restrictions on the rights guaranteed by Articles 19(1)(f) and (g). Section 3 of the Act gives "unguided power" to the executive to add to the diseases enumerated in section 3. Moreover, the power o confiscation under section 8 of the impugned Act is violation of the rights under Articles 21 and 31 of the Constitution.

The Court, on examining the history of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, found that its objects was the prevention of self-

[43] AIR 1965 SC 1167,

medication and self-treatment and not merely stopping of advertisements offending against morality and decency.

The Court held that "advertisement is no doubt a form of speech, but its true character is reflected by the object for the promotion of which it is employed. It is only when an advertisement is concerned with the expression or propagation of ideas that it can be said to relate to freedom of speech. But it cannot be said that the right to publish and distribute commercial advertisements advertising an individual's personal business is a part of the freedom of speech guaranteed by the Constitution."

It also held that the provisions of the Act were in the interests of the general public and placed reasonable restrictions on the trade and business of the petitioners and were saved by Article 19(6) of Constitution of India.

Regarding section 3 of the Act[44], the Court held that the words, "or any other disease or condition which may be specified in the rules made under this Act" in clause (d) of section 3 which empowers the Central Government to add to the diseases falling within the mischief of section 3 conferred uncontrolled power on the executive and were ultra virus. Striking down the impugned words did not affect the rest of the clause as the words were severable.

The Court then held that, "the first part of section 8 which empowered any person authorized by the State Government to seize and detain any document, article or thing which such person had reason to believe contained any advertisement contravening the provisions of the Act imposed an unreasonable restriction on the fundamental rights of the petitioners and was unconstitutional , If this portion was excised from the section, the remaining portion would be unintelligible and could not be upheld." the Court observed that commercial advertisement does not fall within the protection of freedom of speech and expression as there is an element of trade and commerce in them. Thus, a law which lays restrictions on the publication of advertisements to promote the sale of certain goods through the Press or other means does not violate the right to free speech. As such, the impugned words of section 3(d) and the whole of section 8 were declared unconstitutional. The rest of the Act remained unimpaired. The Court directed the respondents to returns the goods seized. The petitions were thus partly allowed.

[44] The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954

6.2 Judicial Approach on Restrictions of freedom of media

The position that emerges is that Freedom of the media is implicit in the guarantee of freedom of expression and speech under Article 19 but the same is not absolute. It can be restricted provided three distinct and independent prerequisites are satisfied.

(1) The restriction imposed must have the authority of law to support it. Freedom of the Press cannot be curtailed by executive orders or administrative instructions which lack the sanction of law.

(2) The law must fall squarely within one or more heads of restrictions specified in Article 19(2), namely, (a) security of the State, (b) sovereignty and integrity of India, (c) friendly relations with foreign States, (d) public order, (e) decency or morality, (f) contempt of Court, (g) defamation or (h) incitement or an offence. Restriction on freedom of expression cannot be imposed on such omnibus grounds as "in the interest of the general public[45].

(3) The restriction must be reasonable. In other words, it must not be excessive or disproportionate. The procedure and the manner of imposition of the restriction also must be just, fair and reasonable."

The validity of the restrictions on freedom of speech and expression i.e. freedom of media is justifiable. The Courts in India exercising the power of judicial review can invalidate laws and measures which do not satisfy the above requirements and have done so repeatedly and ungrudgingly.

In a landmark judgment in the case of **Sakal papers**[46] the Supreme Court ruled that Article 19(2) of the Constitution permits imposition of reasonable restrictions on the heads specified in Article 19(2) and on no other grounds. It is, therefore, not open to the State to curtail the freedom of speech and expression for promoting the general welfare of a section or a group of people unless its action can be justified by a law falling under Article 19 clause 2 of the Constitution of India.

[45] Sakal Papers (P) Ltd. v. Union of India, AIR 1962 Sc 305
[46] AIR 1962 SC 305

6.2.1 Contempt of Court: The Constitution of India, Article19 (2) specifically enables the legislature to impose reasonable restrictions on the freedom of the Press in cases of 'contempt of Court. The expression 'Contempt of Court' is defined in section 2 of the Contempt of Courts Act, 1971, as under:

(a) 'Contempt of Court' means civil contempt or criminal contempt;

(b) 'Civil Contempt' means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court;

(c) 'Criminal Contempt' means the publication (whether by words spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which –

(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 proceedings; or

(iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

The Supreme Court and High Courts under Articles 129 and 215 of the Constitution of India, respectively, can punish persons for contempt of Court.

Article 129 reads: Supreme Court to be a Court of record – 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 of itself.

In **Aswani Kumar Chose v. Arabinda Bose,**[47] the Court observed that a Court of record is one whereof the acts and judicial proceedings are enrolled for perpetual memory and testimony and which has authority to fine and imprison for contempt of itself. In **Delhi Judicial Service Association v. State of Gujarat,**[48] it was held that the Supreme Court could impose punishment even in cases where there was Contempt of subordinate Courts. The words 'including the power to punish for contempt of itself', are not the words of restriction and do not exhaust or exclude its jurisdiction as a Court of record to punish for

[47] , AIR 1952 SC 369,
[48] (1989) 2 scale 748

the contempt of all subordinate Courts. The Constitution al power of the Court cannot be curtailed or taken away by any legislation such as the Contempt of Courts Act, 1971, nor can it be denied because similar power can also be found with the High Courts in Article 215.Article 215 reads: *High Courts to be Courts of record-* 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.

In **R.L. Kapoor v. State of Madras**[49]*,* it was held that the High Courts' jurisdiction to try and punish for contempt of Court includes all necessary and incidental powers to effectuate that jurisdiction.

Article 142(2) confers ancillary powers on the Supreme Court for "the investigation and punishment of any contempt of itself'. The rule-making power of the High Courts in this behalf is preserved by Article 225.

Section 10 of the Contempt of Courts Act, 1971, defines the power of the High Court to punish contempt's of its subordinate Courts. Section 10 reads: *Power of High Court to punish contempt of subordinate Courts:* - Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of Courts subordinate to it as it has and exercises in respect of contempt of itself:

Provided that no High Court shall take cognizance of contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the IPC.[50]

In **E. Chandra v. Member Secretary, MMDA***,* it was held that the power of committal for contempt must be wielded with the greatest reluctance and the greatest anxiety and only with the object of seeing that the dignity and authority of the Court are not imposed.

As per section 13 of the Contempt of Courts Act, 1971 all contempt are not punishable. Section 13 reads: *Contempts not punishable in certain cases:-* Notwithstanding anything contained in any law for the time being in force, no Court shall impose a sentence under this Act for a contempt of Court unless it is satisfied that the

[49] AIR 1972 SC 858,
[50] Indian Penal Code (45 of 1860).

contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

The origin of the law of contempt can be traced back to eighteenth century England. In 1765, a person called Almon was brought before the King's Bench for publishing a pamphlet containing derogatory remarks on the Court of King's Bench and Lord Mansfield, C.J. Thereupon, Wilmot, J., made the following observation: "The arraignment of the justice of the judges is arraigning the King's justice. It is an impeachment of his wisdom and goodness in the choice of his Judge, and excites in the minds of the people a general dissatisfaction with all judicial determination and indisposes their mind to obey them; and whenever men's allegiance to the laws is so fundamentally shaken it is the most fatal and most dangerous obstruction of justice…."

Fletcher, J., an Irish Judge, severely criticized this as "the hasty and warm ebullition of a mind fraught with arbitrary notions irritated and excited by a severe attack upon his whole Court, especially upon his venerated and adored Chief Justice, and the very reverse of what is called a considered, digested and ulterior opinion".

The Indian law of contempt follows the English law. The right of the Indian High Courts to punish for contempt was recognized by the Judicial Committee of the Privy Council which equated its powers to punish for contempt with that of the Supreme Court in England. The English Common Law was applied to the three chartered High Courts of Calcutta, Bombay and Madras, which, as Courts of record, had inherent power to punish summarily for their own contempt. When the High Courts were constituted by Letters Patent, they were made as 'Courts of record' so that the English Common Law could be invoked by them.

As to imposing punishment for contempt of subordinate Courts, the High Court's differed in their views. While in **L.R. v. Moti Lal**, the Calcutta High Court held that the High Court has inherent power to punish for contempt of a subordinate Court, the Madras, Bombay and Allahabad High Courts in **Torburn v. Venkata, Gandhi in re,** and **Abdul Hasan, in re**, respectively, held a contrary view.The first codified law on the contempt of Court was the Contempt of Courts Act which was passed in 1926. It defined and limited the powers of certain Courts to punish for contempt of Courts. Along with the Contempt of Courts Act of 1926, were in existence several other enactments on the law of contempt in various Indian states. These states were Hyderabad, Madhya Bharat, Mysore, Pepsu,

Rajasthan, Travancore-Cochin and Saurashtra. The Contempt of Courts Act and the state enactments were replaced by the Contempt of Courts Act, 1952.

However, this Act too was found to be unsatisfactory. In April 1960, the government brought out a Bill on the subject. On examining, it was found that a further study of the subject was necessary. As such, a Committee was set up with A.N. Sanyal the, then Solicitor General and was called the Sanyal Committee. It submitted its report on February 28, 1963, with a draft Contempt of Courts Bill, 1963. The objective of the Bill was to define and limit the powers of certain Courts in punishing for contempt of Courts and regulate their procedure in relation thereto. This Bill was finally passed as the Contempt of Court Act, 1971 (70 of 1971) in December, 1971 and it came into force with effect from December 24, 1971. The Act was amended in 1976.

The Act of 1971 codifies concepts and terminology of English Common Law which had gone into the legal currency of India[51]. This Act of 1971 has codified the law laid down in many judicial decisions, e.g., in providing definitions of civil and criminal contempt, and thus, this Act has become more elaborate and exhaustive than the Act of 1952.

The Court decisions show an interesting pattern in the development of the law of contempt in India. It was as early as 1952, when the issue of the contempt of Court was brought before the Supreme Court in the case of **Bathina Ramkrishna Reddy v. State of Madras**. The Supreme Court held that if defamation of a subordinate Court amounts to contempt of Court, proceedings can be taken under the Contempt of Courts Act, besides taking recourse to the remedy available to the aggrieved party under section 499 of the Indian Penal Code, 1860. Holding that the article in question was a scurrilous attack on the integrity of a judicial officer, the Court observed, "Specific instances have been given where the officer is alleged to have taken bribes or behaved with impropriety to the litigants who did not satisfy his dishonest demands, If the allegations were true, obviously it would be to the benefit of the public to bring these matters into light. But if they were false, they cannot but undermine the confidence of the public in the administration of justice and bring the judiciary into this repute".

But in **Perspective Publications v. State of Maharashtra**,[52] the Supreme Court held that "it may be that truthfulness or factual correctness is a good defence in an action

[51]Baradakanta Mishra v. Registrar of Orissa High Court ,AIR 1974 SC 710
[52] AIR 1971 SC 221

for libel, but in the law of contempt there are hardly any English or Indian cases in which such defence has been recognised".

In **Md. Vamin v. O.P. Bansal,**[53] it was held that a defence of truth or justification is not available to the publisher of a newspaper in proceedings for contempt of Court. However, fair and accurate report of judicial proceedings and a fair criticism of a judicial act is not contempt.

In **Subhash Chand v. S.M. Aggarwal,**[54] it was held that media reports must represent a fair and accurate report of a judicial proceeding and not be a one-sided picture.

In a recent incident, which was published in the Times of India[55] a sitting judge of the Allahabad High Court, I.M. Quiddishi, J., conducted a Court at the New Delhi railway station to try a railway employee for contempt of Court for not allotting him a berth on a train on March 8. Supreme Court lawyer Arvind Nigam said that Quiddishi, J., could not have exercised his powers as a judge to pass an order under the Contempt of Courts Act. He says, if a person is a complainant or a witness to an offence, he cannot be a prosecutor or a judge in the same case. Moreover, Quiddishi, J., lacked jurisdiction and it was not contempt of any of his orders. "Denial of a railway berth to a judge is not contempt of the Court," said another lawyer.

In **Mohammed Vamin v. Om Prakash Bansal**,[56] A notice was given to Om Prakash Bansal, editor, printer and publisher of a weekly, 'Prsant Jyoti', under section 15 read with section 2 (c) of the Contempt of Courts Act, 1971, for a news item published in the newspaper.The news item, in the opinion of the Court, was *prima facie* contemptuous of the Rajasthan High Court and the subordinate Courts. It scandalized the former and present judges of the said High Court, besides 32 judicial officers.

It was contended that the suit was barred by limitation as the matter referred to happened in 1977, three-and-a-half years before, and the news item contained the contents or a representation given by 25 advocates of Jaipur in 1977 to the President of India. Thus, the contempt had been committed in 1977 itself. The Court observed that "the exercise of the jurisdiction to punish for contempt commences with the initiation of proceedings for contempt whether *suo motu* or on a motion or a reference. The *terminous-a-quo* for the period of limitation provided in section 20 is the date when a proceeding for contempt is

[53] 1982 Cr. LJ. 332 (Raj),
[54] 1984 Cr. LJ. 481 (Del),
[55] March 13, 2000,p.8
[56] 1982 Cr. LJ. 322 (Raj)

imitated by the Court. It is not in dispute that the present news item has been published by the non-petitioner in the weekly newspaper, 'Prasant Jyoti' dated 30th March, 1981 and the proceedings for contempt have been initiated by this Court on 4th May, 1981. Though there is nothing on record to hold that the non-petitioner only published the contents of the representations made by Jaipur Advocates in 1977 or Bikaner Advocates in 1978, but that apart, every publication itself gives a fresh ground for taking proceedings for contempt and the present proceedings cannot be held to be barred by limitation even though the news item might relate to the same subject matter which was given in the representations of 1977 and 1978 as alleged by Bansal."

Regarding the contention that the matter was defamatory as it did not relate to any proceedings pending in the Court, the Court observed, "Whether defamatory matter amounts to contempt of Court in any particular case is a question of fact or degree and of circumstances. The defamatory statement scandalizing a judge in his official capacity calls for an action in contempt, if the impugned article attacks the judge personally and not on account of any of his official actions; it can only be questioned by libel action. However, venomous and sarcastic an article may be, if it is only an attack on the judge in his personal capacity and not in the capacity of a judge, there is no contempt… But if the impugned article attacked the judge ascribing to him favoritism in his judicial or official capacity, it is contempt."

The Court held that "in the reply as well as in the arguments advanced before us, the condemner has tried to defend the contents of the news item published by him in his weekly newspaper, 'Prasant Jyoti' dated March 30, 1981. He has not furnished any apology nor has shown any regret about such publication. He is all in all, the editor, publisher and printer of such article. There was no indication of any remorse or contrition on the part of the contemnor during the whole case. The contemnor has scandalized the past and present judges of the High Court of this state and also 32 judicial officers of the lower Courts."As such, he was found guilty of contempt of Court.

Delhi Judicial Service Association, Tis Hazari Courts, Delhi v. State of Gujarat,[57] In this Case N.L. Patel was posted in Nadiad, Gujarat as Chief Judicial Magistrate in October, 1988. Soon after his posting, he found that the local police was not cooperating with the activities of the Courts, as a result of which trials were unduly delayed. He lodged a complaint against the local police with the District Superintendent of Police, but to no

[57] 1991) 4 SCC 406.

effect. The Police Inspector, Sharma, in order to take revenge on Patel for complaining against the local police, on the pretext of discussing a case invited Patel to the police station.

When Patel arrived at the police station, he was assaulted and forced to drink liquor. He was handcuffed and tied up with a rope. On the dictation of Sharma, a panchnama was prepared stating that Patel was in a drunken state. This was signed by Sharma and two panchas.

Patel was then taken to the Civil Hospital in that state and made to sit outside where a press photographer was called to take photographs of Patel. Patel's request to the doctors to contact the District Judge was turned by Sharma. When lawyers sought bail for the offence registered under the Bombay Prohibition Act, Sharma registered another case under sections 332 and 506 of the Indian Penal Code to make it a non-bailable offence.

Two questions of law arose in this matter before the Court:

- Whether the incident constituted Contempt of Court;
- Whether the Supreme Court has inherent jurisdiction or power to punish for contempt of subordinate or inferior Courts under Article 129 and whether the inherent jurisdiction and power of the Supreme Court is restricted by the Contempt of Courts Act.

The Court held that "the definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of Court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community n the due administration of justice and so, it is entrusted with the power to commit for contempt of Court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. The power to punish for contempt is thus, for the protection of public justice, whose interest requires that decency and decorum is preserved in Courts of Justice. Those who have to discharge duty in a Court of justice ate protected by the law, and shielded in the discharge of their duties. Any deliberate interference with the discharge of such duties either in Court or outside the Court by attacking the presiding officers of the

Court, would amount to criminal contempt and the Courts must take cognizance of such conduct."

As for the other question, the Court held that "the Supreme Court as well as High Courts is Courts of Record. The Constitution does not define Court of Record, but this expression is well recognized in the juridical world. A Court of Record is 'a Court where of the acts and judicial proceedings are enrolled for a perpetual memorial and testimony' and has power of summarily punishing contempt of itself as well as of subordinate Courts." It further held, "where jurisdiction is conferred on a Court by a statute the extent of jurisdiction is limited to the extent prescribed under the statute. But there is no such limitation on a superior Court of record in matters relating to the exercise of Constitution al powers. The conferment of appellate power on the Supreme Court under section 19 of the Contempt of Courts Act does not and cannot affect the width and amplitude of its inherent powers under Article 129[58]."

The Court then laid down the following guidelines for the arrest of a judicial officer:

A. If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court, as the case may be.

B. If facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinator judiciary, a technical or formal arrest may be affected.

C. The fact of such arrest should be immediately communicated to the District and Sessions Judge of the co9ncerned district and the Chief Justice of the High Court.

D. The judicial officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

E. Immediate facilities shall be provided to the judicial officer for communication with his family members, legal advisers and judicial officers, including the District and Sessions Judge.

F. No statement of a judicial officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence

[58] Constitution of India,Art.129

of the legal adviser of the judicial officer concerned or another judicial officer of equal or higher rank, If available.

G. There should be no handcuffing of a judicial officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District and Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the police to establish the necessity for effecting physical arrest and handcuffing the judicial officer and if it be established that the physical arrest and handcuffing of the judicial officer was unjustified, the police officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

The Court however, went on to say that "in our opinion, no judicial officer should visit a police station on his own except in c connection with his official and judicial duties and functions. If it is necessity for a judicial officer or a subordinate judicial officer to visit the police station in connection with his officer or a subordinate judicial officer to visit the police station in connection with his official duties, he must do so with prior intimation of his visit to the District and Sessions Judge."

6.2.2 Defamation

The defamation[59] is the publication to a third party of a statement which tends to lower a living person in the estimation of right thinking members of society generally; or which makes them shun or avoid that person; or which disparages his reputation in relation to his work.

In Youssoupaff v. MGM Pictures Ltd. (1934), a film was made by the defendant in which was suggestion that the plaintiff, a Russian princess, had either been raped or seduced by Rasputin. When the film appeared, the princess was in exile in Paris. She sued the defendants as there was no proof of the suggestions made, in real life. They contended that people seeing the film would not hate, ridicule or feel contempt for the princess. The Court rejected their arguments as the princess was able to show that her friends had started

[59] The classical definition of defamation in England as given by Robin Callender Smith (Press law, 1978)

pitying her for no fault of her own and had begun avoiding her to save her from embarrassment.

In India, defamation comes under both the criminal law and civil law. The Constitution of India under Article 19(2) mentions defamation as one of the reasonable restrictions on the freedom of speech and expression guaranteed under Article 19(1)(a).

Section 499 of the Indian Penal Code defines defamation[60] as whoever by words either spoken or intended to be read, or by sign or by visible representations, makes or publishes and 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, except in the case, hereinafter excepted, to defame that person.

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[60] Explanation S.499 of I.P.C.,1860, Explanation I – It may amount to defamation to impute anything to a deceased person, if the 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.

Explanation 2 – It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3 – An imputation in the form of an alternative expressed ironically, may amount to defamation.

Explanation 4- 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 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.

First exception.-Imputation of truth which public good requires to be made or published – It is not defamation to impute anything which is true concerning any person, if it to be for the public good that the imputation should be made or published.

Whether or not it is for the public good is a question of fact.

Second exception – Public conduct of public servants – It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third exception- Conduct of any person touching any public question :- It is no defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further

Fourth exception – Publication of reports of proceedings of court :- It is not defamation to publish substantially true report of the proceedings of a court of justice or of the result of any such proceedings.

Fifth exception – Merits of case decided in court or conduct of witnesses and others concerned :- It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a court of justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in thatj conduct, and no further.

Sixth exception – Merits of public performance :- It is not defmation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Seventh exception – Censure passed in good faith by person having lawful authority over another :- It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth exception – Accusation preferred in good faith to authorize :- It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth exception – Imputation made in good faith by person for protection of his or other's interests. :- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth exception – Caution intended for good of person to whom conveyed or for public good :- It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

The punishment for the criminal offence of defamation is mentioned in section 502 of the Indian Penal Code. Section 502 reads: Sale of printed or engraved substance containing defamatory matter – "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".

However, "defamation is primarily a civil matter with the plaintiff seeking to recover damages for the tort (civil wrong) or injury to his reputation. If his reputation is not damaged but statements are made which affect him financially in his work, then he may have an action for the tort of injurious falsehood if he can prove the words were published maliciously and that the facts stated were untrue"[61].

The criminal law of defamation is different from the civil law of damages for defamation in India. In a civil action, the intention of the defendant is no defence to defamation. But under criminal law as enshrined in section 499 of the Indian Penal Code, the imputation must be published, "intending to harm, or knowing or having reason to believe that such imputation will harm". In **Capital & Counties Bank v. Henty**, it was held that in a civil action for defamation, intention of the defendant is, in general immaterial. "A person charged with libel cannot defend himself by showing that he intended in his own breast not to defame, or that he intended not to defame the plaintiff, if in fact he did both"[62]. However, the position, as ruled in **T.V. Ramasubha Iyer v. *A.M.A. Mohideen***[63], is different in India. Here, the point of law that came up before the Madras High Court was whether a person would be held liable for publishing a defamatory statement without the intention to defame the plaintiff. In this case the defendants published news in their newspaper that a person exporting agarbathis to Ceylon, had smuggled opium into Ceylon and that he was arrested in Ceylon. The plaintiff who manufactured agarbathis and exported them to Ceylon brought an action against the defendants alleging that the news item had defamed him. The defendants also carried a correction of the news in their paper so as to apologise.

The Court referring to English cases and the Defamation Act, 1952 reversed the judgment in **Hulton v. Jones**,[64] saying it was against justice, equity and good conscience.

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[61]. Robin Calender Smith – The Press Law, 1978.
[62] Hulton v. Jones, 1910 AC 20.
[63]. AIR 1972 Mad 398 : (1972) 1 MLJ 508.
[64] 1910 AC 20

Section 4 of the Defamation Act also alters the English law, by which the publisher of an innocent but defamatory statement is not liable. In India, therefore, there is no liability for matter published innocently.

Any matter which exposes a person, about whom it is published, to hatred, ridicule or contempt, is said to be defamatory. Defamation can be either libel or slander. Defamatory matter becomes a libel, if it is in writing, is printed or is in some other permanent medium. Slander has to be in spoken words or gestures.

To invoke the law of defamation, a statement must fulfill four essential conditions. The statement must be defamatory, must refer to the plaintiff, must be published by the defendant and must be false.

A statement is defamatory if it has a tendency to injure a person's reputation. the test is whether the statement has a tendency to excite against the plaintiff the "adverse opinions or feelings of others", such as hatred, ridicule or contempt. ***In Ramdhara v. Phulawatibai***[65]**,** imputation of illegitimacy was held to be defamatory, so was the imputation of unchastity to a married woman or a widow. In **Youssoupoff v. MGM Pictures,** the suggestion that a woman was either raped or seduced in a film was found to be defamatory as in real life her friends came to avoid her to save her from embarrassment. In **D.P. Choudhary v. Manulata**[66]*,* a statement was published in a local daily in Jodhpur that Manjulata went out of her house in the night on the pretext of attending night classes and eloped with a boy named Kamlesh. The news was false and was published with utter-irresponsibility. This brought the plaintiff to ridicule and contempt and even affected her marriage prospects as she was a young girl. The statement being defamatory and false, the defendants were held liable. In **Lewis v. Daily Telegraph**,[67] a newspaper report that the police fraud squad was inquiring into the company's affairs and was naming the chairman was defamatory. In *Dunlop Rubber Co. v. Dunlop,* it was held that the form or mode in which the disparagement of the plaintiff is done is immaterial, if it has the tendency of rousing the adverse opinion of others against the plaintiff. A statement is defamatory if under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libelous sense.

[65] 1970 Cr. LJ. 286 (MP),
[66]. AIR 1977 Raj 170.
[67] 1963 (2) All ER 151

Where a statement in its ordinary meaning has a defamatory imputation, the defendant would be liable, unless he proves that the persons to whom it was conveyed or published, did not construe it in that sense, owing to certain other factors which lent it a special meaning. On the other hand, words which are not defamatory in the ordinary sense could nevertheless be defamatory, if the particular circumstances in which they were spoken were taken into account.

The second condition is that the statement must refer to the plaintiff. The plaintiff must be able to prove that the defendant intended it to be so. In **Hulton v. Jones**[68] , the appellants published an article in their newspaper in which one Artemus Jones, referred to as a church-warden was alleged to be living with a mistress in France. However, there was an English barrister and journalist by the same name and those who knew him, thought that the article referred to him. It was held by the House of Lords that the defendants were liable; notwithstanding the fact that the defendants had no intention to defame the plaintiff in as much as reasonable men understood the article to refer to the plaintiff. "A person charged with a libel cannot defend himself by showing that he intended in his own breast not to defame, or that he intended not to defame the plaintiff, if in fact he did both."

In **Newstead v. London Express Newspapers**,[69] it was held that when the plaintiff establishes that those acquainted with him reasonably believed the statement to refer to the plaintiff, the defendant cannot take the defence that there was another person who answered the description given in the statement and of whom the imputation made was true.

The third essential condition for defamation is that the statement must be published. There can be no civil action, if the defamatory words are communicated only to the person spoken of as it cannot harm his reputation although it may hurt his self-esteem. Communication must be made, at least, to one third person. A libelous statement if sent straight to the person of whom it is made in a sealed envelope addressed to him will not amount to defamation. However, if on the other hand the matter is communicated even to a single individual other than the person defamed, and such other individual is capable of understanding the defamatory significance of the statement, such matter then amounts to the civil wrong of defamation. Thus, if a defamatory statement is sent through a telegram or a postcard which can in all probability be read by other persons, the person sending

[68] 1910 AC 20
[69] 1940 1 KB 377

such libelous matter will be liable. However, if a sealed envelope containing such matter is opened by a servant or other person who is not supposed to do so and who has in fact no right to do so, the defendant will not be liable.

In **Bryansten v. de Vries**[70], it was held that the writer of a letter and his typist or a photocopier having a common interest in the writing of the letter in the usual course of business, there would be no publication by the defendant even though the purpose of the letter was to defame the address.

The Press has a responsibility to see that defamatory statements are not published. Every repetition of a defamatory matter is a new publication and gives rise to a fresh cause of action. It is no defence to say that the defendant received the libelous statement from another person whose name he disclosed at the time of publication. If a libel appears in a newspaper, all those involved with the process of publication, the proprietor, editor, printer and the publisher, can be jointly and severally sued even if they had no intention to defame the plaintiff.

In **Cassidy v. Daily Mirror**,[71] the defendants published a photograph of the plaintiff's husband in a newspaper with another lady announcing that they were engaged. The photograph as well as the caption was given to them by the plaintiff's husband. It was held that though the defendants had no reason to believe that the matter published was defamatory, the plaintiff was entitled to damages as the publication was capable of conveying the meaning that the plaintiff was her husband's mistress.

Apart from the news which is recognized by law as 'privileged' as for instance, reports of parliamentary or judicial proceedings, the media does not enjoy any protection under the law of defamation, even if the matter is in public interest. A newspaper vendor, who circulates libelous matter, cannot be held liable if he can prove that he did not know, nor could with reasonable diligence have known that he was circulating defamatory matter. This is also applicable to booksellers and librarians who are not aware or could not have with reasonable diligence been aware of the libelous matter they were circulating.

The fourth condition for a matter to be defamatory is that the statement must be false. There can be no civil action for the publication of a defamatory statement which is true. The burden of proof lies on the defendant to prove that the statement is true.

[70] 1975 (2) All ER 609
[71] 1929 (2) KB 331

In an action for defamation, a defendant can take up three general defence' justification, fair comment and privilege. According to Durga Das Basu, possible defence to an action for defamation in India can be:

(i) That the alleged statement was not published.

(ii) That that statement did not refer to the plaintiff.

(iii) That the words complained of did not bear any defamatory meaning.

(iv) That the statement was true in substance and in fact.

(v) That the statement was absolutely privileged.

(vi) That the statement was published in good faith and without malice towards the plaintiff on a matter of public interest.

(vii) That the publication was made by the authority or with the consent of the plaintiff.

(viii) That the plaintiff has agreed to forgo the claim or has given a written release from liability.

(ix) That the person defamed has died.

(x) That the suit is barred by limitation.

(xi) That the suit is barred by res judicata[72].

The truth of a defamatory statement is a complete defence and other extraneous factors like motive and intention cannot hold ground. This is said to be the plea of justification, whereby a defendant justifies his statement. If a statement is substantially true even if certain unimportant details are incorrect, the plea of justification still stands.

Deference is fair comment. No statement can be said to be defamatory if it is a fair comment on a matter of public interest. To take fair comment as a defence, the defendant must be able to show that the published matter is in public interest, is a comment and not a statement of fact and that the comment is fair. In **London Artists v. littler** were pointed out three situations where the defence of fair comment can be exercised. Whenever any matter is such as to affect people at large then is a matter of public interest and everyone can make a fair comment on it. The statement in question must be only a comment and not

[72]. Law of the Press in India, 1980.

a statement of fact. Thirdly, whether there were any facts on which a fair comment could be made.

In certain circumstances, a person is allowed to make defamatory statements. The defence available in such cases is called the defence of privilege. This again is of two kinds-absolute and qualified.

Absolute privilege arises in matters of public policy, where a man is allowed to speak freely without fear of consequences, even if the statement made is false or malicious.

Qualified privilege exists where the exemption is not absolute. This privilege is recognized in cases where the defendant had some lawful interest or duty in making the statement. However, absence of malice or improper motive has to be proved. In *Adam v. Ward*, it was held that the basis of qualified privilege is that the person making the statement "has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. The reciprocity is essential."

In any defamatory statement, the presence of malice, like falsity is always presumed and the plaintiff need not prove it except in cases where the defendant seeks the defence of qualified privilege.

***Hulton v. jones*,**[73] The appellants published in the 'Sunday Chronicle' an article defamatory of a person described as 'Artemus Jones'. One Artemus Jones, a barrister, was in fact at one time working with the 'Sunday Chronicle'. At the trial, the respondent's friends gave evidence that they had read the libel and belied it to refer to the respondent. The evidence of the appellants that they did not know of the respondent's existence was accepted as true by the respondent's counsel.

The appellant contended that there could be no intention to defame the respondent, when the writer was not even aware of the respondent's existence.

The Court held, "Tort consists in using language which others knowing the circumstances would reasonably think to be defamatory of the person complaining of and injured by it. A person charged with libel cannot defend himself by showing that he

[73] 1910 AC 20 (23)

intended in his own breast not to defame, or that he intended not to defame the plaintiff, if in fact, he did both."

Cassidy v. Daily Mirror Newspapers Ltd [74] The plaintiff, Mrs. Mildred Anna Cassidy, was the lawful wife of one Kettering Edward Cassidy, also known as Michael Dennis Corrigan, an owner of race horses and known to be a General in the Mexican Army at one time. Though the plaintiff and her husband did not live together, he used to visit her at the shop where she worked.

The plaintiff brought an action of libel against the defendant for a photograph of her husband, K.E. Cassidy, with a woman whose name was not mentioned at the trial but referred to as Miss X, which was published in their newspaper, the Daily Mirror, on February 21, 1928, with the words, "Mr. M. Corrigan, the race horse owner and Miss" X, "whose engagement has been announced".

The plaintiff contended that she suffered damage on account of the above publication inasmuch as it was intended and by several people understood to mean that the said K.E. Cassidy was not the plaintiff's husband, but was living with her in immoral cohabitation. At the trial, the plaintiff produced three of her acquaintances who had held her in respect and treated hr as a friend, but who on seeing the publication thought that she has been deceiving them.

The defendants, on the other hand, showed evidence to the effect that on February 18, 1928, at Hurst Park races, one Stanley Earnest King Richardson, who was a partner in the News Illustrations Press Agency, saw K.E. Cassidy with Miss X, whose photograph he had taken on a former occasion; that Cassidy told him that he was engaged to Miss X, that Richardson asked if he might publish a photograph and the news of the engagement; that Cassidy had consented to it and that Richardson then sent to the defendants for publication a print of their photograph along with the words complained of and the defendants had published the same. The Court held that the publication was capable of conveying a meaning defamatory of the plaintiff and so the appeal failed.

Newstead v. London Express Newspapers Ltd.[75] The plaintiff was one Harold Cecil New stead, a hairdresser in Camberwell and the defendants were printers and publishers of the Daily Express newspaper. The words objected to, published in the Daily Express of March 30, 1938 are as follows: "Harold New stead, 30 year-old Camberwell men, who

[74] 1929 (2) KB 331
[75] 1940 (I) KB 377

was jailed was jailed for nine months, liked having two wives at once. Married legally for a second time in 1932-his legal wife is pictured right, above-he unlawfully married 19 year old Daris Skelly (left, above). He said, 'I kept them both till the police interfered'."

The plaintiff contended that he was well known in the hairdressing trade as Harold New stead, and that he was about 30 years old and a Camberwell man. He alleged that the words objected to be understood by a number to refer to him.

The defendants denied that the words complained of were intended or understood to refer to the plaintiff, or that they were defamatory of him. They contended that the words referred to an existing person of whom the words were true.

The news item reported the proceedings for bigamy at the Central Criminal Court. The Harold Newstead, who was the convict, was referred to as a barman and his address in Camberwell given. While making it into a story, the address and occupation of Harold Newstead were omitted. These omissions made the words capable of being referred to the plaintiff.

Du Parcq L.J. held, "In the present case and in any similar case in which a defendant says that he was only speaking the truth of another person and not meaning to attack the plaintiff, it may well be right to direct the jury that a reasonable man must be aware of the possibility that in any district there may be more than one person of the same name, and that, in considering how a reasonable man would understand the words, they must assume that he will read them with such care as may fairly be expected of him, not ignoring any parts of the description which are inapplicable to the plaintiff. If a defendant has been careful and precise, he may by his care, avoid the risk of a successful action, but he cannot in my opinion escape liability merely by showing that he was careful and that his intentions were good."

***Ramdhara v. Mst. Phulwatibai*,**[76] In this matter, the relation between the parties was already strained. Few days before the incident in question took place, there was a quarrel between the parties and a report was lodged in the police station. On the day of the incident, Ramdhara, the plaintiff, on her way to bring her cattle happened to come across defendant No. 1. On seeing her, defendant No. 1 abused her filthily and uttered defamatory words, calling her the keep of their daughter-in-law's maternal uncle, Jagatram.

[76] 1970 Cr LJ 286 (MP)

The Court observed, "In the present case, if the defendants had merely uttered the word 'chinal', I would have held that the word did not convey its literal meaning, that is, a woman of easy virtue, but was only a vulgar abuse, which is not uncommon in villages when women quarrel among themselves. Mere vulgar abuse, which does not tend to lower a person addressed in the estimation of others or to bring him into obloquy, contempt or ridicule, does not amount to defamation. In such a case the abuse is uttered merely to put an affront upon the feeling of the person abused, or as an insult to his dignity or self-respect without other persons knowing of it or without producing such an impression in their mind as its natural meaning would convey. But where words are uttered in circumstances tending to lower the person addressed in the estimation of the people present and to bring him into ridiculous or contempt, they will constitute defamation and will be actionable.

"Here, the words uttered by the defendant did not constitute a mere vulgar abuse. There was a definite imputation upon the plaintiff's chastity. The attending circumstances cannot be lost sight of. She is a widow of 45 years, her husband having died several years before. Jagatram is a close relation of hers, being maternal uncle of her daughter-in-law. If in these circumstances, there is an imputation that the plaintiff is the keep of Jagatrakm, or that she had developed illicit relations with hem, the statement is undoubtedly defamatory. A language is defamatory on the face of it when defamatory meaning is the only possible or the only natural and obvious meaning."

***London Artists, Ltd. V. Littler*,**[77] In this Case Four top theatrical artistes, through their agents gave one month's notice to the defendant to move out of their engagements in a play being staged by the defendant at Her Majesty's Theatre, London. The notices were in accordance with their contracts. The moving out of tour top performers in a play was a big jolt and was likely to bring the play to an end. The defendant, convinced there was a plot to stop the play wrote a letter to each artiste concerned in which he suggested that all the four artistes had taken part in what appeared to be a plot to bring about the end of a successful play.

The defendant pleaded justification, fair comment on a matter of public interest (*i.e.* the fate of the play) and publication on an occasion of qualified privilege, in actions for libel against him. The Court held that although the comment was on a matter of public interest, the allegation of a plot was in itself defamatory of the plaintiffs and was not

[77] 1969 2 All ER 193

reasonably capable of being considered a fair comment and which the defendant failed to prove as true, As such the plea of fair comment failed. The appeal was dismissed and leave to appeal to the House of Lords refused.

T.V.Ramasubba lyer v. A. M. Ahamed Mohideen, [78] The appellants in this matter are the editor and owner of a daily, 'The Dhinamalar', published from Tirunelveli. In the February 18, 1961 issue of the daily, a news item with the dateline as Ceylon, February 17, reported that a person from the Tirunelveli distridct, who was exporting scented agarbathis to Ceylon and who was also called the 'king of Agrarbathi business' had smuggled opium into Ceylon in the form of agarbathis. On information, the Madras police with the help of the Ceylon police, arrested him and got him to Madras.

The respondent, who is a resident of Alakiamanavalapuram, is a manufacturer of scented agarbathis and he exported the same to Ceylon. The respondent alleged that the said publication defamed him as the news item was understood to refer to him and so instituted a suit for damages of Rs. 5,000. The appellants contended that the news item was not defamatory. More importantly, they were not aware of the respondent's existence and did not intend to publish the news item with reference to the respondent. In the May 14, 1961 issue of the 'Dhinamalar', they even published a correction clarifying that the person referred to in the earlier news item was not the respondent. The subordinate Judge, relying on the decision of the House of Lords in **E. Hulton and Co. v. Jones**[79], concluded that the intention was not the test of liability so long as the respondent had actually been defamed. However, the decision of **Hulton v. jones** was overruled in English law by section 4 of the Defamation Act, 1952. The position therein as summarized by S. Ramaswami lyer in his Law of Torts is as follows:

"*A publisher of words alleged to be defamatory of another cannot be sued if he published them 'innocently' and if he follows the prescribed procedure. Words shall be treated as having been published 'innocently' if either of two conditions are satisfied, first, he did not intend to publish them of and concerning the party aggrieved and did not know of circumstances by virtue of which they might be understood to refer to him, or second, the words are not defamatory on the face of them and he did not know of circumstances by virtue of which they might be understood to be defamatory of that person; and in either case the publisher exercised all reasonable care in relation to the publication.*"

[78] AIR 1972 Mad 398
[79] 1910 AC 20

The Court held that "even assuming that the English principle of law, as it is in existence, is automatically approvable to the Indian conditions, still by the time this case came to be decided, even the English law has been altered by section 4 of the Defamation Act, 1952, and therefore on this basis, it is the law as it stood after modification by section 4 of the Defamation Act, 1952, As I have pointed out already, the trial Court came to the conclusion that the appellants neither did not know of the existence of the respondent herein and the respondent, as PW 6 admitted, had no connection with the appellants. The explanation of the appellants was that they published the news item as they got it from the correspondent in "Ceylon by name Thambiuithorai. Even though they have failed to prove the truth of the news item with reference to any particular individual, the case of the appellants that they published the news on the basis of a communication received by them from their correspondent in Colombo was not disbelieved by either of the Courts below. Under these circumstances, I am clearly of the opinion that this is a case in which, looked at from any point of view, the appellants should not have been made liable in damages at all."Accordingly, the appeal was allowed.

M.R. Parashar v. Farooq Abdullah, [80] In this case, a petition was filed against the Chief Minister of Jammu and Kashmir, Farooq Abdullah for contempt of Court. On November 13, 1982, a news item appeared in the Daily Kashmir Times which read: "CM asks engineers to forcibly occupy club building." It was reported that the Chief Minister advised the Institute of Engineers to move quickly in the matter before the management of the club could obtain a stay order from the Court.

In another news item on November 23, 1982, it was reported that the Chief Minister while addressing a rally of Judicial Employees' Welfare Association, denounced and ridiculed the judiciary by saying that "justice is being bought in the judicial Courts".

The Court had to however, dismiss the case as there was no official record whatsoever of the speeches made by the Chief Minister at the two functions.

D.P. Chaudhary v. Manjulata, [81] In this case, the plaintiff respondent, Manjulata, was a member of a distinguished family in Jodhpur. On December 18, 1977, Dainik Navjyoti published a news regarding Manjulata with unfair comments and false imputations. The news item said that Manjulata, who had left her residence the previous night on the pretext of attending night classes, had eloped with one Kamlesh.

[80] AIR 1984 SC 615
[81] AIR 1997 Raj 170

The news item was untrue and was published negligently with utter irresponsibility which gave rise to negative feelings against Manjulata. The Court found from the evidence on record that the defendant appellants, "after having received information from the police, without any proper verification published the news item, with the result Manjulata and her parents lost their prestige in the society and in the eyes of relatives as well as the persons who know them," This also affected her marriage prospects. Thus, held that damages of Rs. 10,000 awarded was not excessive.

- Emergency and Press censorship
- Morality, obscenity and censorship

6.2.3 Right to Privacy

Privacy as a concept involves what privacy entails and how it is to be valued. Privacy as a right involves the extent to which privacy is (and should be legally protected). "The law does not determine what privacy is, but only what situations of privacy will be afforded legal protection[82]." It is interesting to note that the common law does not know a general right of privacy and the Indian Parliament has so far been reluctant to enact one.

At this point begins the role of the Judiciary. Judicial activism has brought the Right to Privacy within the realm of Fundamental Rights. Article 141 of the Constitution states that "the law declared by the Supreme Court shall be binding on all Courts within the territory of India." Therefore, the decisions of The Supreme Court of India become the Law of the Land. The Supreme Court of India has come to the rescue of common citizen, time and again by construing "right to privacy" as a part of the Fundamental Right to "protection of life and personal liberty" under Article 21 of the Constitution, which states "no person shall be deprived of his life or personal liberty except according to procedures established bylaw". In the context of personal liberty, the Supreme Court has observed "those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty must strictly and scrupulously observe the forms and rules of the law".Even the fundamental right "to freedom of speech and expression" as enumerated in Article 19(1)(a) of the Constitution of India comes with reasonable restrictions imposed by the State relating to (i) defamation; (ii) Contempt of Court; (iii) decency or morality;(iv) security of the State; (v) friendly relations with foreign states; (vi)

[82]. Hyman Gross, The Concept of Privacy, 42 N.Y.U.L. Rev. 36, 36 (1967).

incitement to an offence; (vii) public order; (viii) maintenance of the sovereignty and integrity of India. Thus, the right to privacy is limited against defamation, decency or morality. The Supreme Court has reiterated the Right to Privacy in the following cases:

Kharak Singh v. State of UP[83] In this case the appellant was being harassed by police under Regulation 236(b) of UP Police Regulation, which permits domiciliary visits at night. The Supreme Court held that the Regulation 236 is unconstitutional and violate of Article 21. It concluded that the Article 21 of the Constitution includes "right to privacy" as a part of the right to "protection of life and personal liberty". The Court equated 'personal liberty' with 'privacy', and observed, that "the concept of liberty in Article 21 was comprehensive enough to include privacy and that a person's house, where he lives with his family is his 'castle' and that nothing is more deleterious to aman's physical happiness and health than a calculated interference with his privacy".

Gobind v. State of M.*P.* [84] is another case on domiciliary visits. The Supreme Court laid down that, "privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test.

State v. Charulata Joshi[85] the Supreme Court held that "the Constitutional right to freedom of speech and expression conferred by Article 19(1)(a) of the Constitution which includes the freedom of the press is not an absolute right. The press must first obtain the willingness of the person sought to be interviewed and no Court can pass any order if the person to be interviewed expresses his unwillingness".

R. Rajagopal v. State of Tamil Nadu[86],The Supreme Court held that the petitioners have a right to publish what they allege to be the life-story/autobiography of Auto Shankar insofar as it appears from the 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 then they will be liable for the consequences in accordance with law. Similarly, the State or its officials cannot prevent or restraint the said publication. It stated that "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

[83] (AIR 1963 SC 1295)
[84] (1975) 2 SCC 148
[85] (1999) 4 SCC 65.
[86] (1994) 6 SCC 632

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……."

People's Union for Civil Liberties (PUCL) v. Union of India,[87] the Supreme Court held that the telephone tapping by Government under S. 5(2) of Telegraph Act, 1885 amounts infraction of Article 21 of the Constitution of India. Right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article 21 of the Constitution. The said right cannot be curtailed "except according to procedure established by law".6. In **Mr. 'X' v. Hospital 'Z'**[88] for the first time the Supreme Court articulated on sensitive data related to health. In this case, the appellant's blood test was conducted at the respondent's hospital and he was found to be HIV (+). His marriage, which was already settled, was called off after this revelation. Several persons including the members of his family and those belonging to their community came to know of his HIV (+) status and were ostracized by the community. He approached the National Commission against the respondent hospital claiming damages from them for disclosing information about his health, which, by norms of ethics, according to him, ought to have been kept confidential. The National Commission summarily, dismissed his complaint. Consequently he moved the Supreme Court by way of an appeal.

The appellant argued that the principle of 'duty of care' as applicable to persons in medical profession also included the duty to maintain confidentiality and that since this duty was violated by the respondents, they were liable to pay damages. "Right of privacy may, apart from contract, also arise out of a particular specific relationship, which may be commercial, matrimonial, or even political. Doctor-patient relationship, though basically commercial, is professionally, a matter of confidence and, therefore, doctors are morally and ethically bound to maintain confidentiality." It however, held that although it was the basic principle of jurisprudence that 'every Right has a correlative Duty and every Duty has a correlative Right', the rule was not absolute and was 'subject to certain exceptions' in the sense that 'a person may have a Right, but there may not be correlative Duty, and the instant case fell within exceptions. The Court observed that even the Code of Medical Ethics carved out an exception to the rule of confidentiality and permitted the disclosure in certain circumstances 'under which public interest would override the duty of confidentiality' particularly where there is 'an immediate or future health risk to others'. According to the Court, the 'right to confidentiality, if any, vested in the appellant was not

[87] 6 (1997) 1 SCC 301

[88] 1998) 8 SCC 296

enforceable in the present situation ,as the proposed marriage carried with it the health risk from being infected with the communicable disease from which the appellant suffered. As regards the argument of the appellant that his right to privacy had been infringed by the respondents by disclosing that he was HIV (+) and, therefore, they were liable in damages, the Supreme Court observed that as one of the basic human rights, the right of privacy was not treated as absolute and was 'subject to such action as may be lawfully taken for the prevention of crime or disorder or protection of health or morals or protection of rights and freedom of others." **District Registrar and Collector v. Canara Bank**[89], it was held, that "exclusion of illegitimate intrusions into privacy depends on the nature of the right being asserted and the way in which it is brought into play; it is at this point that the context becomes crucial, to inform substantive judgment. If these factors are relevant for defining the right to privacy, they are quite relevant whenever there is invasion of that right by way of searches and seizures at the instance of the State."

If one follows the judgments given by the Hon'ble Supreme Court, *three* themes emerge9:(1) that the individual's right to privacy exists and any unlawful invasion of privacy would make the 'offender' liable for the consequences in accordance with law;(2) that there is Constitution al recognition given to the right of privacy which protects personal privacy against unlawful governmental invasion;(3) that the person's "right to be let alone" is not an absolute right and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others;

Privacy uses the theory of natural rights, and generally responds to new information and communication technologies. In North America, Samuel D. Warren and Louis D. Brandeis wrote that privacy is the "right to be let alone" focuses on protecting individuals. This citation was a response to recent technological developments, such as photography, and sensationalist journalism, also known as yellow journalism. Warren and Brandeis declared that information which was previously hidden and private could now be "shouted from the rooftops.[90]

Privacy rights are inherently intertwined with information technology. In his widely cited dissenting opinion in ***Olmstead v. United States*** (1928), Brandeis relied on thoughts he

[89] 8 (2005) 1 SCC 496: AIR 2005 SC 186

[90] Warren and Brandeis, "The Right To Privacy", 4 Harvard Law Review 193 (1890

developed in his *Harvard Law Review* article in 1890. But in his dissent, he now changed the focus whereby he urged making personal privacy matters more relevant to Constitution al law, going so far as saying "the government was identified , as a potential privacy invader." He writes, "Discovery and invention have made it possible for the Government, by means far more effective than stretching upon the rack, to obtain disclosure in Court of what is whispered in the closet." At that time, telephones were often community assets, with shared party lines and the potentially nosey human operators. By the time of Katx, in 1967, telephones had become personal devices with lines not shared across homes and switching was electro-mechanical. In the 1970s, new computing and recording technologies began to raise concerns about privacy, resulting in the Fair Information Practice Principles.

Kedar Nath Singh v. State of Bihar[91]In this matter, the appellant, one Kedar Nath Singh, was prosecuted at Begusarai in Bihar. In the charges framed against him, he was accused of speaking the following words: “Today the dogs of CID are loitering a round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country and elected these Congress gonads to the gaddi and seated them on it. Today these Congress gonads are sitting on the giddy due to the mistake of the people. When we drove out the Britishers, ewe shall strike and turn out these Congress gonads as well. These official dogs will also be liquidated along with these Congress gonads. These Congress gonads are banking upon the American dollars and imposing various kinds of taxes on the people today. The blood of our brothers-mazdoors-and kisans-is being sucked. The capitalists and the zamindars of this country help these Congress gonads. These zamindars and capitalists will also have to be brought before the people’s Court along with these Congress goondas.

“On the strength of the organization and unity of kisans and mazdoors, the Forward Communists Party will expose the black deeds of the Congress goondas, who are just like the Britishers. Only the colour of the body has changed. They have today established a rule of lathis and bullets in the country. The Britishers had to go away from this land. They had aeroplanes, guns, bombs and other weapons with them.

“The Forward Communist Party does not believe in the doctrine of vote itself. The party had always believed in revolution and does so even at present. We believe in that

[91] , AIR 1962 SC 955

revolution, which will come and in the flames of which the capitalists, zamindars and the Congress leaders of India who have made it their profession to loot the country, will be reduced to ashes and on their ashes will be established a Government of the poor and the down trodden people of India.

"It will be a mistake to expect anything from the Congress rulers. They (Congress rulers) have set up V. Bhave in the midst of the people by causing him to wear a langoti in order to divert the people's attention from their mistakes. Today Vinova is playing a drama on the stage of Indian politics. Confusion is being created among the people. I want to tell Vinova and advise his agents, 'you should understand it that the people cannot be deceived in the hands of Congressmen. Those persons, who understand the Yojna of Vinova, realize that Vinova is an agent of the Congress Government.

"I tell you that this Congress Government will do no good to you.

"I want to tell the last word even to the Congress tyrants, 'you play with the people and ruin them by entangling them in the mesh of bribery, black marketing and corruption. Today the children of the poor are hankering for food and you Congressmen are assuming the attitude of Nawabs sitting on the chairs." The charges that were framed against Kedar Nath Singh were that aforesaid words "brought or attempted to bring into hatred or contempt or excited or attempted to excite disaffection towards the Government established by law in the Indian Pinal code." Secondly, the words were spoken "with intent to cause or which was likely to cause fear or alarm to the public whereby any person might be induced to commit an offence against the State of Bihar and against the public tranquility, and thereby committed an offence punishable under section 505 (b) of the Indian Penal Code."

The question that arose was whether sections 124A and 505 of the IPC had become void in view of the provisions of Article 19 (1)(a) of the Constitution which guaranteed the right to freedom of speech and expression.

Sections 124A and 505 of the IPC read as follows: Section 124A : *Sedition*.[92]

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[92] Explanation of sedition , Explanation 1. –The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2. –Comments expressing disapprobation of the measures

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.

Explanation 3. –Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Whoever, by words, either spoken or written, or by sings, or by visible representation, 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.

Section 505: *Statements conducing to public mischief*.-

1. Whoever makes, publishes or circulates any statement, rumor 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, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

1. *Statements creating or promoting enmity, hatred or ill-will between classes*.- Whoever makes, publishes or circulates any statement or report containing rumor 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.

2. *Offence under sub-section (2) committed in place of worship, etc.*- Whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance of religious worship or religious ceremonies, shall be punished it imprisonment which may extend to five years and shall also be liable to fine.

Exception.- It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumor or report, has

reasonable grounds for believing that such statement, rumor or report is true and makes, publishes or circulates it in good fairy and without any such intent as aforesaid.

The Court observed, "It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favor of the former construction. The provisions of the sections teed as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resorting to violence ,the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, *etc*. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section in our opinion strikes the correct balance between individual fundamental rights and the interest of public order. Privileges of Parliament and State 'Reporting Indians Proceeding, Broadcasting and Publishing.

6.3. Constitutionality of sting operation

6.3.1 Sting operation

It was in the 1980s, that the first sting operation on how women were being trafficked was carried out by the Indian Express reporter Ashwin Sarin. As part of the sting, the Express purchased a tribal girl called Kamla. Subsequently, in 2001, the sting operation conducted by Tehelka exposed corruption in defence contracts using spy cams and journalists posing as arms dealers. The exposé on defence contracts led to the resignation of the then defence minister George Fernandes. Sting operations gained legitimacy in India, especially in the aftermath of the Tehelka operation, exposing corruption within the government. The original purpose of a sting operation or an undercover operation was to expose corruption. Stings were justifiable only when it served a public interest. Subsequent to the Tehelka exposé, stings have assumed the status of investigative journalism, much of which has been questioned in recent times, especially, with respect to ethics involved in conducting sting operations and the methods of entrapment used by the media. Further, stings by Tehelka, where the newspaper used sex

workers to entrap politicians have brought to question the manner in which stings are operated. Although, the overriding concern surrounding sting operations has been its authenticity, as opposed to, the issue of personal privacy.[93]

On 30 August, 2007 Live India, a news channel conducted a sting operation on a Delhi government school teacher forcing a girl student into prostitution. Subsequent to the media exposé[94], **the teacher Uma Khurana**[95] was attacked by a mob and was suspended by the Directorate of Education, Government of Delhi. Later investigation and reports by the media exposed that there was no truth to the sting operation. The girl student who was allegedly being forced into prostitution was a journalist. The sting operation was a stage managed operation.

> The brazenness that was seen in BMW case where the lawyers were caught in a sting operation by a TV channel for bribing a key witness to turn hostile is a real slur on the judicial history of this nation. Such instances call for strict penal action. The experiences in many sensational cases wherein the witness turned hostile lead us to look at the legal remedy of this criminality which too often involves "buying" of witness by influential accused can be handled only by strictly enforcing the penal law on perjury. However, the action against making a false statement should be initiated during the trial itself, & not at the end of it-which may take a long time. That may be a deterrent against persons who intentionally mislead the Court or make false statements under oath or file tainted affidavits[96] much against the public good. Initiating action against a person for perjury after the trial is over is one of the reasons -why in India several perjury cases go totally unnoticed as a fresh trialbegins on perjury running into years[97]

6.4.1 Judicial Approach on media trial

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

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[93] http://cis-india.org/internet-governance/blog/privacy/privacy-media-law,visited on 14 April,2015

[94] Section 5 of the Cable Television Networks (Regulation) Act, 1995 and the Cable Television Network Rules (hereafter the Cable Television Networks Act), stipulates that no programme can be transmitted or retransmitted on any cable service which contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths. The Rules prescribes a programming code to be followed by channels responsible for transmission/re-transmission of any programme

[95] WP(Crl.) No.1175/2007

[96] The Delhi High Court on April17th 2005 summoned the Deputy Commissioner, Municipal Corporation, Delhi, East N.K. Sharma and three other officials to appear before it following a complaint that the officials have filed a false affidavit regarding the ongoing demolition drive in the capital's Krishnanagar and Gandhinagar areas. http: // www. Newkerala.com/

[97] The Law Commission of India has examined aspects of this in 1958, 1966 and more recently in a consultative paper in 2005

creating a widespread perception of guilt regardless of any verdict in a Court of law. The Apex Court observed that the freedom of speech has to be carefully and cautiously used to avoid interference in the administration of justice. If trial by media hampers fair investigation and prejudices the right of defense of the accused it would amount to travesty of justice. The Court remarked that the media should not act as an agency of the Court.[98]The Court, commented, "Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending."[99]

Under the Contempt of Court Act, 1971, pre-trial publications are sheltered against contempt proceedings. Any publication that interferes with or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding, which is actually 'pending', only then it constitutes contempt of Court under the Act.[100] Certain acts, like publications in the media at the pre-trial stage, can affect the rights of the accused for a fair trial. Such publications may relate to previous convictions of the accused, or about his general character or about his alleged confessions to the police. Under the existing framework of the Contempt of Court Act, 1971, media reportage, as seen during the Aarushi Talwar case, where the press, had literally gone berserk, speculating and pointing fingers even before any arrests were made, is granted immunity despite the grave treat such publications pose to the administration of justice. Such publications may go unchecked if there is no legislative intervention, by way of redefining the word '*pending*' to expand to include '*from the time the arrest is made*' in the Contempt of Court Act, 1971, or judicial control through gag orders as employed in United States of America. Due to such lacunas, the press has a free hand in printing colourful stories without any fear of consequences. Like a parasite, it hosts itself on the atrocity of the crime and public outrage devoid of any accountability. The Supreme Court has expounded that the fundamental principle behind the freedom of press is people's right to know.[101] Elaborating, the Supreme Court opined, "*The primary function,*

[98] Sidhartha Vashisht @ Manu Sharma vs State (Nct Of Delhi),

[99] Ibid

[100] Contempt of Court Act, 1971,Under Section 3(2), sub clause (B) of clause (a) of Explanation, 'pending' has been defined as "In the case of a criminal proceeding, under the Code of Criminal Procedure, 1898 (5 of 1898) or any other law – (i) where it relates to the commission of an offence, when the charge sheet or challan is filed; or when the court issues summons or warrant, as the case may be, against the accused."

[101] A.G. v. Times Newspaper, (1973) 3 All ER 54; Express Publications (Madurai) Ltd. v. Union of India, AIR 2004 SC 1950, para 29; Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal, AIR 1995 SC 1236, para 4. See also Ritu Tiwari & Aju John, Contempt of Court and the Media, http://www.indlawnews.com/display.aspx?3537#_ftnref1 (Last visited on September 25, 2008).

therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion".[102] However, the Chief Justice of India has remarked, "*freedom of press means people's right to know the correct news*", but he admitted that newspapers cannot read like an official gazette and must have a tinge of "sensationalism, entertainment and anxiety".[103] In **the Bofors Case**[104], the Supreme Court recounted the merits of media publicity: "*those who know about the incident may come forward with information, it prevents perjury by placing witnesses under public gaze and it reduces crime through the public expression of disapproval for crime and last but not the least it promotes the public discussion of important issues.*"[105] Two important core elements of investigative journalism envisage that (a) the subject should be of public importance for the reader to know and (b) an attempt is being made to hide the truth from the people.[106]

Some scholars justify a 'trail-by-media' by proposing that the mob mentality exists independently of the media which merely voices the opinions which the public already has.[107] In a democracy, transparency is integral. Without a free press, we will regress into the dark ages of the Star Chambers, when the judicial proceedings were conducted secretively. All these omnipresent SMS campaigns and public polls only provide a platform to the public to express its views. It is generating public dialogue regarding issues of public importance.[108] Stifling this voice will amount to stifling democracy. Quoting Jeremy Bentham, on secrecy in the administration of justice, "In the darkness of secrecy, sinister interest and evil in every shape are in full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the

[102] In Re: Harijai Singh and Anr.; In Re: Vijay Kumar, (1996) 6 SCC 466, para 10

[103] CJI says media must not run parallel trials, http://www.asiamedia.ucla.edu/article.asp?parentid=99360 (Last visited on October 21, 2009).

[104] Kartongen Kemi Och Forvaltning AB v. State through CBI, 2004 (72) DRJ 693

[105] Ibid., para 10

[106] G.N. Ray, Should there be a Lakshman Rekha for the Press, http://presscouncil.nic.in/speech7.htm Last visited on September 25, 2009).

[107] Navajyoti Samanta, Trial by Media-Jessica Lall Case, http://ssrn.com/abstract=1003644. (Last visited on September 20, 2009).

[108] Prabhsahay Kaur, Freedom of Press vis-à-vis Responsible Journalism, www.legalserviceindia.com/articles/fre_pre_v.htm (Last visited on 20 May, 2009)

judge himself while trying under trial."[109] In **Ajay Goswami v. Union of India**[110], the shortcomings of the powers of the Press Council were highlighted: Section 14 of the Press Council Act, 1978 empowers the Press Council only to warn, admonish or censure newspapers or news agencies and that it has no jurisdiction over the electronic media and that the Press Council enjoys only the authority of declaratory adjudication with its power limited to giving directions to the answering respondents arraigned before it to publish particulars relating to its enquiry and adjudication. It, however, 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 the Press Council of India has tied its hands in exercising control over the erring publications.[111]The PCI also has criminal contempt powers to restrict the publication of prejudicial media reports. However, the PCI can only exercise its contempt powers with respect to pending civil or criminal cases. This limitation does not consider the extent to which pre- trial reporting can impact the administration of justice.[112]

Another example is the case **of Zee News v. Navjot Sandhu**[113] in which the Supreme Court held that media interviews do not prejudice judges.[114] Media Activism - Evils of 'Trial by Media'Justice Katju and P. Sainath have attacked the media for focusing attention on "non-issues" and "trying to divert attention of the people from the real issues to non-issues"[115] and "stifling of smaller voices".[116] Who will watch the watchdog as it abdicates its role as an educator in favour of being an entertainer.[117] A line between informing and entertaining must be drawn.[118] Public

[109] K.G. Balakrishnan, The Constitution, The Media And The Courts, The Fourth K.S. RajamonyMemorial Public Law Lecture, Kerala, www.supremecourtofindia.nic.in/new_links/9%5B1%5D.8.08.rajamony.pdf (Last visited on September 20, 2009

[110] (2007) 1 SCC 143

[111] Ibid., para 41

[112] www.legalserviceindia.com/articles/fre_pre_v.htm (Last visited on 25 May, 2009)

[113] 2003 (1) SCALE 113

[114] State v. Mohd. Afzal, 2003 (3) JCC 1669, para 137

[115] Markandey Katju, Ideal and reality: Media's role in India, http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2008081955330900.htm&date=2008/08/19/&prd=th& (Last visited onSeptember 18, 2009

[116] P. Sainath, "Lost the Compass? Rural India is a giant canvas that is begging the media to do a portrait" Outllookindia.com, 17 October 2005, http://www.outlookindia.com/full.asp?fodname=20051017&fname=CP+Sainath&sid=1 (Last visited on September 29, 2009

[117] Ramachandra Guha, Watching the Watchdog-Time for the press to look within, The Telegraph, May 10,2008, (Last visited on September 29, 2009).

[118] Nancy L. Trueblood, Curbing The Media: Should Reporters Pay When Police Rides Along ViolatePrivacy?, 84 MARQ. L. REV., 541, 549.

opinion may exercise an indirect influence over the criminal justice system. "Justice should not only be done, it should manifestly and undoubtedly be seen to be done"[119]In **Zahira Habibullah Sheikh v. State of Gujarat**[120], the Supreme Court explained, "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."[121] The media played an excessive and negative role in shaping the public conscience before Afzal was even tried."[122] Sometimes, the media working as watchdog of system. In **D.K. Basu V. State of West Bengal**[123], the Supreme Court took cognizance of the existence of custodial violence after a letter was sent to the Chief Justice of India drawing attention to newspaper reports regarding death in police lock-ups and custody. Markandey Katju J. remarked, nobody is trying to gag the media. They must play a responsible role. By investigation, the media must not do anything which will prejudice either the prosecution or the accused. Sometimes the entire focus is lost. A person is found guilty even before the trial takes place. See what happened in this [Aarushi] case. Till today what is the evidence against anyone? We will lay down guidelines on media coverage. We are not concerned about media criticizing us. Let media say anything about us, we are not perturbed. Our shoulders are broad enough and we will ignore it [the criticism]. We are for media freedom. What we are saying is there is no absolute freedom. See what happened to Dr. Talwar (Aarushi's father), his reputation is tarnished.[124]

Pre-trial publicity is injurious to the health of a fair trial. Even before the accused is arrested and tried, the cacophony of media proclaims the accused to be guilty. In a democracy, the right of free press and right of fair trial must peacefully co exist. Our Constitution s, whether written or unwritten, proclaim, protect and promote the same set of fundamental rights: both the First Amendment of the American Constitution and Article19

[119] R v. Sussex Justices : Exparte McCarthy : 1924(1) KB 256
[120] (2004) 4 SCC 158
[121] Ibid., para 36.
[122] State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru, AIR 2005 SC 3820,This can be demonstrated by the observations of Justice P. Venkatarama Reddi in upholding the imposition of the death penalty on Mohammed Afzal, "the incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender.
[123] (1997) 1 SCC 416.
[124]J. Venkatesan, Apex Court to lay down coverage norms, http://www.thehindu.com/2008/08/19/stories/2008081957360100.htm (Last visited on September 28, 2009).

(1)(a) of the Indian Constitution guarantee the freedom of speech and expression. **Bridges v. California**[125] the American Supreme Court did note that; legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper., the Court prescribed certain methods for controlling the pre-trial publicity:(i) Control the presence of the press at the judicial proceedings.(ii) The Court should have insulated the witnesses. This implies protecting and isolating the witnesses during the trial. (iii) The Court should make efforts to control the release of leads, information, and gossip to the press by police officers, witnesses, and the counsel for both sides. More specifically, the trial Court might well have proscribed extrajudicial statements by any lawyer, party, witness, or Court official which divulged prejudicial matter.(iv) Reporter who wrote or broadcast prejudicial stories could have been warned as to the impropriety of publishing material not introduced in the proceedings.(v) Where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity.(vi) If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered. While the American Courts have favoured the press over the accused, the British Courts have thought vice versa. Laws, J. in **R. v. Lord Chancellor**[126], observed, indeed, the right to a fair trial is as near to an absolute right as any which I can envisage. The English Courts recognize the potential threat to justice posed by unrestrained publicity. Certain information, especially reports of confessions made by criminal defendants and details of defendants. prior convictions, is considered inherently prejudicial. Courts tend to halt prosecutions when detrimental publicity interferes with criminal trials. If the rules of evidence preclude the production of particular facts during trial, and members of the jury are exposed to those same facts, British Courts simply assume that justice has been compromised. Thus, the English Courts have followed the test of; presumed prejudice; to hold that pre-trial publicity has violated the right to fair trial. In **Attorney General v. Guardian Newspapers Ltd**.[127] Collins, J. observed that in assessing whether there has been a violation, Courts must determine whether the risk of prejudice from the publication is both immediate and serious. In order to ensure fair trial; the English have restricted the flow of information. Under the Contempt of Court Act, 1981, the English Courts have the power to prevent or punish conduct which tends to obstruct, prejudice or abuse the administration of justice. While the American and the English Courts have grappled with

[125] 86 L Ed 192 : 314 US 252 (1941)
[126] 1998 QB 575 : (1998) 2 WLR 849 : (1997) 2 All ER 779 (DC).
[127] 1999 EMLR 904

this problem, the Indian Courts have gingerly touched the issue. The reason is not far to seek: trial by media is a recent phenomenon. Hence, we find sporadic obiter, but no concrete ratio decidendi. The concept of 'denial of a fair trial' has been coined by authoritative judicial pronouncements as a safeguard in a criminal trial. But what does the concept 'denial of fair trial' actually mean: The conclusions of the judicial decisions can be summed as follows: The obstruction or interference in the administration of justice Vis a Vis a person facing trial. In **Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay (P) Ltd**.[128], the Hon;ble Supreme Court partly dealt with the issue of freedom of press and administration of justice. Dealing with an adverse article published in the Indian Express with regard to the public issues of Reliance Petrochemicals, the Supreme Court had restrained; all the six respondents; from publishing any article, comment, report or editorial in any of the issues of the Indian Express or their related publications questioning the legality or validity of any of the consents, approvals or permissions to the [said issue of debentures]. The issue raised was about the continuation of such injunction especially when the shares had been oversubscribed though the day of allotment had not yet expired and before the allotment the subscribers could withdraw their subscriptions. The Apex Court held: There must be reasonable ground to believe that the danger apprehended in continuance of the injunction is real and imminent. This test is acceptable on the basis of balance of convenience. In **State of Maharashtra v. Rajendra Jawanmal Gandhi**[129], while dealing with a case of alleged attempt to rape a minor, the Apex Court observed; A trial by press, electronic media or pubic agitation is the very antithesis of the rule of law. It can well lead to miscarriage of justice. A Judge has to guard himself against any such pressure and he is to be guided strictly by the rules of law. In **M.P. Lohia v. State of W.B**[130], the Hon;ble Supreme Court dealt with a case where a trial for dowry death was sub judice, when an article appeared in a magazine Saga, entitled Doomed by Dowry;. The article was based on the interview of the family of the deceased, giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The Apex Court observed; we have no hesitation that these 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 indulging in such trial by media when the issue is sub judice. Recently, in **Manu**

[128] (1988) 4 SCC 592
[129] (1997) 8 SCC 386 : 1998 SCC (Cri) 76
[130] (2005) 2 SCC 686 : 2005 SCC (Cri) 556

Sharma v. State (NCT of Delhi)[131], the Apex Court has extensively observed about the danger of trial by media. It opined as under: 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.

Despite the significance of the print and electronic media in the present day, it is not only desirable but the 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 the accused ordinary manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial. It further held: Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it [would] be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution.[132]

It is essential for the maintenance of dignity of the Courts and is one of the cardinal principles of the rule of law in a free democratic country, that the criticism or even the reporting particularly, in sub judice matters must be subjected to check and balances so as not to interfere with the administration of justice. The Indian judiciary has not dealt substantially with the issue of freedom of press versus the right to fair trial. But this issue has taxed the imagination of the media, both the world over and in India. In 1994, thirty-nine distinguished legal experts and media representatives met for three days in Madrid. One of the basic principles, enunciated in the Madrid Principles on the Relationship Between the Media and Judicial Independence, is that: It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence[133].In **Saibal v. B.K.Sen** [134]it said:"It would be mischievous for a newspaper to systematically conduct an independent investigation

[131] (2010) 6 SCC 1, 110-11, paras 297-98 : (2010) 2 SCC (Cri) 1385
[132] Anukul Chandra Pradhan v. Union of India (1996) 6 SCC 354 : 1996 SCC (Cri) 1338
[133] Universal law Compendium. Reports of the Law Commission of India, Vol. 17 (Universal Law Publishing Co., NewDelhi 2010)

[134] AIR 1961 SC 633

into a crime for which a man has been arrested and to publish the results of the investigation. This is because, trial by newspapers, when a trial by one of the regular tribunal is going on, must be prevented. The basis for this view is that such action on the part of the newspaper tends to interfere with the course of justice". In **Sahara India Real Estate Corp. Ltd. & Ors Vs. Securities & Exchange Board of India**[135] The Apex Court observed that, the Courts to postpone reporting of judicial proceedings in the interest of administration of justice. Under Article 19(2) of the Constitution, law in relation to contempt of Court, is a reasonable restriction. It also satisfies the test laiddown in the judgment of this Court in **R. Rajagopal v. State ofT.N**.[136] As stated, in most common law jurisdictions, discretion is given to the Courts to evolve neutralizing devices under contempt jurisdiction such as postponement of the trial, re-trials, and change of venue and in appropriate cases even to grant acquittals in cases of excessive media prejudicial publicity. The very object behind empowering the Courts to devise such methods is to see that the administration of justice is not perverted, prejudiced, obstructed or interfered with. At the same time, there is a presumption of Open Justice under the common law. Therefore, Courts have evolved mechanisms such as postponement of publicity to balance presumption of innocence.

[135] I.A. Nos. 14 and 17 in C.A. No. 733 of 2012
[136] [(1994) 6 SCC 632].

CHAPTER-VII

CONCLUSION AND SUGGESTIONS

Chapter-VII : CONCLUSION AND SUGGESTIONS

7.1 Conclusion,

7.2 Suggestions

> "*The only security of all is in the free press. The force of public opinion cannot be resisted when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary, to keep the waters pure."* – **Thomas Jefferson**.

The freedom of speech and expression has been characterized as "the very life of civil liberty" in the Constituent Assembly Debates.[1] The freedom of the press, while not recognized as a separate freedom under Fundamental Rights, is folded into the freedom of speech and expression.[2]The Supreme Court has described this freedom as the "ark of the Covenant of Democracy".[3]The freedom of the press serves the larger purpose of the right of the people to be informed of a broad spectrum of facts, views and opinions. It is the medium through which people gain access to new information and ideas, an essential component of a functioning democracy. Thus, "the survival and flowering of Indian democracy owes a great deal to the freedom and vigour of our press."[4] The Media is vital in the role it plays in uncovering the truth and rousing public opinion, especially in the face of wrongdoing and corruption. Numerous examples exist where the media has played a central role in revealing corrupt practices and shaping the demand for accountability and good governance. In India today, we have every reason to celebrate our news media. However, as society evolves, new challenges are constantly thrown up that require consideration. The Information Technology have expanded horizons, but also brought with it new challenges, recent events related to the news media, such as the proliferation and subsequent curbing of social media, the paid news phenomenon, fake sting operations, trial by media, breach of privacy, etc. The most suitable way to regulate the media will be

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1 Constituent Assembly Debates: Official Report, (Delhi, 1946-1950), VII, p. 18.
2 BrijBhushan and Another vs. The State of Delhi, AIR 1950 SC 129; Sakal Papers (P) Ltd vs. Union of India, AIR 1962 SC.
3 Bennett Coleman & Co. v Union Of India, AIR 1973 SC 106.
4 Amartya Sen, "The glory and the blemishes of the Indian news media", The Hindu, April 25, 2012

to exercise the contempt jurisdiction of the Court to punish those who violate the basic code of conduct. The use of contempt powers against the media channels and newspapers by Courts have been approved by the Supreme Court in a number of cases as has been pointed out earlier. The media cannot be allowed freedom of speech and expression to an extent as to prejudice the trial itself. . An ideal proposal will be that the Indian press and the Indian people are not at present democratic enough to allow the press to intrude in the judicial process. What will an ideal proposition is to not allowing the media trial at this moment. It's definitely an ideal proposition to allow controlled media reporting of the cases once the media is supposed to come out of the profit and sensational considerations. The media has to play the role of a facilitator rather than tilting the scales in favour of one or the other party.

Trial by Media and Rights of the Accused

It needs to be careful and cautious in its conduct. The solution lies not in the curbing of media freedom altogether but in making efforts to make it more responsible. No person charged of any crime should be judged by the media because that person is innocent until proven guilty, and it one the basic premise of criminal jurisprudence. The International Covenant on Civil and Political Rights, 1966 (ICCPR) was ratified by India in 1976 and it states in Article 14(2) that "Article 14(2): Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

And, no one, and this includes also the media, should be allowed to temper with the functioning of law. The rule of law as well as the role of law demands a fair trail of any person who comes to the portal of justice seeking justice. To use the words of Ronald Dworkin, it matter how judges decide cases. And, talking in terms of the reality as it exist in society, and as has been documented herein before, there is every possibility that media by creating a 'pressure condition' may fetter the judicial process. Today, when we are going through one of the crucial period of history which is taking a new turn thanks to the transition that is sweeping the society world over, it requires to be cautious and adopt a cogent approach that does not deny a person what is due to him, that is, a fair trial. Besides, people at large should not be misguided, advertantly or inadvertently as that may prove to be fatal for the human existence. In a time, when the life is faced with

challenges never seen before, the media needs to be aware of the consequences that may arise because of its irresponsible way of functioning.

Media which decries others for violating people's right cannot itself continue to do so howsoever its intentions are noble. And, if it does so, it loses its moral ground to condemn others. It will be better if it continues to stick to its primary work of making people aware of what is happening around in world, and in doing so it may also acting cautiously acquaint people with views that are germane in a particular context . But it does not mean 'polluting' people's conscience and consideration. It is pertinent to refer to the observation of Law Commission of India[5] which observed that:[6]

> "*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."*

Today, there is greater need to devise a delicate and due balance between freedom of speech and expression of the media on the one hand and the due process rights of the suspect and accused. The golden triangle of Indian Constitution, comprising of Articles14, 19 and 21, assumes a great importance in this respect. Somehow, media trail presents the curios case of conflicting rights. William Blackstone rightly observed: [7]

> *The liberty of the Press is indeed essential to the nature of a free State; but this consists in laying no previous restraints upon publication, and notin freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the Press; but if he publishes what is improper, mischievous or illegal, he must take the consequences of his own temerity."*

[5] The Commission has suggested that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In the perception of the Commission such an amendment would prevent the media from prejudging or prejudicing the case. Another controversial recommendation suggested was to empower the High Court to direct a print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting to such publication or telecast. The 17th Law Commission has made recommendations to the Centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial.

[6] 200TH Report of Law Commission of India

[7] William Blackstone, 4th Book of Commentaries, 1769, p 145

There is a widespread view that the difference between an accused and a convict and the basic underlying principle of 'innocent until proven guilty' are regularly overlooked by sections of the media in its coverage of ongoing trials. By conducting parallel trials, the media, it is felt, not only puts undue pressure on the judge but also creates pressure on lawyers to not take up cases of accused. Further once a matter comes under intense media glare, there is an added pressure on the prosecution to secure evidence which must incriminate an accused, lest the media build negative public opinion against the prosecution. A fair trial and investigation, which are foremost Constitution al guarantees, are as much a right of the accused as they are of the victim.

The exponential growth and reach of media has shown unhealthy trends of competition, leading to sensationalized reporting giving the well-established rule of *sub-judice* a go-by. While this is certainly not true across the board to all media publications, the problem is certainly extensive. Some form of restriction on such media trials has been suggested so as to preserve the administration of justice as also to protect privacy of individual.

In response, the Supreme Court in **Sahara India Real Estate Corporation v. Securities and Exchange Board of India**[8] gave judges the power to order postponement of publication on a case-by-case basis, the test being, 'where there is a real and substantial risk of prejudice to fairness of the trial or to proper administration of justice'. However, this is a very general test which does not clarify what publications would fall within this category, leaving it entirely contingent on the content and context of the offending publication. This leaves the higher judiciary with wide discretionary powers to decide what amounts to legitimate restraints on media reporting. Due to the possibility of such subjective interpretation, postponement orders could be used by influential parties as a tool to abuse the process of law. Therefore, the jurisprudence of postponement might be transported into defamations suits, when the application of such order should be sought strictly as a Constitution al remedy.

Today trial has shifted from Courtroom to living room. And the result of such a shift is that rights of people stand to be affected in a manner that has not been seen ever before. Media today is commercialized and globalised. Their primary aim is to increase their

[8] (2012) 10 SCC 603.

profit / TRP ratings. One cannot imagine social responsibility on the contemporary commercialized media. Their primary aim is profit. However, as everything comes for a cost in today's modern world, the profit making too has some cost. And the cost is human rights of the accused.

The role played by media has led to the victimization of innocent people and violation of their fundamental human rights. The accused is held guilty even before the beginning of the trail. For instance, the recent controversies arisen after the **Jamia Encounter**[9] has raised many questions regarding the role of the media in such cases. Such irresponsible way of functioning is a flagrant violation of the ethical principles that form the bedrock of a civil society. This is reflected in the *Arushi Murder Case* where the accused has been socially stigmatised even the case is under consideration before the trial Court. It exemplifies the intrusion by the media into the functioning of agencies of Criminal Justice System. A 'media trial' ensued Afzal's arrest. A week after the attack on Indian Parliament, in a press conference called by the police, Afzal 'incriminated himself' in front of the media which media played negative role in influencing the conscience of general public before Afzal was even tried. Similarly, S.A.R. Geelani, one of Afzal's co-defendants in the *Parliament Attack Case*, was initially sentenced to death for his alleged involvement notwithstanding the stunning paucity of evidence. He was presented before the public as a dangerous terrorist. The Delhi High Court while overturning Geelani's conviction described the prosecution's case as "at best, absurd and tragic". The media as a conclusive determination of the accused's guilt represents confession by the accused, even made to the police. This shows the ignorance of media about the basic principles of law. Sec. 25 of the Indian Evidence Act, 1872 categorically prohibits the confession to the police as admissible in law. Thus, something, which is inadmissible in law, becomes sufficient to taint the accused with guilt in the eyes of ordinary people. It is difficult to find a single news channel explaining the rationale behind such inadmissibility or even a mention about the section in their reports. It is germane here to refer to the concern of the Law commission of India which said:

"The media also creates other problems for witnesses. If the identity of witnesses is published, there is danger of the witnesses coming under pressure both from the accused or his associates as well as from the police. At the earliest stage, the witnesses want to

[9] This was one of the most highlighted cases in recent past and generated invigorated debate. It was highly. It was fervently debated in the media- both print and electronic

Retract and get out of the muddle. Witness protection is then a serious casualty. This leads to the question about the admissibility of hostile witness evidence and whether the law should be amended to prevent witnesses changing their statements. Again, if the suspect's pictures are shown in the media, problems can arise during '**identification parades**' conducted under the Code of Criminal Procedure for identifying the accused." Questions seem to rise also on the fairness of such trials by media.

Being a part of the civil society media has a constructive role to play to see that their irresponsible way of functioning does not result in the violation of the rights of the people, which are succinctly referred to as 'Human Rights'. Judge Cobb observes:[10]

> *"Liberty includes the right to live as one will, so long as that will do not interfere with the rights of another or of the public. One may desire to live a life of seclusion; another may desire to live a life of publicity; still another may desire to live a life of privacy as to certain matters and publicity as to others.... Each is entitled to a liberty or choice as to his manner of life, and neither an individual nor the public has a right to arbitrarily take away from him his liberty*."

Lastly, one of the much debated issues has been the influence of the media on the decision making process of the judges. Sensationalized journalism has also had an impact on the judiciary. For example, in upholding the imposition of the death penalty on Mohammed Afzal for the December 2001 attack on the Indian Parliament, Justice P. Venkatarama Reddi stated, "the incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender."[11] The Supreme Court has held that a trial by press, electronic media or by way of a public agitation is the very anti-thesis of rule of law and can lead to miscarriage of justice. A Judge is to guard himself against such pressure.[12]

However, this fact needs to be balanced with the fact that people also have the Right to Information. And media plays a vital role in the dissemination of the information. What

[10] Pavesich v. New England Life Ins. Co., 50 S.E. 70 (Ga. 1905).
[11] See: http://www.hrdc.net/sahrdc/

[12] State of Maharashtra v. Rajendra Jawanmal Gandhi, 1997 (8) SCC 386.

need to be seen is that the information must not be *mis*information. As Prof. Upendra Baxi once aptly remarked that 'I have a basic human right that my mind should not be treated as a dustbin where gossips or *mis*information of people can be thrown.' Thus, media needs to be properly trained in the legal notices and legal knowledge. This point has also been recommended in the 200th report of the Law Commission of India, which observed that:[13]

> "*… Journalists need to be trained in certain aspects of law relating to freedom of speech in Art. 9(1)(a) and the restrictions which are permissible under Art. 19(2) of the Constitution, human rights, law of defamation and contempt. We have also suggested that these subjects be included in the syllabus for journalism and special diploma or degree courses on journalism and law be started*,,

The commission further observed that:[14] The subject of 'Trial by Media' is discussed by civil rights activists, Constitution al lawyers, judges and academics almost every day in recent times. With the coming into being of the television and cable-channels, the amount of publicity which any crime or suspect or accused gets in the media has reached alarming proportions. Innocents may be condemned for no reason or those who are guilty may not get a fair trial or may get a higher sentence after trial than they deserved. There appears to be very little restraint in the media in so far as the administration of criminal justice is concerned.''

Defamation

The issue of defamation vis-à-vis the news media requires careful consideration. On the one hand, instances of fake sting operations or trial by media give credence to allegations of irresponsible journalism. On the other, threats of legal action with punitive damages under the laws of defamation lead to a 'chilling effect' on the publication of free and independent news articles and puts undue pressure on journalists and publishing houses. Any change to the laws on defamation in India must balance these two considerations.

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[13] Law Commission of India, 200th Report on Trial by Media, Free Speech and Fair Trial underCr.P.C,1973(August 2006) at p.8.

[14] Id at 11

Currently, civil defamation is dealt with under the law of torts whereas criminal defamation is an offence under Section 499 of the Indian Penal Code. A journalist has no special status under defamation laws in India. Although the press enjoys the freedom of speech and expression under Art. 19(1)(a) of the Constitution , defamation is a ground for a reasonable restriction to this freedom under Art. 19(2).

The Demands have been made in the past by entities such as the Editors' Guild of India, to decriminalize defamation as it pertains to journalists. The proposal has been noted by the Law Ministry as well. In 2003, the newspaper The Hindu mounted an unsuccessful challenge in the Supreme Court against the use of the criminal code for defamation, on the ground that it violates the press freedom guaranteed by the Constitution. Therefore, a comprehensive review of laws regulating the media must consider the question of defamation laws as well.

Publications and Contempt of Court

With the rise of public interest litigation and a more activist judiciary, Courts have been regularly thrust into the limelight in recent years, often provoking confrontations with the media that result in contempt proceedings. The rationale of contempt proceedings is to prevent erosion of public confidence in the administration of justice.

The law of contempt is one of the grounds for reasonable restrictions under Article 19(2) to the freedom of speech and expression. While civil contempt refers to the willful disobedience to any judgment, or order of a Court, criminal contempt is an offence under Section 2(c) of the Contempt of Courts Act, 1971, and is punishable by imprisonment of up to six months. It is defined as the publication of any matter which lowers the authority of any Court, or scandalizes or tends to scandalize, prejudices or tends to prejudice, or obstructs or tends to obstruct any judicial proceedings, or the administration of justice. It is evident that this definition is extremely wide, particularly as it is unclear what the words "tends to" encompasses.

In India, the Courts have generally not distinguished between scandalizing the judge as a person, and scandalizing the Court. Other countries have progressed to a more liberal regime. In UK, scandalizing the Court has ceased to be an offence, a change brought in by the Crime and Courts Act 2013.In the USA, the offence of

scandalizing the Court is unknown and Courts initiate action for contempt only when they determine that there is 'clear and present danger' to the administration of justice.

There have been repeated calls for reform of contempt of Court laws. The NCRWC recommended in 2002 that Article 19(2) be amended to provide for the justification of truth and public interest in matters of contempt. In 2006, Parliament amended the Contempt of Courts Act to introduce Section 13(b), which permitted justification by truth as a valid defense if the same is in public interest and made *bona fide*. Nevertheless, the manner of application of this defense in the Courts has been inconsistent, and a Constitution al amendment has not been introduced. Hence, there is a need to revisit the law on contempt and consider the need for further amendments.

A brief overview of the existing legal framework governing the media is essential before attention is turned to methods of regulation. There are distinct systems of regulation for broadcast media, print media and social media.

At present, the law applicable to broadcast media is the Cable TV Networks (Regulation) Act 1995. The Act brought into force the Programme Code and the Advertising Code, which prohibit transmission of any programme or advertisement not in compliance with the code. There is no regulatory authority set up under the Act.

Instead, the broadcasting sector is regulated by the TRAI[15], which notifies rules from time to time on matters such as streamlining of the distribution of television channels to platform operators. Additionally, the Electronic Media Monitoring Centre established by the Ministry of Information & Broadcasting monitors the content of all TV channels up linking and down linking in India to check the violation of the Programme and Advertisement Code. It also monitors content of Private FM Radio Channels.

Guidelines and regulations are issued from time to time by these regulatory authorities. The Ministry of Information & Broadcasting, for example has issued Policy Guidelines for Uplinking of Television Channels from India, the latest in 2011, which include mandatory compliance of the Cable TV Networks (Regulation) Act 1995. The Guidelines introduce the three-strike and five-strike rules, whereby

[15] Telecom Regulatory Authority of India

permission to broadcast, and renewal of such permission, is revoked upon three or five violations of the Guidelines respectively.

Self-regulation of content in the broadcast media is conducted through a two-tier mechanism of self-regulation by individual broadcasters as well as industry level regulatory bodies. Regulation of content is divided into news and non-news sectors. For the non-news sector, industry level regulation is enforced by the Broadcasting Content Complaints Council (BCCC) within the Indian Broadcasting Foundation (IBF) that oversees channels other than the news and current affairs channels. The BCCC is an independent council comprising a thirteen member body consisting of a Chairperson being a retired Judge of the Supreme Court or High Court and 12 other members including broadcaster and eminent non-broadcaster members.

The BCCC hears complaints and may issue directions to the channel to modify or withdraw the objectionable content, and can further fine the channel up to Rs. 30 lakhs. If the direction is defied, the matter may be referred to the Ministry of Information and Broadcasting for further action, including revocation of permission to broadcast.

The self-regulatory body for news and current affairs channels is the News Broadcasters Association (NBA) which has set up the News Broadcasting Standards Authority (NBSA) to adjudicate complaints in relation to broadcast content on news channels. The NBA consists only of organizations that are members and submit themselves to regulation by the NBA. Therefore, the jurisdiction of the NBSA is restricted only to members.

The NBA has in place a Code of Ethics to regulate television content. The NBSA is empowered to warn, admonish, censure, express disapproval and fine any broadcaster in violation of the Code a sum upto Rs. 1 lakh.

Cross Media Ownership

Monopolies in the field of media ownership have a severely negative impact on the quality of media freedom and plurality in the country, specifically with respect to news coverage. Issues related to ownership of media entities have been raised repeatedly in the last few years by both private observers and government bodies. The overarching concern is that media ownership does not receive sufficient public scrutiny and is under-regulated.

On the other hand, hastily imposed regulations in this space could infringe on the freedom of the media, and pave the way towards unwarranted state control. Any

regulation on vertical integration, which connotes ownership of both broadcast and distribution, and on horizontal integration, that takes the shape of cross-media holdings, must balance these two competing considerations

At this point of time, there are no cross media ownership restrictions across print, television and radio in the country. Some restrictions on vertical integration are in place in the shape of guidelines for obtaining Direct-to-Home platforms. Restrictions also exist on the number of licenses allowed to FM radio operators in a given area. Apart from these specific laws, the general competition law in India applies to the media sector.

As for public interest is concern, Media ownership issues have been raised repeatedly by the Telecom Regulatory Authority of India, the Ministry of Information and Broadcasting and the Parliamentary Standing Committee on Information Technology, among others. The call has been for the introduction of regulations in this area, but no such steps have yet been taken.

Social Media and the Information Technology Act, 2000

The ability to disseminate information seamlessly over social media has resulted in a rising need to regulate the content of such information. Section 66A of the IT Act makes it a punishable offence to send messages that are offensive or false or created for the purpose of causing annoyance or inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, through a computer device. Since no guidelines have been laid down for identification of offensive information, the wide amplitude of the provision has often been used for politically motivated arrests. Recently, two professors were arrested in West Bengal for posting a cartoon critiquing a politician. In another incident, two young girls from Maharashtra were arrested – one for posting a Face book status about the chaotic shut down of Mumbai due to a popular politician's death and the other for 'liking' the status post. Section 66A is currently under challenge for being violation of the freedom of speech and expression. Though no stay on arrests under this provision has been granted, the Supreme Court has held that no person should be arrested for posting objectionable comments online without permission of senior police officials. The Apex Court held that Section 66A of the IT Act is unconstitutional.[16]

[16] Shreya Singhal v. Union of India, W/P (Civil) No. 167 of 2012 .

At the same time, social media has often been used as a conduit for instigating ethnic and communal violence such as false rumors online in August 2012 that led to an exodus of North-eastern migrants from South India. In 2013, the Election Commission introduced guidelines to regulate internet campaigns given the vast use of social media by political parties. Though, the Print and Electronic Media Standards and Regulation Bill, 2012 proposed the establishment of a media regulatory authority, the Bill did not get introduced. Under the present Act, the Cyber Appellate Tribunal is empowered to deal with complaints under the Act but is largely confined to cases of fraud and hacking.

Regulations over government owned media

Media in India is owned both by government as well as the private sectors. Government-owned media such as All India Radio, Doordarshan, Directorate of Field Publicity, Press Information Bureau, etc., have a significant role to play as the matters they address are not extensively covered by large sections of privately-owned media. Government-owned media is not only a channel through which news about developmental initiatives is passed on to the common man but can also be an independent filter shaping the common man's perception of government policies and their implementation. However, government owned media is not seen as adequately independent of the government. Hence, the credibility of the development stories they produce may be questioned, especially if they focus exclusively on describing governmental initiatives rather than using their independent judgment on the efficacy of initiatives. Further, issues also arise regarding the quality of such government media when compared to private media.

India is the only known democracy in the world where news on the radio is still a monopoly of the government. Any information broadcast by radio should adhere to the government's codes, and should not have any political content. Print and TV media, in contrast, have self-regulating bodies. Radio still has the highest reach across the country; the illiterate poor as well as people in remote areas rely on it for information. But the only news available to them is that of the government owned and controlled All India Radio (AIR).

Doctrine of postponement

The application of postponement orders is narrowed down by introducing guidelines/parameters such as kinds of publications to be covered, categories of proceedings which may be covered.

Media and Individual Privacy

The exponential growth of media, particularly electronic media, has resulted in a corresponding decline in an individual's privacy. The right to privacy, not specifically enshrined in the Constitution of India, has been held to be implicit in Article 21.[17]Though the freedom of speech and expression, as guaranteed in the Constitution of India, empower the press to disclose information vital to public interest, it often results in intrusion of privacy. In 2012, a news channel aired the molestation of a girl in Guwahati, filmed by one of its reporters. In several instances, sting operations have been used as a medium to exact retribution or have sought to expose information within the realm of an individual's private domain having no bearing on public interest. In 2008, the Delhi High Court took *suo motu* cognizance of a manipulated sting operation on a schoolteacher resulting in her suspension and assault by a mob and directed the government to consider adopting guidelines for sting operations.[18] EMMC under the I&B Ministry has a set of self-regulatory guidelines for broadcast service providers including guidelines that channels should refrain from using material related to a person's private affairs unless there is an identifiable larger public interest. The Content Certification Rules 2008 under the Cable Television Networks (Regulation) Act define "identifiable larger public interest" to include revealing or detecting crime or disreputable behavior; protecting public health or safety, exposing misleading claims made by individuals or organizations or disclosing significant incompetence in public office for the larger public interest. Despite the presence of such norms, sting operations invading personal privacy by the media is a fairly common occurrence.

Paid News

Another issue that has received a great deal of attention from various sources is that of paid news [19].The issue was extensively dealt with by the Press Council's sub-

[17] Govind v. State of Madhya Pradesh, AIR 1975 SC 1378.
[18] (2008) 146 DLT 429.
[19] In its report on paid news dated 30.07.2010, the Press Council of India (PCI) recommended self-regulation on this issue, and that the PCI be empowered to adjudicate complaints on paid news. In May 2013, the Parliamentary Standing Committee on Information Technology (2012-2013) in its forty-seventh report examined issues related to paid news and recommended that either there be a statutory body to look into content from both print and electronic media or that the PCI be revamped with powers to tackle paid news and a similar statutory body be set up for electronic media. The Committee observed that there was a need to evolve a comprehensive definition of paid news so that 'news' and 'advertisement' could be demarcated. The Committee noted that the phenomenon of Private Treaties gave rise to Paid News and recommended strict enforcement of existing guidelines and codes to bring transparency in Private Treaties.

committee report on 'Paid News[20]' in 2009. The report talked about the way in which the illegal practice has become organized, with 'rates' for the publication of 'news items'.[21] Further, the Parliamentary Standing Committee on Information Technology, in 2013, has brought out its forty-seventh report on the phenomenon of paid news, where it has highlighted the 'dangerous trend' of presenting paid-for information as news, that has spread at 'remarkable pace' in some parts of the media.[22] The Report also outlined the practice of 'Private Treaties', where a non-media company transfers shares to a media company in exchange for advertisements, space and favorable coverage. Guidelines are present both in print and broadcast media that call for clear demarcation of advertisement and news content. These take the shape of norms under the Press Council of India Act, and the Programme and Advertisement Codes under *the Cable Television Networks (Regulation) Act*. However, these guidelines are either subverted or ignored altogether.

If it is mere merger of news with commercially paid information, or just commercialization of the media's influence, or vulgar display of bias towards a particular caste or political party or the candidate, it could be a case of 'ethics' or 'breach of code of conduct', or 'impropriety' etc. But selling space or time (by print and electronic media) to propagate falsity is something far above the unethical practice which puts the media on par with poll-criminals. It is not only a transgression against professionalism and ethics but a crime against democracy besides being a punishable offence under both, the Representation of People's Act and the Indian Penal Code. The syndrome is not just the concern of Press Council of India but a real challenge to the Election Commission, whose aim is to conduct free and fair polls, because media sold 'free' news and its freedom for packet, and also spread wrong information to seduce the voters to like a particular candidate. Here again an ethical question arises as the same newspaper, same local bulletin or same page projects the rival candidates for similar amounts of money.

Media regulation in India is therefore not unified, and has a multiplicity of regulatory bodies. Further there are issues surrounding the enforceability of decisions of such bodies. An independent broadcasting media authority along the

[20] Paid news, defined by the Press Council of India as "any news or analysis appearing in any media (print and electronic) for a price in cash or kind as consideration" is now a common occurrence that poses a serious threat to democratic processes and financial markets. It misinforms audiences and undermines their freedom of choice.

[21] Press Council of India, Sub-committee Report on Paid News, <http://presscouncil.nic.in/OldWebsite/Sub-CommitteeReport.pdf>

[22] Standing Committee on Information Technology, 15th Lok Sabha, 47th Report on 'Issues related to paid news', para 1.2

lines of TRAI was first suggested by the Supreme Court in **Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal.**[23] Thereafter, the Ministry of Information & Broadcasting has made various attempts, the latest in 2007, to draft a Broadcasting Services Regulation Bill in order to set up a **Broadcasting Regulatory Authority of India (BRAI).** In **Indraprastha People v. Union of India**[24], the Delhi High Court recommended that an independent statutory body be set up under the Cable Television Networks (Regulation) Act, "consisting of men and women of eminence." Further they said, "Security of tenure of a kind should be provided for the Members of the Board so that they are free from Government interference." Till this comes into force, the BCCC, according to the Court should be recognized by the Government of India as competent to decide complaints on violation of the law by broadcasters. Its decisions shall be treated by the Union of India as the foundation to take appropriate action against the offender.

A trial by press, electronic media or public agitation is the very antithesis of the rule of law. It can only lead to miscarriage of justice.[25] In **MP Lohia v. State of West Bengal**[26], the Apex Court, admonishing the media, stated, "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 was responsible for the said article against indulging in such trial by media when the issue is sub-judice."[27] It might be enlightening to examine how other countries combat the ramifications of 'trial-by-media'. Most countries admit that such practices undermine the authority of Courts and result in loss of confidence in the judicial system.[28]

The view taken by the Courts in New Zealand is laudable: "In the event of conflict between the concept of freedom of speech and the requirements of a fair trial, all

[23] AIR1995 SC 1236
[24] WP (C) No.1200/2011, (Del. HC)
[25] State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997) 8 SCC 386
[26] 2005 (2) SCC 686
[27] Ibid., para 10.
[28] In Sunday Times v. U.K, 1979(2) EHRR 245, the House of Lords' view that 'trial by newspaper' was not permissible was a concern in itself 'relevant' to the maintenance of the 'authority of the judiciary'. However, the European Court accepted that: "If the issues arising in litigation are ventilated in such a way as to lead the public to form its own conclusion thereon in advance, it may lose its respect for and confidence in courts." See also 200th Report of the Law Commission of India on "Trial by Media-Free Speech and Fair Trial Under Criminal Procedure Code, 1973 (Amendments to the Contempt of Court Act, 1971), August 2006, 154

other things being equal, the latter should prevail."[29] The Courts in India have taken a similar view. The Punjab High Court in **Rao Harnarain v. Gumori Ram**[30] stated that "Liberty of the press is subordinate to the administration of justice. The plain duty of a journalist is the reporting and not the adjudication of cases."

The Orissa High Court in **Bijoyananda v. Bala Kush**[31] observed that – "the responsibility of the press is greater than the responsibility of an individual because the press has a larger audience. The freedom of the press should not degenerate into a licence to attack litigants and close the door of justice nor can it include any unrestricted liberty to damage the reputation of respectable persons." The precedence given by the Orissa and Punjab High Courts to the right to fair trial over freedom of expression is an excellent example of judicial craftsmanship since the loss of freedom of press is not absolute but merely temporary. The loss of immediacy is the lesser evil of the two. The media can print its critique of the judicial process with wild abandonment after the trial, as Justice Katju has rightly remarked, "Our shoulders are broad enough and we will ignore it. We are for media freedom."[32]

Suggestion

1. There 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 rules and regulations must be framed in this regard.

2. The regulations can be introduced to ensure Independence of government-owned Media.

3. There is a need of legislative and Constitutional amendments which are necessary to the law on Contempt of Court to ensure Freedom of the Press.

4. There is a need for comprehensive guidelines on reporting of *sub- judice* matters.

[29] Solicitor General v. Wellington Newspapers Ltd., 1995 (1) NZLR 45: "In pretrial publicity situations, the loss of freedom involved is not absolute. It is merely a delay. The loss is an immediacy; that is precious to any journalist, but is as nothing compared to the need for fair trial."
[30] AIR 1958 Punjab 273
[31] AIR 1953 Orissa 249
[32] J. Venkatesan, Apex Court to lay down coverage norms, http://www.thehindu.com/2008/08/19/ stories/2008081957360100.htm (Last visited on September 28, 2009

5. The statutory body must have the 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 must be introduced and existing framework of media laws is to be rightfully amended to include specific guidelines governing disclosure of private information by the media.

7. The Statutory Authority must monitor and regulate the propagation of paid news.

8. The comprehensive, independent competent authority should be introduced 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:

(A) The Media Communication Convergence Bill has been drafted and implemented to regulate the Indian media.

(B) 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.

APPENDIX-A

Draft Model
Media Communication Convergence
Bill-2015

The Media Communication Convergence Bill, 2015

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THE MEDIA COMMUNICATION CONVERGENCE BILL, 2015

A Bill to promote, facilitate and develop in an orderly manner the carriage and content of media communications (including broadcasting, telecommunications and multimedia), for the establishment of an autonomous Commission to regulate carriage of all forms of media and communications, and for establishment of an Appellate Tribunal and to provide for matters connected therewith or incidental thereto.

WHEREAS it is considered necessary—

(i) to facilitate and preserving the freedom of the Press ,media and of maintaining and improving the standards of media in India.

(ii) to facilitate development of a national infrastructure for an information based society, and to enable access thereto;

(iii) to provide a choice of services to the people with a view to promoting plurality of news, views, information and communication in light of convergence ;

(iv) to establish a regulatory framework for carriage and content of communications in the scenario of convergence of telecommunications, broadcasting, data-communication, multimedia and other related technologies and services, and also promote free and fair competition;

(v) to provide for the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal, and

(vi) to establish a structured mechanism to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunications and multimedia) in the scenario of increasing convergence of technologies.

CHAPTER I

PRELIMINARY

Short title, extent and commencement

(1) This Act may be called the Media Communication

Convergence Act, 2001. (2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision of this Act to the commencement of this Act shall be construed as a reference to the commencement of that provision.

Definitions

2. In this Act, unless the context otherwise requires,—

(1) “Adjudicating Officer” means an officer of the Commission appointed asAdjudicating Officer under sub-section (1) of section 39;

(2) "Appellate Tribunal" means the Communications Appellate Tribunal established under sub-section (1) of section 43;

(3) “broadcasting service” means a content application service for providing television programme or radio programme, to persons having equipment appropriate for receiving that service regardless of the means of delivery of that service, but does not include—

(a) a service (including a teletext service) that provides only data or text (with or without associated still images); or

(b) a service that makes programme available on demand on a point-to-point basis, including a dial-up service; or

(c) a service or a class of services which the Central Government may notify as not being a broadcasting service;

(4) “Chairperson” means the Chairperson appointed under sub-section (4) of section
7;

(5) “channel” means a set of frequencies used for transmission of a programme;

(6) "Commission" means the Media Communication Commission of India established under sub-section (1) of section 6 ;

(7) “communication" means the process of conveyance of content through transmission, emission or reception of signals, by wire or other electromagnetic waves;

(8) “communication service" means a networking service or network application service or value added network application service or a content application service;

(9) “content” means any sound, text, data, picture (still or moving), other audio-visual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically;

(10) “content application service” means an application service which provides content meant for the public and includes such other services as may be prescribed;

(11) "frequency" means frequency of electro-magnetic waves used for providing a communication service;

(12) “grantee” means a person who has been granted registration under Chapter VII;

(13) “license” means a license granted under Chapter VII or Chapter VIII;

(14) “licensee” means a person who has been granted a license;

(15) “Member” means a Member of the Commission appointed under section 7 and includes the Chairperson;

(16) "network application service" means the service provided by means of one or more networking services and includes such other services as may be prescribed;

(17) “network infrastructure facilities” means any element or combination of elements of physical infrastructure, which would be utilised by licensees for providing networking services and includes such other facilities as may be prescribed;

(18) “Communication information infrastructure " means a infrastructure for service of carrying communications by means of guided or unguided electromagnetic waves and includes such other services as may be prescribed;

(19) “ notification” means a notification published in the Official Gazette and the expression "notified", with its cognate meaning and grammatical variation, shall be construed accordingly;

(20) “post” means a post and includes a pole, tower, standard, stay, strut, cabinet, pillar or any above ground contrivance for carrying, suspending or supporting any network infrastructure facility;

(21) "prescribed" means prescribed by rules made by the Central Government under this Act;

(22) “programme" means television or radio programme including advertising or sponsorship, whether or not of a commercial kind, and broadcast programming shall be construed accordingly;

(23) "programme code" means the code specified under section 20;

(24) “public authority”

includes— (i) the Central

Government; (ii) a State

Government;

(iii) any person, agency or organization engaged in land development for public use, or in roads for public transportation;

(iv) any local authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of any municipal or local fund; and

(v) any institution, concern or undertaking or body which is financed wholly or substantially by funds provided directly or indirectly by the Government which may be specified, by notification in this behalf, by the Central Government;

(25) "public service broadcaster" means anybody created by an Act of Parliament only for the purpose of public service broadcasting; and other local public broadcaster worked as nonprofit basis provides educational service;

(26) “registration” means the registration granted under Chapter VII;

(27) "regulations" means regulations made by the Commission under this Act;

(28) “Secretary-General” means the Secretary-General appointed under sub-section (1)
of section 15;

(29) “service provider” includes any person who provides a communication service;

(30) “spectrum” means a continuous range of electromagnetic wave of frequencies up
to and including a frequency of 3000 giga hertz;

(31) “Spectrum Manager” means Wireless Advisor to the Government of India notified as Spectrum Manager, Government of India under sub-section (3) of section 23;

(32) “subscriber of a service” means a person who subscribes to a communication service primarily for his own use;

(33) “Universal Service Obligation” means obligation in respect of services as may be prescribed;

(34) “value added network application service” means the service provided by means of value addition using one or more network application services and includes such other services as may be prescribed;

(35) “wireless equipment” means any equipment in use or capable of use in wireless communication and includes any article or apparatus as may be prescribed;

(36)“wireless communication” means any communication without the use of wire or cable.

CHAPTER II

REGULATION OF USE OF SPECTRUM, COMMUNICATION SERVICES, NETWORK INFRASTRUCTURE FACILITIES AND WIRELESS EQUIPMENT

3. Prohibition of use of spectrum without assignment

No person shall use any part of the spectrum without assignment from the Central Government or the Commission under this Act.

4. Provision of services, etc.

(1) No person other than a public service broadcaster shall— (a) own or provide any network infrastructure facility, or

(b) provide any networking service or any network application service or any value added network application service or any content application service,

without a license or registration:

Provided that all facilities and services exempted from licensing or registration immediately before the commencement of this Act shall continue to be so exempt under this Act, until otherwise notified by the Central Government.

(2) The Central Government may, by notification, exempt any—

(a) person or class of persons; or

(b) facility or service, from the provisions of this section.

5. Prohibition of possession of wireless equipment without a license

(1) No person shall possess notified wireless equipment without obtaining a license in accordance with the provisions of this Act:

Provided that the Central Government may, by notification, exempt in the public interest any person or class of persons or any wireless equipment or class or category of wireless equipments from the provisions of this section.

(2) Nothing contained in sub-section (1) shall apply to—

(a) any person or equipment licensed under any law for the time being in force immediately before the commencement of this Act; or

(b) any person or equipment exempted from licensing immediately before the commencement of this Act,

until otherwise notified by the Central Government.

CHAPTER III

MEDIA MEDIA COMMUNICATION COMMISSION OF INDIA

6. Establishment of Commission

1) With effect from such date as the Central Government may, by notification, appoint in this behalf, there shall be established for the purposes of this Act, a Commission to be known as the Media Media Communication Commission of India and the head office of the Commission shall be located at Delhi with regional offices at East ,West, North ,South and Central region.

(2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The Commission shall consist of the following Members,

namely:— (a) a Chairperson;

(b) not more than ten persons to be appointed as Members; and

(c) the Spectrum Manager as an ex officio Member.

(4) The Chairperson and not less than six Members other than the ex officio Member, shall be whole-time Members and the remaining shall be part-time Members.

7. Appointment of Chairperson and Members

(1) The Members (except the ex officio Member) shall be appointed by the Central Government, by notification, from amongst persons recommended by a search committee as may be prescribed.

(2) One-half of the Members shall be appointed from amongst persons of eminence in the fields of literature, performing arts, media, culture, education, films, media law, human rights and from persons prominent in social and consumer activities.

(3) One-half of the Members shall be appointed from amongst persons of eminence in specialised fields such as telecommunications, broadcasting technology, information technology, finance, management and administration, or law.

(4) The Chairperson shall be appointed by the Central Government, by notification, on the recommendation of the search committee referred to in sub-section (1) from amongst persons of eminence in one or more fields enumerated in sub-sections (2) and (3).

(5) Before appointing a person as Chairperson or other Member, the Central Government shall satisfy itself that the person does not have any such financial or other interests as are likely to affect prejudicially his functions as such Member.

(6) A person, who is in the service of Government, shall have to retire or resign from service before entering the office of Chairperson or whole-time Member.

8. Term of office of Chairperson and Members

(1) The Chairperson and a whole-time Member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier:

Provided that the Chairperson or the whole-time Member shall not be eligible for re-appointment.

(2) The tenure of part-time Members shall be such as may be prescribed.

(3) The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of the Commission and shall, in addition to presiding over the meetings ofthe Commission, exercise and discharge such powers and functions of the Commission as may be assigned to the Chairperson by the Commission.

(4) The Chairperson or other Member may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, the Chairperson or such other Member shall be deemed to have vacated his office.

9. Removal from office of Chairperson and Members.

The Central Government may remove from office any Member,

who– (a) has been adjudged an insolvent; or

(b) has been convicted of any offence, which in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as Chairperson or other Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that no such Member shall be removed from his office under clause (d) or clause (e) unless he has been given a reasonable opportunity of being heard in the matter.

10. Salary and allowances of Chairperson and Members

The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or other Member shall be varied to his disadvantage after appointment.

11. Vacancy or defect not to invalidate proceedings

No act or proceeding of the Commission shall be invalidated merely by reason of- (a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as a Member; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

12. Functions of regional offices

The regional offices of the Commission at Kolkata, Chennai and Mumbai shall perform such functions as may be determined by regulations.

13. Meetings of Commission

(1) The Commission shall meet at such times and places and shall observe such procedure in regard to the transaction of business at its meetings as may be provided by regulations:

(2) A Member, other than the Chairperson, shall be deemed to have vacated his office if he absents himself for three consecutive meetings of the Commission without the leave of the Chairperson.

(3) The Chairperson or, if he is unable to attend a meeting of the Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any other Member chosen by the Members present from amongst themselves shall preside at the meeting of the Commission.

14. Power of Commission to regulate its procedure

(1) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of

documents; (c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) subject to the provisions of sections 123 and 124 of the Indian Evidence Act,
1872, requisitioning any public record or document or a copy of such record or document, from any office;

(f) dismissing an application for default or deciding it ex parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) reviewing its decisions;

(i) granting interim relief; and

(j) any other matter which may be prescribed.

(2) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section
195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(3) The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Commission shall have powers to regulate its own procedure including the places at which it shall conduct its business.

15. Secretary of the Commission.

(1) The Secretary-General shall be appointed by the Commission and he shall be its chief executive officer and shall exercise such powers and discharge such functions as determined by regulations.

(2) For the purposes of sub-section (1), the Commission may seek from the Central Government a panel of not less than three officers who are eligible to be, or are of the rank of, the Secretary to the Government of India for being appointed as the Secretary.

3) The terms and conditions of service of the Secretary shall be such as may be prescribed.

16. Setting up of Panel, distribution of business, etc.

(1) The Commission shall set up a Panel from amongst Members appointed under sub-section (2) of section 7 to deal with matters in relation to the content in content application services, and the Chairperson shall preside over meetings of the Panel:

Provided that wherever necessary the Chairperson may place before the Commission any issue relating to the matters referred to in this section.

(2) Except for the power to make regulations, the Commission may, by general or special order, make provisions for the distribution of its business amongst Members as may be considered appropriate and necessary.

(3) For the discharge of its functions under this Act, the Commission may, if it considers necessary, set up bureaus or divisional organisations on the basis of its principal workload operations and subject to the provisions of section 53, such bureaus or divisional organisations shall be provided with such officers and other employees as are necessary to perform their functions.

(4) The Commission may, by order in writing, authorise any District Magistrate or Sub- Divisional Magistrate in any area or any other officer of the Central Government or State Government or Union territory Administration to implement and ensure compliance of its directions and orders; and when so directed or authorised, such Magistrate or officer shall be bound to implement and carry out such directions and orders.

CHAPTER IV
OBJECTIVES OF THE COMMISSION

17. Objectives and guiding principles.

The Commission, while exercising its functions, shall strive to achieve the following objectives and guiding principles governing the administration of this Act, namely:—

(i) that the communication sector is developed in a competitive environment and in consumer interest;

(ii) that communication services are made available at affordable cost to all, especially uncovered areas including the rural, remote, hilly and tribal areas;

(iii) that there is increasing access to information for greater empowerment of citizens and towards economic development;

(iv) that quality, plurality, diversity and choice of services are promoted;

(v) that a modern and effective communication infrastructure is established taking into account the convergence of information technology, media, telecommunication and consumer electronics;

(vi) that defence and security interests of the country are fully protected;

vii) that introduction of new technologies, investment in services and infrastructure and maximisation of communication facilities and services (including telephone density) are encouraged;

(viii) that equitable, non-discriminatory interconnection across various networks are promoted;

(ix) that licensing and registration criteria are transparent and made known to the public;

(x) that an open licensing policy allowing any number of new entrants (except in specific cases constrained by limited resources such as the spectrum) is promoted; and

(xi) that the principle of a level playing field for all operators, including existing operators on the date of commencement of this Act, is promoted, so as to serve consumer interest.

CHAPTER V

POWERS, DUTIES AND FUNCTIONS OF THE COMMISSION

18. Powers, duties and functions of the Commission

(1) It shall be the duty of the Commission to facilitate and regulate all matters relating to carriage and content of communications.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Commission shall—

(i) carry out management, planning and monitoring of the spectrum for non-strategic or commercial usages subject to the provisions of section 24;

(ii) grant license or registration for purposes of this Act, and determine and enforce license or registration conditions and determine fees, including fees for usage of spectrum, wherever required;

(iii) determine appropriate tariffs and rates for services, wherever considered necessary and keeping in view the objectives and guiding principles in this Act;

(iv) ensure that the grant of license or registration shall not result in eliminating competition or in one or more service providers becoming dominant to the detriment of other service providers or consumers;

(v) promote competition and efficiency in the operation of communication services and network infrastructure facilities;

(vi) formulate and determine conditions for fair, equitable and non-discriminatory access to a network infrastructure facility or networking service and such other matters as may be prescribed;

(vii) take such measures as may be prescribed to protect consumer interests and to promote and enforce Universal Service Obligations;

(viii) formulate and lay down programme and advertising codes in respect of content application services;

(ix) formulate and lay down commercial codes in respect of communication services and network infrastructure facilities;

(x) take steps to regulate or curtail the harmful and illegal content on the internet and other communication services;

(xi) formulate and lay down codes and technical standards and norms to ensure, in a technology neutral manner, the quality and interoperability of services and network infrastructure facilities, including equipment;

(xii) carry out any study and publish findings on matters of importance to the consumers, service providers and the communications industry;

(xiii) institutionalise appropriate mechanisms and interact on a continual basis with all sectors of industry and consumers, so as to facilitate and promote the

objectives and guiding principles of this Act to encourage self regulatory codes and standards;

xiv) report and make recommendations either suo motu or on such matters as may be referred to it by the Central Government; and

(xv) perform all or any functions in furtherance of the objectives and guiding principles of this Act, or such other matters as may be prescribed.

(3) The Commission shall ensure transparency while exercising its powers and discharging its functions.

19. Power to make recommendations in certain cases

The Commission may at any time make appropriate recommendations to the Central Government with regard to any particular practice that impinges upon or adversely affects the interests of the society, sovereignty and integrity of India, friendly relations with foreign States, public order, decency or morality.

20. Codes and standards

The Commission shall, by regulations, specify programme codes and standards which may include, inter alia, practices–

(i) to ensure that nothing is contained in any programme, which is prejudicial to the interests of the sovereignty and integrity of India, security, friendly relations with foreign States, public order or which may constitute contempt of court, defamation or incitement to an offence;

(ii) to ensure fairness and impartiality in presentation of news and other programme;

(iii) to ensure emphasis on promotion of Indian culture, values of national integration, religious and communal harmony, and a scientific temper;

(iv) to ensure in all programme, decency in portrayal of women, and restraint in portrayal of violence and sexual conduct;

(v) to enhance general standards of good taste, decency and morality;

(vi) to ensure avoidance of offence to religious views and belief; and

(vii) to be followed in connection with the prevention of unjust and unfair treatment in any programme, and unwarranted infringement of privacy in, or in connection with, obtaining of material included in such programme.

21. Hearing of complaints and resolution of disputes by the Commission.

(1) The Commission shall-—

(a) decide any dispute or matter—

(i) between two or more service providers on issues relating to spectrum interference, interconnectivity, denial of fair access and practices restrictive of fair competition; or

(ii) between one or more service providers and a group of consumers; or

(iii) arising out of enforcement of any provision of this Act;

(b) hear and determine any complaint from any person regarding contravention of the provisions of this Act, or the rules, regulations or orders made there under including contraventions relating to any formulated codes and technical standards, and of other terms and conditions subject to which any license or registration was granted; and if necessary, refer the matter for adjudication to the Adjudicating Officer under Chapter X.

(2) For the purposes of sub-section (1), the Commission shall pass such orders and issue such directions as it deems fit.

(3) The Commission shall endeavour to decide disputes and complaints referred to in sub- section (1) as expeditiously as possible.

22. Directives by the Central Government

(1) The Commission shall follow such policy directives as may be communicated to it in writing by the Central Government from time to time and such directives may include the procedure and the mode in which any services are to be licensed or registered, whether by way of auction in case of granting license, or in any other form.

(2) In framing the policy directives, the Central Government shall take into account the objectives and guiding principles governing the administration of this Act.

(3) The decision of the Central Government whether a question is one of policy or not shall be final.

(4) The Commission may request the Central Government, by means of a written communication, for a review of any policy directive, and if any such request is made, the Central Government shall respond with reasons in writing to such request with all expeditious dispatch.

CHAPTER VI

FREQUENCY SPECTRUM MANAGEMENT

23. Spectrum Management Committee

(1) The Central Government shall be responsible for co-ordination with international agencies in respect of matters relating to spectrum management and also for allocation of available spectrum for strategic and non-strategic or commercial purposes.

(2) For the purposes of discharging the responsibility under sub-section (1), the Central Government shall establish, by notification, a Spectrum Management Committee

with the Cabinet Secretary as its chairman and consisting of such other members as may be notified by it from time to time.

(3) The Central Government shall notify Wireless Advisor to the Government of India as Spectrum Manager, Government of India, to act as Member-Secretary of the Spectrum Management Committee.

(4) Subject to the general supervision and control of the Spectrum Management Committee, the Spectrum Manager shall, inter alia, perform the following functions, namely:-

(i) to co-ordinate with international agencies, matters relating to overall spectrum plannin g, use and its management;

(ii) to carry out spectrum planning, and assign frequencies to the Central Government and to State Governments to meet their vital needs, including those of defence, national security and of the public service broadcaster;

(iii) to allocate frequencies or band of frequencies including frequencies which are to be assigned by the Commission; and reassignment of frequencies from time to time;

(iv) to review constantly and to make available as much spectrum as possible for assignment by the Commission, in particular by optimising usages;

(v) monitoring as appropriate, in consultation with the Commission, the efficiency of the utilisation of the spectrum by all users including investigation and resolution of spectrum interference; and

(vi) after meeting the requirements of the Central Government and of State Governments for fulfilling their vital needs including those of defence, national security and public service broadcaster, the Spectrum Manager shall make the spectrum available, to the maximum extent possible, for assignment by the Commission, both in the shared as well as in the exclusive bands.

(5) Subject to the general supervision and control of the Spectrum Management Committee, the Spectrum Manager shall assign frequencies on payment of such fee as may be prescribed.

24. Assignment of spectrum

(1) The Commission shall be responsible for assignment of the non-strategic and commercial spectrum to various users:

Provided that the Commission shall assign such frequencies in case these are not exclusively allocated to it, only with the prior approval of the Spectrum Management Committee.

(2) Whenever the Commission seeks allocation of additional spectrum for assignment, including in the shared bands, a process for mutual consultation between the Commission and the Spectrum Manager shall be initiated in such manner and within a time frame as may be prescribed.

25. Commission to notify schemes for assignment of spectrum

(1) Before assigning any part of spectrum, the Commission shall prepare and notify from time to time one or more schemes or plans for such assignment, after such public hearing as it may consider appropriate.

(2) The Central Government may, by notification, determine the class or classes of persons or services for preferential assignment of any frequency or spectrum by the Commission.

CHAPTER VII

LICENSE OR REGISTRATION

26. License or registration of service providers

(1) Having regard to the necessity of serving the public interest, ensuring competition and prevention of monopoly in the provision of network infrastructure facilities and communication services, the Commission may, by regulations specify—

(i) eligibility conditions for granting of licenses or

registrations; (ii) restrictions regarding ownership and control

of the media;

(iii) restrictions on the number of licenses or extent of accumulation of interest in such licenses by a person; and

(iv) such other conditions as may be considered necessary from time to time.

(2) (a) The Commission may determine by regulations, the obligations, conditions, restrictions, tariffs and rates subject to which a service provider shall provide facilities and services referred to in sub-section (1).

(b) The Commission may, by regulations, determine the conditions subject to which a license or registration may be granted or transferred and where a license or registration is transferred, the transferee shall be deemed as licensee or grantees, as the case may be, for the purposes of this Act.

(3) Subject to the provisions of sub-section (1), the Commission may grant license or registration in such manner, and within such time, subject to such terms and conditions, on payment of such fee and after following such procedure as may be determined by regulations:

Provided that the fee for registration shall not exceed thirty thousand rupees.

(4) The Commission shall notify, from time to time, one or more schemes or plans for licensing or registration containing such details as may be specified by regulations:

Provided that the Commission shall, before finalising such schemes or plans, consult the Central Government in order to ensure that the defence and security interests of India are fully protected.

(5) Any scheme or plan referred to in sub-section (4) may provide for eligibility conditions, number and scope of licenses and registrations and such other matters as the Commission may consider necessary.

(6) The Commission may grant license to any person—

(a) to provide or own Telecom and information Service infrastructure facilities.

Explanation.—For the purposes of this clause, network infrastructure facilities shall include earth stations, cable infrastructure, wireless equipments, towers, posts, ducts and pits used in conjunction with other communication infrastructure, and distribution facilities including facilities for broadcasting distribution; networking services shall include band-width services, fixed links and mobile links;

(b) to provide network application services.

Explanation.—For the purposes of this clause, network application services shall include public switched telephony, public cellular telephony, global mobile personal communication by satellite, internet protocol telephony, radio paging services, public mobile radio trunking services, public switched data services and broadcasting (radio or television service excluding continued);

(c) to provide content application services.

Explanation.—For the purposes of this clause, content application services shall include satellite broadcasting, subscription broadcasting, terrestrial free to air television broadcasting and terrestrial radio broadcasting;

(d) to provide value added network application services such as internet services and unified messaging services.

Explanation.—For the removal of doubts, it is hereby declared that information technology enabled services such as call centres, electronic-commerce, tele-banking, tele- education, tele-trading, tele-medicine, videotex and video conferencing shall not be licensed under this Act.

(7) The Commission may, while granting a license for any of the categories under sub-section (6), confine or limit the scope of the facility or service to be provided by the licensee in each category of license, and also specify the conditions for providing that facility or service.

(8) The Commission may, while granting a license under sub-section (6), grant licenses either singly or jointly for one or more of the categories of facilities or services specified therein:

Provided that no license shall be granted under this sub-section, if it conflicts with the objectives and guiding principles set out under this Act particularly in relation to ensuring fair access and promotion of competition.

Explanation.—No license shall be required in respect of any person or class of persons, or any facility or service, which has been exempted under the proviso to clause (b) of sub-section (1) of section 4 unless specifically notified by the Central Government for the purposes of licensing under this Act.

27. Period and form of license or registration

(1) A license or registration shall be granted for such period as may be specified by regulations. (2) A license or registration, granted under this Act, shall be in such form and shall be subject to the payment of such fee as may be determined by regulations:

Provided that the fee for registration shall not exceed the amount referred to in the proviso to sub-section (3) of section 26:

Provided further that the Central Government may, by notification, in the public interest, exempt any person or class of persons from payment of the license fee or registration fee.

28. Duties of service providers

(1) Every service provider shall, wherever required or

applicable,– (i) give effect to Universal Service

Obligations;

(ii) provide such life saving services as may be prescribed;

(iii) provide service to any person on demand within a reasonable period of time and on a non-discriminatory basis; and

(iv) follow the codes and standards laid down and specified by the Commission.

(2) Every service provider of a content application service shall, wherever required or applicable,—

(i) endeavour to provide a suitable proportion of programme of indigenous origin; and

ii) ensure that no programme forming part of his services infringes any copyright.

(3) Without prejudice to the foregoing provisions of this Act, every service provider holding a license for providing of broadcasting services shall, amongst others,—

(i) provide a specified number and type of broadcasting services, including those of the public service broadcaster, in such manner, as may be prescribed;

(ii) include only licensed broadcasting service in his delivery package for the purposes of distribution; and

(iii) use not more than such number of channels as specified by regulations, out of the total

channel capacity of the system, for providing his own programming.

29. Certain agreements to be registered with the Commission

Every agreement, entered into or made by any service provider or infrastructure facilities provider, falling under one or more of the following classes shall, within sixty days from the making of such agreement, be registered with the Commission, namely:—

(a) shareholders or promoters

agreements ; (b) interconnectivity

agreements; and

(c) such other agreements as may be specified by regulations.

CHAPTER VIII

LICENSING FOR POSSESSION OF WIRELESS EQUIPMENT

30. License for wireless equipment

(1) Subject to the provisions of sub-section (1) of section 5, any person who intends to possess any wireless equipment shall make an application to the Commission for the grant of a license.

(2) Every application shall be in such form and shall be accompanied by such fee as may be determined by regulations.

(3) The Commission shall, on receipt of an application under sub-section (1), after making such inquiries as it deems fit, grant the license or reject the application:

Provided that no application shall be rejected unless an opportunity of being heard is given to the applicant:

Provided further that no application for a license shall be rejected except on the grounds of security of India or part thereof, public order or public interest.

(4) Every license granted under this section shall be subject to such conditions and restrictions as may be determined by regulations.

CHAPTER IX

SPECIAL PROVISION IN RESPECT OF CERTAIN SERVICES

31. Provision for live broadcasting of certain events

(1) For the purpose of ensuring the widest availability of viewing in India of a national or international event of general public interest to be held in India, the Central Government shall notify the same well in advance.

(2) The national or international event of general public interest notified under sub-section (1) shall have to be carried on the network of a public service broadcaster as well.

(3) In order to strive towards providing a level playing field for bidders for broadcasting rights, or persons interested in receiving broadcasting rights for events, notified under sub- section (1), the Commission shall determine, well in advance of such event, the principles and terms for the access to the network of public service broadcaster.

CHAPTER X

BREACH OF TERMS AND CONDITIONS OF LICENSE OR REGISTRATION, CIVIL LIABILITY AND ADJUDICATION

32. Breach of terms and conditions of license, etc

(1) In case of breach of any of the terms of the license or registration or failure to comply with any decision, direction or order of the Commission, it may, after providing an opportunity to the party concerned of being heard, do any one or more of the following, namely:—

(a) direct the licensee or grantee to do or abstain from doing any act or thing to prevent such breach or for such compliance;

(b) suspend the license or registration for a specified

period; (c) curtail the period of the license or

registration;

(d) revoke the license or registration; and

(e) initiate adjudication proceedings under this Chapter.

(2) If the Commission has reason to believe that the terms and conditions of a license or registration for providing a net work infra-structure facility or communication service under this Act have been or are being breached, the Commission may direct or order the seizure of the equipment being used for provision of such facility or service, and for this purpose the Commission may, by order in writing, authorise any District Magistrate or Sub-Divisional Magistrate in any area, or any other officer of the Central Government or a State Government or Union territory Administration, to implement and ensure compliance of its directions and orders; and when so authorised, such Magistrate or officer shall be bound to carry out the directions and orders of the Commission.

(3) Any person aggrieved by the seizure under sub-section (2) may prefer an appeal to the Appellate Tribunal within thirty days of the seizure and the Appellate Tribunal may pass such orders, as expeditiously as possible, as to the disposal of the property so seized as it may deem fit:

Provided that no such equipment shall be retained by the Commission or the authorised officer for a period exceeding forty-five days from the date of its seizure, unless the Appellate Tribunal, on the report made by the authorised officer, approves such retention for a longer period.

33. Civil liability for breach of terms and conditions of license etc

If any licensee or grantee commits breach of, or fails to comply with, any terms and conditions subject to which a license or registration, as the case may be, was granted or fails to comply with any rules, regulations or order made under this Act, the licensee or grantee shall be liable to a civil liability under this Chapter.

34. Civil liability for contravention of the provisions relating to transmission, etc

If any person transmits or distributes any communication or performs any service incidental thereto, by the use of a network infrastructure facility, communication service or wireless equipment which is required to be licensed or registered under this Act and not so licensed or registered, as the case may be, or has been established or maintained or operated in contravention of the provisions of this Act or any rule or regulation made there under, such person shall be liable to a civil liability under this Chapter.

35. Civil liability for delivery of content through facilities services or equipments not licensed or registered.

If any person delivers any content for transmission or accepts delivery of any content sent by the use of network infrastructure facility, communication service or wireless equipment knowing or having reason to believe that such facility, service or equipment has been established or has been maintained or operated without a license or registration or in contravention of the provisions of this Act or any rule or regulation made thereunder, such person shall be liable to a civil liability under this Chapter.

36. Civil liability for failure to register agreements.

If a service provider fails without reasonable excuse to register an agreement which is required to be registered as provided under section 29, he shall be liable to a civil liability under this Chapter.

37. Civil liability for failure to comply with the decision, etc., of the Commission.

If any person wilfully fails to comply with any decision, direction or order of the Commission, he shall be liable to civil liability under this Chapter.

38. Filing of complaint, reference for adjudication, etc.

(1) A complaint may be filed before the Commission alleging that a service provider or any other person has incurred a civil liability under this Chapter.

(2) Every complaint under sub-section (1), except a complaint under section 33, shall be filed within sixty days from the date on which any act or conduct constituting the contravention took place and shall be in such form as may be prescribed:

Provided that the Commission may entertain the complaint after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it, within that period.

(3) On receipt of a complaint under sub-section (1), if the Commission is of the opinion that there is a prima facie case for referring the matter for adjudication under this Chapter, it may refer the same to the Adjudicating Officer having jurisdiction in the matter for adjudication; in all other cases the Commission may summarily dispose of the complaint.

(4) Notwithstanding anything contained in this section, the Commission may at any time refer suo motu any contravention of any of the provisions of this Act or of any rule, regulation, direction or order made there under, to the Adjudicating Officer for adjudication in accordance with the provisions of this Chapter.

39. Power to adjudicate

(1) For the purpose of adjudging whether any person has contravened any of the provisions of this Act, any rules, regulations, made there under or directions or orders issued under this Act is liable to a civil liability under this Chapter, the Commission shall, subject to the provisions of sub-section (3), appoint by general or special order, an officer of the Commission as Adjudicating Officer for holding an inquiry in the manner provided for herein and in the regulations.

(2) The Adjudicating Officer shall give the person referred to in sub-section (1), a reasonable opportunity for making a representation in the matter, and if, on inquiry, the Adjudicating Officer is satisfied that the person has committed any contravention, and is liable to a civil liability, then, such liability as may be determined, by order, shall be imposed by the Adjudicating Officer on such person:

Provided that where the Adjudicating Officer is satisfied that there has been no contravention, he may pass such order as he deems fit.

(3) No person shall be appointed as an Adjudicating Officer unless he possesses such experience as may be prescribed.

(4) Where more than one Adjudicating Officers are appointed, the Commission shall specify, by order, the matters and places with respect to which such officers shall exercise their jurisdiction.

(5) For the purpose of discharging his powers and functions, every Adjudicating Officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure,
1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on
oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;

(e) issuing commission for the examination of witnesses or for production of documents;

(f) dismissing an application for default or deciding it ex parte;

(g) setting aside any order of dismissal of any application for default or any order passed by him ex parte;

(h) reviewing his decisions;

(i) granting interim relief; and

(j) any other matter which may be prescribed.

(6) The Adjudicating Officer shall endeavour to decide disputes and complaints referred to him within 60 Days .

(7) Any proceeding before the Adjudicating Officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Adjudicating Officer shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

40. Civil liability for willfully or otherwise damaging network infrastructure facility and causing interruption.

(1) If any person damages, displaces or destroys any cable or any part of the network infrastructure facility laid, established or placed in accordance with the provisions of this Act, or if the communication service by reason of the damage or displacement caused by him is interrupted, such person shall be liable,—

(a) where the act is wilful and deliberate, to a civil liability which may extend to five crore rupees and where the actual loss or damage caused is more than five crore rupees, then, a civil liability up to the extent of the damage;

(b) where the act is not wilful or deliberate, to a civil liability not exceeding the actual loss or damage caused.

(2) Out of the civil liabilities imposed under sub-section (1), such sum as may be determined by the Adjudicating Officer shall be payable to the licensee or the grantee, as the case may be, as reasonable compensation for damage suffered.

41. Civil liability for not taking consent for use of private land.

If any person contravenes the provision of sub-section (2) of section 63, he shall be liable to a civil liability as determined by the Adjudicating Officer under this Chapter.

42. Factors to be taken into account by the Adjudicating Officer.

(1) Any civil liability which may be imposed under this Chapter shall not exceed fifty crore rupees.

(2) The Adjudicating Officer shall, while adjudging the quantum of civil liability, under this Chapter, have due regard to the provisions of this Act, and also to the following factors, namely:—

(a) the amount of revenue loss to the Government;

(b) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(c) the amount of loss caused to any person as a result of the

default; (d) the repetitive nature of the default; and

(e) the amount adjudged shall be such as may act as a deterrent even though no financial loss has been caused by such contravention.

CHAPTER XI

COMMUNICATIONS APPELLATE TRIBUNAL

43. Establishment of Appellate Tribunal

(1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as the **Media Communications Appellate Tribunal**, to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

(2) Any person aggrieved by any decision or order of the Commission may prefer an appeal to the Appellate Tribunal.

(3) (a) Every appeal under sub-section (2) shall be preferred within a period of sixty days from the date on which a copy of the decision or order made by the Commission is received by the person aggrieved and the appeal shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed.

(b) Any person aggrieved by an order of civil liability imposed by the Adjudicating Officer may prefer an appeal to the Appellate Tribunal within sixty days from the date on which such order is received and the appeal shall be in such form, verified in such manner and accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal under clause (a) or clause (b) after expiry of the said period of sixty days, if it is satisfied that there was sufficient cause for not filing the same within that period.

(4) On receipt of an appeal under sub-section (2) or sub-section (3), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(5) The Appellate Tribunal shall send a copy of every order made by it to each of the parties to the appeal and to the Commission or the Adjudicating Officer, as the case may be.

(6) The Appellate Tribunal shall endeavour to deal with and dispose of every appeal preferred under sub-section (2) or sub-section (3) as expeditiously as possible; and all parties appearing before the Appellate Tribunal shall actively assist in ensuring that the appeal is disposed of not later than ninety days from the date of filing of the appeal.

(7) The Appellate Tribunal may, on its own motion or otherwise for the purpose of examining the legality, propriety or correctness of any order or decision of the Commission or the Adjudicating Officer, call for relevant records and make such orders as it thinks fit:

Provided that the power under this sub-section shall not be invoked after the expiry of three months from the date of such order or decision.

44. Composition of Appellate Tribunal

(1) The Appellate Tribunal shall consist of a chairperson and not more than six members to be appointed, by notification, by the Central Government.

(2) The appointment of the chairperson of the Appellate Tribunal shall be made by the
Central Government in consultation with the Chief Justice of India.

(3) The appointment of members of the Appellate Tribunal shall be from amongst persons recommended by the search committee as may be prescribed.

(4) Subject to the provisions of this Act —

(a) the jurisdiction of the Appellate Tribunal may be exercised by benches thereof;

(b) a bench may be constituted by the chairperson of the Appellate Tribunal consisting of two or more members thereof as he may deem fit:

Provided that every bench shall be presided over by a judicial member.

Explanation.—For the purposes of this section "judicial member" means any member of the Appellate Tribunal who has been a Judge of a High Court

(c) the benches of the Appellate Tribunal shall ordinarily sit at Delhi and also at such other places as the Central Government may notify, in consultation with the chairperson of the Appellate Tribunal;

(d) the Central Government shall, on the recommendation of the Appellate Tribunal, notify the areas in relation to which each bench of the Appellate Tribunal may exercise jurisdiction.

(5) The chairperson of the Appellate Tribunal may, as the exigencies of business may require, request a member of the Appellate Tribunal sitting on one bench of the Appellate Tribunal to sit on another bench thereof.

(6) If at any stage it appears to the chairperson or a bench of the Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a bench consisting of more than two members of the Appellate Tribunal, the case or matter may be transferred by the chairperson to a bench of more than two members.

45. Qualifications, salary and allowances, etc., of the chairperson and members of the Appellate Tribunal.

(1) A person shall not be qualified for appointment as the chairperson or a member of the

Appellate Tribunal unless,—

(a) in the case of the chairperson, he is, or has been, a Judge of the Supreme Court;

(b) in the case of a member, he is, or has been, a Judge of a High Court, or has held the post of Secretary to the Government of India or any equivalent post in the Central Government or a State Government for a period of not less than two years, or he is a person who is proficient in any of the fields specified in sub-sections (2) and (3) of section 7.

(2) The chairperson and every member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no chairperson or member shall hold office as such after he has

attained,— (i) in the case of the chairperson, the age of seventy years;

(ii) in the case of any other member, the age of sixty-five years.

(3) The salary and allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the chairperson or a member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

(4) (a) If, for reason other than temporary absence, any vacancy occurs in the office of the chairperson or a member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy.

(b) When the chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, any member of the Appellate Tribunal, as authorised so to do by the Central Government, shall discharge the functions of the chairperson until the day on which the chairperson resumes charge of his functions.

(5) Before appointing any person as chairperson or member of the Appellate Tribunal, the Central Government shall satisfy itself that the person does not have any such financial or other interests as are likely to affect prejudicially his functions as such chairperson or member.

(6) A person, who is in the service of Government, shall have to retire or resign from service before entering the office of chairperson or member of the Appellate Tribunal.

46. Resignation and removal

(1) The chairperson or a member of the Appellate Tribunal may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, the chairperson or the member shall be deemed to have vacated his office.

(2) The Central Government may remove from office, the chairperson or a member of the Appellate Tribunal, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as the chairperson or a member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the chairperson or a member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(3) Notwithstanding anything contained in sub-section (2), the chairperson or a member of the Appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be specified in this behalf by the Supreme Court, reported that the chairperson or the member ought on such ground or grounds be removed.

(4) The Central Government may suspend from office, the chairperson or a member of the Appellate Tribunal in respect of whom a reference has been made to the Supreme Court

under sub-section (2), until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference.

47. Distribution of business amongst benches, etc.

(1) The chairperson of the Appellate Tribunal may, from time to time, by order, make provisions as to the distribution of the business of the Appellate Tribunal amongst the benches of the Appellate Tribunal and also provide for the matters which may be dealt with by each bench thereof.

(2) On the application of any of the parties and after notice to the parties, and after hearing such of them as may desire to be heard, or suo motu without notice, the chairperson of the Appellate Tribunal may transfer any case pending before one bench of the Appellate Tribunal for disposal, to any other bench thereof.

(3) If the members of a bench of the Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the chairperson of the Appellate Tribunal who shall hear the point or points, and thereafter such point or points shall be decided according to the opinion of the majority who have heard the case, including those who first heard it.

48. Procedure and powers of Appellate Tribunal

(1) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of

documents; (c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act,
1872, requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or

documents; (f) dismissing an application for default or deciding it

ex parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) reviewing its decisions;

(i) granting interim relief; and

(j) any other matter which may be prescribed.

(2) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and,

subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

49. Right of applicant to take assistance of legal practitioners, etc.

An applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its accredited officers to present his or its case before the Appellate Tribunal.

Explanation.—For the purposes of this section,-

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub- section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader.

50. Appeals to Supreme Court.

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law for the time being in force, an appeal shall lie against any order, not being an interlocutory order, passed by the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against:
Provided that the Supreme Court may entertain the appeal after the expiry of the said period of
ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

51. Execution of Orders

1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of a civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Explanation.–For the purposes of this section, the expression "civil court having local jurisdiction" shall mean the civil court within whose local limits of jurisdiction, the licensee, grantee or judgment debtor, as the case may be, resides or has a place of office or business and also within whose jurisdiction any property belonging to the licensee, grantee or judgment debtor is located.

52. Penalty for failure to comply with the orders, etc., of Appellate Tribunal

If any person wilfully fails to comply with any decision, direction or order of the Appellate Tribunal, such person shall be liable to a penalty to be imposed by the order of the Appellate Tribunal which may extend to five crore rupees:

Provided that no such penalty shall be imposed without giving an opportunity of being heard to the party concerned.

CHAPTER XII

OFFICERS AND EMPLOYEES OF THE COMMISSION AND THE APPELLATE TRIBUNAL

53. Officers and employees of Commission and Appellate Tribunal

(1) The Commission or Appellate Tribunal, as the case may be, shall appoint such officers and other employees as the Commission or Appellate Tribunal, as the case may be, considers necessary for the efficient discharge of its functions under this Act subject to such conditions as may be prescribed.

(2) The salaries and allowances payable to and the terms and conditions of service of the officers and employees of the Commission and of the Appellate Tribunal shall be such as may be prescribed;

(3) The officers and employees of the Commission shall discharge their functions under the general superintendence and control of the Chairperson of the Commission and the officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the chairperson of the Appellate Tribunal.

CHAPTER XIII

FINANCE, ACCOUNTS AND AUDIT

54. Proceeds of license fee, etc.

(1) Subject to the provisions of sub-section (2) of section 40 and sub-section (2), the proceeds of the license fee, fee paid under sub-section (5) of section 23, registration fee, amount received by imposition of civil liabilities imposed under this Act and amount of penalties imposed by the Appellate Tribunal shall be credited to the Consolidated Fund of India.

(2) Such portion or percentage of the license fee as may be attributable to the Universal Service Obligation as may be prescribed shall be credited to a separate fund to be called the Media Communication Service Development Fund in the public account of India.

55. Media Communication Commission and Appellate Tribunal Funds.

(1) There shall be constituted two separate funds to be called the Media Communication Commission Fund and the Appellate Tribunal Fund, and there shall be credited to these funds sums of money paid or grants made by the Central Government to be utilised for the purposes of this Act**.**

(2) Subject to the provisions of sub-section (1) of section 54, fee receivable by the Commission shall be credited to the Media Communication Commission Fund, and fee receivable by the Appellate Tribunal shall be credited to the Appellate Tribunal Fund.

56. Grants and application of Funds

After due appropriation made by Parliament by law, the Central Government shall credit to the funds referred to in sub-section (1) of section 55 by way of grant, separately for the Commission and for the Appellate Tribunal, adequate sums of money for being utilized for the purposes of this Act, and for meeting the salaries and allowances payable to the Chairperson and Members of the Commission and chairperson and members of the Appellate Tribunal and the administrative expenses including the salaries and allowances payable to, or in respect of, officers and other employees of the Commission and of the Appellate Tribunal, as the case may be.

57. Accounts and audit

(1) The Commission as also the Appellate Tribunal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall form part of the annual report of the Commission referred to in sub-section (1) of section 58.

(3) The accounts of the Appellate Tribunal as certified by the Comptroller and Auditor- General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government, and that Government shall cause the same to be laid before each House of Parliament.

58. Annual report

(1) The Commission shall, after the end of each financial year, furnish to the Central Government an annual report on its activities during the preceding financial year and containing such information relating to the proceedings and policy as may be prescribed and such report shall also contain therein the statement of annual accounts of the Commission.

(2) The Central Government shall cause such report to be laid before each House of Parliament.

CHAPTER XIV

RIGHT OF WAY FOR LAYING CABLES AND ERECTION OF POSTS

59. Rights of facility providers in public land

(1) Subject to the provisions of this Act, any person entitled under the provisions of this Act for providing services or facilities (hereinafter referred to as facility provider) may from time to time lay and establish cables and erect posts under, over, along, across, in or upon any immovable property vested in or under the control or management of a public authority.

(2) Any public authority under whose control or management any immovable property is vested shall, on receipt of a request from a facility provider permit the facility provider to do all or any of the following acts, namely:—

(a) to place and maintain underground cables or posts; and

(b) to enter on the property, from time to time, in order to place, examine, repair, alter or remove such cables or posts.

(3) The permission under sub-section (2) shall be promptly given and shall not be unreasonably withheld or denied:

Provided that in case of an emergency the facility provider may at any time for the purpose of examining, repairing, altering or removing any cable or post enter upon the property for that purpose without obtaining such permission.

(4) The facility of right of way under this section for laying underground cables, and erecting posts, shall be available to all facility providers without discrimination and subject to the obligation of reinstatement or restoration of the property or payment of reinstatement or restoration charges in respect thereof at the option of the public authority.

(5) Where any shifting or alteration in position of the underground cable or post is required due to compulsive causes like widening of highways and construction of flyovers or bridges, the said facility provider shall shift or alter the same at his own cost within the period indicated by the concerned public authority.

(6) For the purposes of speedy clearance of requests for laying cables or erecting posts on any property vested in, or under the control or management of, any public authority, high powered committees, or other appropriate mechanisms shall be promptly set up by the Central Government or the State Government in the manner prescribed, and they shall in each State act as a single nodal agency to co-ordinate all activities in this regard; and the Central Government may provide appropriate guidelines in this behalf.

60. Right of public authority to grant permission

Any permission granted by a public authority under section 59 may be subject to such reasonable conditions as that authority thinks fit to impose as to the time or mode of execution of any work, or as to any other matter connected with or related to any work undertaken by the facility provider in exercise of those rights.

61. Provision for removal or alteration of cable or post

When under the foregoing provisions of this Chapter, any cable or post has been placed by any facility provider under, over, along, across in or upon any property and the public authority having regard to circumstances which have arisen since the cable or post was so placed, considers it necessary and expedient that it should be removed or its position should be altered, it may require the concerned facility provider to remove it or alter its position, as the case may be, and it shall, then, be so removed or altered without any delay.

62. Determination of disputes

(1) If any dispute arises under this Chapter including refusal of permission by the public authority, the district court within whose local limits of jurisdiction the property concerned is situated shall on application determine the same.

(2) Every such determination shall be in accordance with the provisions of this Chapter and such determination shall be deemed to be a decree of the district court and be for all purposes treated as such.

(3) The provisions of the Code of Civil Procedure, 1908 shall apply to adjudication of all disputes under this section.

(4) Pending disposal of any application, the district court may pass such interim orders, preventive or mandatory, for the doing of any act under this Chapter on such terms and conditions as may be provided for in such order.

63. Use of private land by facility provider

(1) A facility provider may make use of private land or premises for constructing or laying of cables or erecting posts only with the consent in writing of the owner of the land or premises, as the case may be:

Provided that where in the opinion of a facility provider such consent to the reasonable use of any land or premises is not forthcoming, such facility provider may, on an application to and with the approval of the Commission, take steps authorised by the Commission for use of the land or premises for constructing or laying cables or erecting posts on such terms as the Commission may deem fit.

(2) Where, immediately before the commencement of this Act, a facility provider has made use of private land or premises for constructing or laying of cables or erecting posts without consent

of the owner of the land or the premises and despite owner's objection, the facility provider shall, within a period of six months from the date of commencement of this Act, obtain a written consent of the owner, and the proviso to sub-section (1) shall apply mutatis mutandis to this situation.

64. Power of Commission to issue order regarding use of private land

(1) The Commission may, by order, require any network infrastructure facility to be provided, constructed, installed, altered, moved, operated, used, repaired or maintained on any private land or premises or any system or method to be adopted by any person interested in, or affected by, the order, and at or within such time subject to such conditions as to compensation or otherwise and under such supervision as the Commission may determine to be just.

(2) The Commission may, by order, specify by whom, in what proportion and at or within what time the cost of doing anything required to be done under sub-section (1) shall be paid.

(3) Any order of the Commission under sub-section (1) or sub-section (2) shall be enforceable under Chapter X of this Act as if such order is the order referred to in section 37.

65. Right of a facility provider

Nothing in this Chapter shall confer any right upon any facility provider other than that of a user for the purpose only of laying cables or erecting posts or maintaining them.

CHAPTER XV

INTERCEPTION OF COMMUNICATION AND PUNISHMENT FOR UNLAWFUL INTERCEPTION

66. Interception of communication and safeguards

(1) Subject to the prescribed safeguards, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or the State Government, on the occurrence of any public emergency or in the interest of public safety, if satisfied that it is necessary or expedient so to do in the interests of the security, sovereignty and integrity of India, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, may direct—

(i) any agency of that Government to intercept any communication on any network facilities or services;

(ii) any service provider that any content brought for communication by, or communicated or received by, him shall not be communicated or shall be intercepted or detained or shall be disclosed to that Government or its agency authorised in this behalf.

(2) The service provider shall, when called upon by any agency which has been directed to carry out interception under sub-section (1), extend all facilities and technical assistance for interception of the content of communication.

(3) Any service provider, who fails to assist the agency referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to seven years.

(4) Save as otherwise provided under this section, any person, who intercepts any communication or causes any communication to be intercepted or discloses to any person any content of such communication, shall be punishable with imprisonment which may extend to five years or with fine which may extend to ten lakh rupees, and, for the second or subsequent offence, with imprisonment which may extend to five years, and with fine which may extend to fifty lakh rupees.

Explanation.—For the purposes of this section, "interception" means the aural or other acquisition of the content through the use of such devices or means as may be necessary for such acquisition.

67. Saving

Nothing in this Chapter shall affect the provisions of section 69 of the Information Technology Act, 2000.

CHAPTER XVI

OFFENCES AND PUNISHMENT

68. Punishment for unlicensed services

(1) Save as otherwise provided in this Act, any person who, without a license, owns or provides any network infrastructure facility or provides any communication service or knowingly assists in the transmission or distribution of such service in any manner including—

(a) collection of subscription for his principal; or

(b) issuing of advertisements to such service; or

(c) dealing in, or distribution of, equipment for decoding programme,

shall be punishable with imprisonment which may extend to five years, or with fine which may extend to five crore rupees, or with both, and, for the second or subsequent offence, with imprisonment which may extend to five years, or with fine which may extend to ten crore rupees, or with both.

(2) Any person, who without the permission of the service provider and with the intent to defraud, diverts any signal or decodes any content or deals in decoding equipment for such purpose, shall be punishable with imprisonment which may extend to five years and with fine which may extend to five crore rupees, or with both, and, for the second or subsequent offence, with imprisonment which may extend to five years, and with fine which may extend to ten crore rupees.

(3) Any person, who knowingly benefits from any unauthorized diversion or tampering with any communication service or network infrastructure facility with the knowledge that such service or facility is unauthorized or tampered, shall be punishable with imprisonment which may extend to two years, or with fine which may extend to two crore rupees, or with both.

(4) Any person, who abets or induces the making of any unauthorized diversion or tampering with any communication service or network infrastructure facility, shall be punishable with imprisonment which may extend to two years, or with fine which may extend to two crore rupees, or with both.

(5) Any person, who having been convicted of an offence under sub-section (3) or sub- section (4) is again convicted of an offence there under, shall be punishable with imprisonment which shall not be less than six months but which may extend to five years, and with fine which may extend to five crore rupees.

69. Punishment for possession of wireless equipment, etc., without license

(1) Any person,—

(a) who possesses any wireless equipment in contravention of the provisions of section 5; or

(b) who uses a radio frequency which he is not authorised to use under this Act,

shall be punishable with imprisonment which may extend to three years, or with fine which may extend to two crore rupees, or with both.

Explanation.—For the purposes of this sub-section, "radio frequencies" means any frequency of electro-magnetic waves upto and including a frequency of 3000 giga hertz.

(2) When any person is convicted for an offence punishable under sub-section (1), all wireless equipments or any part thereof in respect of which the offence has been committed, shall be forfeited to the Central Government.

(3) Any wireless equipment which has not been claimed by any person shall vest in the
Central
Government.

(4) Any officer, authorised by the Central Government or the Commission in this behalf, may search any building, vehicle, vessel or place in which he has reason to believe that any wireless equipment in respect of which an offence punishable under sub-section (1) has been committed is kept or concealed, and take possession thereof.

70. Punishment for sending obscene or offensive messages

Any person who sends, by means of a communication service or a network infrastructure facility,—

(a) any content that is grossly offensive or of an indecent, obscene or menacing character; or

(b) for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, any content that he knows to be false or persistently makes use for that purpose of a communication service or a network infrastructure facility,

shall be punishable with imprisonment which may extend to three years, or with fine which may extend to two crore rupees, or with both.

71. Attempt to commit offences

Whoever attempts to commit, or abets the commission of, any offence under sub-section (3) or sub-section (4) of section 66 or under this Chapter shall be punished with the punishment provided for that offence.

72. Offences by companies

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

73. Offence trial able by Court of Session

No court inferior to that of a Court of Session shall try any offence under this Act.

74. Offences to be cognizable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be cognizable.

CHAPTER XVII TRANSFER OF PROCEEDINGS

75. Transfer of proceedings to Commission

On the date of establishment of the Commission under sub-section (1) of section 6, all proceedings pending before the Telecom Regulatory Authority of India, established under sub- section (1) of section 3 of the Telecom Regulatory Authority of India Act,

1997, shall be deemed to be pending before the Commission and shall be disposed of in accordance with the provisions of this Act.

76. Transfer of proceedings to Appellate Tribunal

On the date of establishment of the Appellate Tribunal under sub-section (1) of section 43, all proceedings pending before the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997 shall stand transferred to the Appellate Tribunal which shall hear and dispose of such proceedings from the stage at which the proceedings were pending before the first-mentioned Tribunal, in accordance with the provisions of this Act.

CHAPTER XVIII

MISCELLANEOUS

77. Taking over control and management of communication service or network infrastructure facility.

(1) In the event of war or any calamity of national magnitude, the Central Government may, by notification, for a limited period, in the public interest, take over the control and management of any communication service or any network infrastructure facility connected therewith, suspend its operation or entrust any agency of that Government to manage it in the manner directed by that Government for such period as provided for in the notification.

(2) If it appears necessary or expedient to do so, the Central Government may, in the public interest, at any time request the Commission to direct any licensee or grantee to—

(a) transmit in his broadcasting service specific announcements, in such manner as may be considered necessary by that Government;

(b) stop any broadcasting service which is prejudicial to the security, sovereignty and integrity of India, friendly relations with foreign States, or to public order, decency or morality, or communal harmony.

(3) On the issue of such directions by the Commission, it shall be the duty of the licensee or grantee to ensure compliance of such directions.

78. Obligations of licensees and grantees

(1) Every licensee or grantee shall—

(a) commence operation of his service within such period as may be specified by the
Commis
sion;

(b) maintain such documentary records and transmission schedules as may be specified by the regulations; and

(c) allow inspection of such facilities and such documentary records and transmission schedules, as may be specified by the Commission, by any person authorised by the Commission in this behalf.

(2) The Commission may call for any information from a licensee or grantee including information necessary for ensuring transparency or for ascertaining the true ownership of the license or registration or the status of licensee or grantee.

(3) The Commission or any officer authorised in this behalf by the Commission shall have power to inspect and obtain information, wherever necessary, from programme producers, programme distributors and programme advertising agents.

(4) For effective enforcement of the terms and conditions of license or registration, the Commission or any officer authorised by the Commission for that purpose, shall have all the powers of an officer making inspection for the purposes of inspecting books of account and other books and papers of any licensee or grantee under section 209A of the Companies Act,1956.

(5) It shall be the duty of every licensee and grantee to carry out the directions of the Commission given under this section.

79. Licenses to operate wireless equipment onboard

(1) No person shall operate any wireless equipment onboard any ship or aircraft registered in India without a license granted by such authority or agency as may be notified by the Central Government in this behalf.

(2) The Central Government may prescribe the qualification for the authority to be notified under sub-section (1) and the manner for granting the license to operate wireless equipment onboard ships and aircraft.

(3) The Central Government may prescribe the qualification for the person to whom a license for operating wireless equipment referred to in sub-section (1) may be granted, examination, if any, to be conducted for granting such license, the conditions of the license, the fee to be paid therefor and other connected matters.

80. Recovery of civil liabilities

Without prejudice to other modes of recovery, any civil liability imposed under this Act shall, if not paid, be recovered as an arrear of land revenue, and the Commission shall be empowered to suspend the license or registration of the person on whom the civil liability is imposed till the same is paid.

81. Supply of information to authorised officers

Notwithstanding anything contained in any law for the time being in force, where the Central Government or a State Government is satisfied that any information, document or record in possession or control of any service provider relating to any service availed of by any consumer or subscriber is necessary to be furnished in relation to any pending or apprehended civil or criminal proceedings, an officer, specially authorised in writing by such Government in this behalf, shall direct such service provider to furnish such information, document or record to him and the service provider shall comply with the direction of such officer.

82. Act not to apply in certain cases

Subject to the provisions contained in Chapter VI, nothing contained in this Act shall apply to network infrastructure facilities or communication services owned, and operated by the Central Government or any State Government for their own use.

83. Bar of jurisdiction of civil courts

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer or the Appellate Tribunal or the Commission is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

84. Chairperson, Members, etc., to be public servants

The Chairperson, Members, officers and other employees of the Commission, and the chairperson, members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

85. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Commission or any Member or officer or other employee thereof or against the Appellate Tribunal or the chairperson or member or officer or other employee thereof for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulation or order made thereunder.

86. Exemption from tax on wealth and income

Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Commission or Appellate Tribunal shall not be liable to pay wealth-tax, income-tax or any other tax in respect of its wealth, income, profits or gains derived.

87. Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

88. Power to make rules

(1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) other services relating to content application service under clause (10) of section 2; (b) other services relating to network application services under clause (16) of section 2;

(c) other facilities relating to network infrastructure facilities under clause (17) of section 2;

(d) other service relating to networking service under clause (18) of

section 2; (e) obligation in respect of services under clause (33) of

section 2;

(f) other services relating to value added network application service under clause
(34) of section 2;

(g) other article or apparatus relating to wireless equipment under clause (35) of section 2;

(h) search committee for the purposes of sub-section of section 7;

(i) (i) the tenure of part-time Members under sub-section (2) of section 8;

(j) the salary, allowances payable to and other terms and conditions of service of, the
Chairperson and other Members under section 10;

(k) any other matters in respect of which the Commission may exercise the powers of a civil court under clause (j) of sub-section (1) of section 14;

(l) the terms and conditions of service of the Secretary-General under sub-section (3) of section 15;

(m) other matters under clause (vi) of sub-section (2) of section 18;

(n) measures to protect consumer interests under clause (vii) of sub-section (2) of section 18;

(o) other matters under clause (xv) of sub-section (2) of section 18;

(p) fee for assignment of frequencies under sub-section (5) of section 23;

(q) the manner and time frame for consultation between the Spectrum Manager and the Commission for seeking allocation of additional spectrum under sub-section (2) of section 24;

(r) life saving services to be provided by the service provider under sub-clause (ii) of sub-section (1) of section 28;

(s) the manner in which the number and type of broadcasting services including those of the public service broadcaster is to be provided by every service provider under clause (i) of sub-section (3) of section 28;

(t) the form in which a complaint may be filed under sub-section (2) of section 38;

(u) experience required for appointment of an Adjudicating Officer under sub-section (3) of section 39;

(v) any other matters in respect of which an Adjudicating Officer may exercise the powers of the civil court under clause (j) of sub-section (5) of section 39;

(w) the form, the manner of verification and fee to be accompanied with the appeal under clause (a) of sub-section (3) of section 43;

(x) the form, the manner of verification and fee to be accompanied with the appeal under clause (b) of sub-section (3) of section 43;

(y) search committee for the purposes of sub-section (3) of section 44;

(z) the salary and allowances payable to, and other terms and conditions of service of, the chairperson and other members of the Appellate Tribunal under sub-section (3) of section 45;

(za) any other matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (j) of sub-section (1) of section 48;

(zb) the conditions subject to which appointments of officers and employees of the Commission or the Appellate Tribunal shall be made under sub-section (1) of section 53;

(zc) the salary and allowances payable to, and the terms and conditions of service of the officers and employees of the Commission and of the Appellate Tribunal under sub- section (2) of section 53;

(zd) the portion or percentage of license fee as may be attributable to Universal Service Obligation to be credited to the Universal Service Obligation Fund under sub- section (2) of section 54;

(ze) the form and manner in which the annual statement of accounts shall be prepared under sub-section (1) of section 57;

(zf) the information relating to the proceedings and policy to be contained in the annual report under sub-section (1) of section 58;

(zg) the manner of setting up high powered committees or other appropriate mechanism by the Central Government or a State Government under sub-section (6) of section 59;

(zh) safeguards under sub-section (1) of section66;

(zi) the qualifications for the authority to be notified under sub-section (1) of section 79 and the manner for granting licences under sub-section (2) of that section;

(zj) the qualifications for the person to whom a license for operating wireless equipment referred to in sub-section (1) of section 79 may be granted, examination, if any, to be conducted for granting such license, the conditions of the license, the fee to be paid therefor and other connected matters under sub-section (3) of that section;

(zk) any other matter which is to be, or may be prescribed, or in respect of which provision is to be made, by rules.

89. Power to make regulations

(1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the functions to be performed by the regional offices of the Commission under section 12;

(b) the time and places, and the procedure to be observed in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 13;

(c) the powers and functions of the Secretary- General under sub-section (1) of section15;

(d) the programme codes and standards to be specified under section 20;

(e) the eligibility conditions for grant of license or registration, restrictions regarding ownership and control of the media, restrictions on the number of licenses or extent of accumulation of interest of such licenses by a person and other conditions as may be considered necessary under sub-section (1) of section 26;

(f) the obligations, conditions, restrictions, tariffs and rates subject to which a service provider shall provide facilities and services under clause (a) of sub-section (2) of section 26;

(g) the conditions subject to which a license or registration may be granted or transferred under clause (b) of sub-section (2) of section 26;

(h) the manner, the time, the terms and conditions, the fee and the procedure for grant of a license or registration under sub-section (3) of section 26;

(i) the details to be specified under sub-section (4) of section 26;

(j) the period for which license or registration shall be granted under sub-section (1) of section 27;

(k) the form and the fee payable for granting license or registration under sub-section
(2) of section 27;

(l) the number of channels for providing distribution of broadcasting services under clause (iii) of sub-section (3) of section 28;

(m) other agreements to be registered with Commission under clause (c) of section29;

(n) the form of application and the fee to be accompanied therewith under sub-section
(2) of section 30;

(o) the conditions and restrictions subject to which the license is granted under sub- section (4) of section 30;

(p) the manner of holding inquiry by the Adjudicating Officer under sub- section (1) of section 39;

(q) the documentary records and transmission schedules to be maintained by the licensee or grantee under clause (b) of sub-section (1) of section 78;

(r) the eligibility and other terms and conditions for granting license or registration under sub-section (3) of section 93;

(s) such other regulation as may be required to carry out the purposes of the Act.

90. Laying of rules and regulations

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

91. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient, for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

92. Amendment of Act 2 of 1974

In the Code of Criminal Procedure, 1973,—

(a) in section 91, in sub-section (3), in clause (b), for the words "postal or telegraph authority", the words and figures "postal authority or any service provider holding a license or registration granted under the Communication Convergence Act, 2001" shall be substituted;

(b) in section 92, for the words "postal or telegraph authority", wherever they occur, the words and figures "postal authority or any service provider holding a license or registration granted under the Communication Convergence Act, 2001" shall be substituted.

CHAPTER XIX

REPEAL AND SAVINGS

93. Repeal of certain Acts, saving of licenses and registrations and dissolution of certain Authorities

(1) Subject to the other provisions of this section, the enactments namely, the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, the Telegraph Wires

(Unlawful Possession) Act, 1950 and the Telecom Regulatory Authority of India Act, 1997, are hereby repealed.

(2) Notwithstanding such repeal, any person, who has obtained a license or registration under the Acts repealed under sub-section (1), or who has obtained registration under the policy of the Central Government in force may continue to provide his services, if he has made an application to the Commission for the grant of a license or registration under this Act within a period of six months from the date of establishment of the Commission under this Act or where he has already made such an application, until the disposal of such application, whichever is later.

(3) The Commission shall, on receipt of an application referred to in sub-section (2), grant a license or registration after taking into consideration the terms and conditions on which such services were licensed or registered under any of the provisions of the repealed Acts, or the policy referred to in sub-section (2), as the case may be, and keeping in view the objectives of this Act.

(4) During the period of six months mentioned in sub-section (2) or till his application is disposed of, whichever is later, the applicant shall continue to be governed by, and shall comply with, the provisions of the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act,
1933, the Telegraph Wires (Unlawful Possession) Act, 1950 or the Telecom Regulatory Authority of India Act, 1997, as the case may be, as if these Acts had not been repealed, or the policy referred to in sub-section (2).

(5) Save as otherwise provided under this Act, with effect from the date of the establishment of the Commission and the Appellate Tribunal under this Act, as the case may be, the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 and the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of that Act, shall stand dissolved.

(6) Subject to the other provisions of this section, the Cable Television Networks
(Regulation) Act, 1995 is hereby repealed.

(7) Notwithstanding such repeal, any cable operator registered under the Act so repealed, may continue to provide his cable service, if he has made an application to the Commission for the grant of a license under this Act within a period of six months from the date of the establishment of the Commission under this Act or where he has already made such an application, until the disposal of such application, whichever is later.

(8) The Commission shall, on receipt of an application referred to in sub-section (2), grant a license after taking into consideration the terms and conditions on which such cable operator was registered under the provisions of the repealed Act, and keeping in view the objectives of this Act.

(4) During the period of six months mentioned in sub-section (2), or till his application is disposed of, whichever is later, the applicant cable operator shall continue to be governed by, and shall comply with, the provisions of the Cable Television Networks (Regulations) Act, 1995 as if that Act had not been repealed.

APPENDIX-B

CONSTITUTIONAL AMENDMENT

Appendix –B

Constitutional Amendment

Background and Approach

The Constitution of India guarantees for the human rights of our people were one of the persistent demands of our leaders throughout the freedom struggle. By the year 1949, when the Constituent Assembly had completed the drafting of the Fundamental Rights Chapter, it had before it the 'Universal Declaration of Human Rights, 1948.The International Covenant on Civil and Political Rights,1966 (ICCPR) broadly referred to the inherent right to life and liberty and the right against arbitrary deprivation of those rights and its various aspects (Articles 6 to 14); privacy, family, etc. (Article 17); freedom of conscience and religion (Article 18); freedom of expression and information (Article 19); The treaty obligations under the covenant enjoined the State Parties to ensure these rights without discrimination and "to take steps" to promote them "to the maximum of its available resources", with a view to achieving "progressively" the full realization of these rights.

The need of hour that after sixty five years, time is ripe to review and enlarge suitably the contents of some of the Fundamental Rights, particularly those Fundamental Rights which have been judicially deduced.

Freedom of Press and Freedom of Information

Article 19(1)(a) refers to 'freedom of speech and expression'. [1]

The Constitution of India: Article 19(1)(a) and (2) should be amended to read as follows:

Art. 19(1): All citizens shall have the right –

> (a)To freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas;".

Art.19(2): "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to

[1] It is proposed that the article must expressly include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas. It is also proposed to amend article 19(2) by adding a further restriction on disclosure of information received in confidence except if required in public interest.

contempt of court, defamation or incitement to an offence, or preventing the disclosure of information received in confidence except when required in public interest.".[2]

The Amendment also is to be made, that an appropriate proviso to article 19(2) of the Constitution may be added as under:-

"Provided that, in matters of contempt, it shall be open to the Court to permit a defense of justification by truth on satisfaction as to the bona fides of the plea and it being in public interest."

Right to Privacy

The Supreme Court has included: 'Right to Privacy' in the Right to 'Life' under article 21.

It is, therefore, proposed that a new article, namely, article 21-B, should be inserted on the following lines:

21-B. (1) every person has a right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1), in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others.

[2] The report of NCRWC, Para; 3.8.1

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