

LEGAL DEVELOPMENTS IN PRESS AND MEDIA LAWS OF INDIA

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ABSTRACT

The paper covers the legal developments regulating the mass media and communication technology. In the countries like china and USSR there are various restrictions imposed upon the media. In certain countries media has not been granted enough freedom to express any such thoughts and opinions which violates the ideology of the government. On the other side there are countries like U.S.A which follows a system of Bourgeois democracy. In such countries no limitations have been imposed upon media. When we shift our views to Indian aspect there is a system of parliamentary democracy. In India press is guaranteed certain rights and freedoms but at the same time there are limitations imposed by the Constitution of India. Before the era of globalization the press was not granted freedom to report freely since it was controlled by the government. However in the present times there has been a colossal growth in privatization which has brought a revolution in the media and technological developments.

When we refer to the mass media laws, it has a deep rooted history. Since the post-independence there have been laws framed to regulate the press and media. The evolution of the media laws could be traced back in the year 1799 when lord Wellsley formulated the Press regulations. In the year 1835 first Press Act was enacted which undone the repressive features of the other legislations with respect to the press.

It was on 18th June 1857 the government gave the clearance to the “Gagging Act” which introduced the concept of compulsory licensing for controlling and regulating the printing press. The Act empowered the government to ban the circulation of any newspaper, magazines, printed materials, news publications which had the tendency to expose the government. The Act was followed by the “Press Registration of Books Act 1867 which is still in existence. The Vernacular Press Act 1878 was passed by Lord Lytton which granted the powers to the government to quash down the laws which appears to be seditious and at the same time the Act also imposed sanctions against the printers and publishers who violate the provisions of the Act. The most significant developments in the history of media legislations was with the enactment of the Constitution of India which granted implicit recognition to the press through the Article 19(1)(a) “Freedom of Press” This freedom was granted to the press with an aim to empower the masses by creating awareness.

KEYWORDS:- Sedition, privatization, Contempt, Commercial, Advertisements.

INTRODUCTION

Just like the U.S Constitution the constitution of South Africa also does not mentions the freedom of media as the independent right. The Constitution of India in the similar manner also does not grant as such specific mention of the freedom of media as the independent right just like the other rights being mentioned in the article 19 of the Constitution of India. The freedom of media has only enjoyed the status of the inherent implicit rights under the constitution of India.¹ K.M Munshi however was of the Opinion that the freedom of media should be granted an independent status. Clearing all the rising doubts with respect to the Fundamental Rights Dr. B.R Ambedkar, the press is not bestowed with any of the rights which is not bestowed upon the individual in his capacity. The people who are part of the media while delivering the newspapers are exercising the freedom of speech and expressions just like the normal citizens so it is often felt that there is no such requirement of mentioning the freedom of media as the special right. So after listening to the following arguments the Constitutional Assembly also decided in the favor of the above arguments and held that there is no such need to mention freedom of press as the Independent right. Subsequent to this reason the freedom of press is often considered as the implicit part of the article 19(1) (a) of the Constitution of India which would be protected under the doctrine of “Basic Structure Theory”. The preamble of the Indian Constitution also mentions that each and every citizen of the nation shall exercise the liberty of thought, expression, belief, faith and worship. Similarly like the citizen of India the press enjoys freedom of speech and expression which is not of absolute nature regulated and controlled by the limitations as stated in article 19(2).²

The Media is considered as the fourth pillar of the democratic system apart from the legislative, executive and the judiciary. The legislature plays an important role in the formulation of the laws; the executive plays an important role in the implementation of the laws, while the judiciary reviews the actions of the legislature and

¹B.Manna, Mass media and related laws in India, ,64(2nd edition 2006).

²Mahendra Pal Singh, V.N Shukla’s Constitution of India,, 114 (11th edition 2018)

executive. The media has to operate within the constitutional boundaries and at the same time it has to work within the limits of the public welfare.³ This proves that no persons are beyond the laws. The Constitution of India grants the freedom of speech and expression which also includes the freedom of press and even press has some boundaries and limitations. The fundamental freedom of speech and expression guaranteed under the article 19 shall be bestowed only upon the citizens.

CONSTITUTIONAL ASSEMBLY DEBATE

It was on December 13th, 1946 that the constitutional assembly had undertaken the objective resolution. The constitutional assembly debate had reflected the idea to have the constitution which would guarantee the fundamental freedom of speech and expression to the entire citizen. On 24th January an advisory committee was formed in order to deal with the issue of the fundamental rights and other connected subject matters. The committee was involved in the submission of the report of the fundamental rights and this report was prepared through the support of the subcommittee. The subcommittee had reflected its concern and declared that the fundamental rights should be categorized into the two parts. The characteristic feature of the first part of the fundamental rights is that the rights are activated through the legal procedures. On the second side of the balance scale would involve the Directive Principles of the State policy, these principles are not enforceable but the principles are very significant in the governance of the country. A number of the members of the Constitutional Assembly such as the Pandit Hriday Nath Kunzru and Somnath Lahiri had revolted against these fundamental rights as they believed that these rights are excessive in nature and the rights guaranteed are practically without any use. It was on 29th August, 1949 that the constitutional assembly was called upon to prepare the law of land in accordance of the observations of the Constitutional Assembly to the different reports which were submitted by various committees. Fundamental rights of the constitution faced a lot of criticisms due to a number of limitations being imposed upon these rights which have gulped the shine of the rights. Critics often believe that the fundamental rights of the great importance but unfortunately their significance has declined due to excessive restrictions. The critics believed that the fundamental rights could never be considered as true form of rights until and unless these are granted the status of absoluteness.⁴

Freedom of Speech and Expression as Broader Perspectives

The freedom of speech and expression constitutes the diverse aspects as it varies from person to person and the way through which the communication could occur would also be different for different people throughout the world. Therefore the freedom of speech and expression is of dynamic nature and with the developments in the field of science and technology and Information and technology. The article 19(1)(A) which would depict that the freedom to express one's ideas, thoughts, printing, or in written form. Thus the freedom of speech and expression also includes the adequate freedom to express oneself without any fear. We can communicate our ideas and thoughts through different medium such as presentation of magazines, newspapers, movies, cyber media.⁵

FREEDOM TO CIRCULATE ONE'S IDEAS

The idea of freedom of speech and expression is of very broad nature and also includes the right of publication but also includes the circulation of ideas and information. The right of circulation is very important in accessing the freedom of speech and expression. The freedom of circulation is an integral part of the publication. In the case of the *Sakal Papers v. Union of India*⁶, state has no power to make such laws which would in any way affect the circulation of the newspapers as it would lead to the infringement of the freedom of speech and expression. The right of the circulation of ideas is very broad in nature and it not only includes the matters which citizen has the freedom to circulate the part of the matter but includes the circulation of major chunk of the circulation. The main aim of the case was to challenge the newsprint policy which was prepared by the government in which there was lot of restrictions specially with respect to the limitations with regard to the limitations upon the number of pages which the newspaper was entitled to publish.

³Amit Sharma, Media Trial of Indian Judicial Proceedings: A Journalistic Approach, 1007 (Volume XII Issue IV 2020, ISSN No. 1006-7930).

⁴Mahendra Pal Singh, V.N Shukla's Constitution of India, , 98, (11th edition 2018)

⁵J.N Pandey, Constitutional Law of India,, 67-70 (51st edition 2018).

⁶1962 AIR 305, 1962

Similarly in the case of *Bennett Coleman and company v. Union of India*⁷, the question of the limitations upon the number of pages in the newspapers was decided in the case and it was held that the newspapers are themselves have the freedom to decide the number of pages and the manner of their circulation. The above case led to challenging the constitutional validity of the Newspaper (Page and Price) Act 1956 which granted the power to fix the space or column in the newspaper for the purpose of advertisement. The court held in this case that restricting the advertisement by the newspapers would fall within the purview of the article 19(1)(a) as it would affect the circulation of the newspapers. The court further held that any such restrictions which would in any way restrict the advertisement costs would have impact upon the circulation of the newspapers and thus encroach the freedom of speech.

In the landmark case of *Manubhai Shah v. LIC*⁸, the Supreme Court in this case emphasized that freedom of speech and expression should be broadened to include both the freedom to circulate one's ideas and thoughts by the medium of mouth or writing by way of audio visual media. This would also include the right to express one's ideas either through printed form or by the way of other forms of media. The court also held that the right to circulate the newspaper and right to express one's thoughts must be discouraged at any cost until and unless it falls within the defects of article 19(2). The right to circulate shall also include the right to determine the volumes of circulation.

RIGHT OF CRITICISMS

The government has accepted the dissidence of the press which measures the maturity of the nation. Freedom of speech and expression constitutes a very broad ambit; it includes the right to criticize activities of the government which is a signature of healthy democracy. The constitutional draft emphasized on the recommendations that held the laws criminalizing as exclusion to the freedom of speech and expression. The offence of sedition is described as the words or gestures which would aim to incite the feelings of heartedness against the ruling government. The sedition does not aim to excite mutiny or rebellion, or any such things of revolt or dissatisfaction whether it is big or small and this was eventually quashed from the article 13(2) of the constitution and this was later on passed and included in the article 19(2) of the Indian Constitution.

In the landmark case of the *Romesh Thappar v. State of Madras*⁹, the Supreme Court held that deleting the article 13(2) of the constitution proved that the framers of the constitution had no intention to criminalize the criticism of the government as it does not form the substantive ground for imposing restrictions of the freedom of speech and expression. There is another famous American case, *Terminiello v. Chicago*¹⁰ which is frequently cited in the courts of India. In this case the significance of inclusion of the freedom of speech and expression was recognized. With the inclusion of the freedom of speech in the Constitution would impose a kind of checks and balance upon the workings of the government. However this situation would sometimes lead to a situation of unrest, revolt and boiling of anger of the public. Since the freedom of speech would ultimately lead to many provocations and challenges. Besides all this it would also incite prejudices and misconceptions and this would further lead to unsettled ideas as it emphasizes upon the forcible acceptance of the idea.

*Kedar Nath Singh v. State of Bihar*¹¹, was the first case of the Sedition, in this case section 124 A and 505 of the Indian Penal Code was challenged and the issue in this case which arose was that the law of sedition aims to punish the attempt to excite any kind of disaffection, hatred against the ruling government and this would further harm the public tranquility. The Supreme Court had further clarified the issues raised in the case and held that mere acts of criticizing the government actions and any such fair criticisms of the public measures even though it is expressed intentionally would not constitute an offence under the offence of sedition and it would in no way lead to an encroachment of the right to freedom of speech and expressions.

THE FREEDOM OF RECEIVING INFORMATION

As we know that the freedom of speech and expression is a very broad in nature, it would not only include the freedom of speech, expression, publication and circulation but also the right to receive information. In the case of *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd*¹², the Supreme Court pronounced the decision and held that the advertisements are the sources of receiving information in different contexts and would provide knowledge to the citizens about life saving drugs. These advertisements would serve great significance as it is a source of knowledge in different fields of sports, creating the political and health awareness amongst the citizen.

⁷1973 AIR 106, 1973 SCR (2) 757

⁸ 1993 AIR 171, 1992 SCR (3) 595

⁹ 1950 AIR 124, 1950 SCR 594

¹⁰ 337 U.S 1 (1949)

¹¹ 1962 AIR 955, 1962 SCR (2) 789

¹² 1995 AIR 2438, 1995 SCC (5) 139

RIGHT TO EXPRESSION OF OPINION BEYOND THE NATIONAL BORDERS

The right to expression one's opinion extends beyond the national borders. The revolution in the field of the electronic and communication media has brought many evolutions and has thus made it possible to transmit the messages and information at each and every corner of the world within few seconds.

The issue whether the freedom of express extends beyond the national jurisdiction first arose in the case of *Maneka Gandhi v. Union of India*¹³. In this case the section 10(3) (c) of the Passport Act 1967 was challenged in the court of law. This provision granted the power to the government authorities to impound the passport in the interest of the public. Another reason to challenge the above mentioned act was that it encroached upon the article 19(1)(a) of the Constitution of India which granted her the freedom to exercise her right to speech and expression even beyond the national jurisdiction. The court decided upon the issue whether freedom of speech and expression extends beyond the national jurisdiction. The court decided this issue and held that the freedom of speech and expression constitutes those rights which are not restricted within the national jurisdiction only, these are the rights which could be extend beyond the national boundaries. The court while deciding this landmark case also held that the framers of our Indian Constitution have never used any such phrase which would restrict the exercise of these rights and freedoms only confined within the "jurisdiction of India". The freedom of speech and expression became a part of the Constitution after a long constitutional debate and the right to speech and expression was extracted and utilized in our Indian Constitution through the Article 13 of the Universal Declaration of the Human Rights.

FREEDOM OF PRESS TO CONDUCT INTERVIEWS

This is the right which has often remained restricted. There are certain limitations also which have been enshrined in the article 19(2) of the Indian Constitution. The person who is being interviewed to give his free consent only after this right can be exercised. The person who is being interviewed has the freedom to answer or not to answer any questions asked by the press.

The most landmark case to explain the limitations of the freedom of press was depicted in the case of *Prabhu Dutt v. Union of India*¹⁴. In this case the petition was filed to interview the prisoners of Tihar Jail against whom the death sentence order was passed. The court while deciding the case held that there are certain restrictions imposed upon the exercise of the right to information since these rights are not of the absolute nature and the member of the press are bound by the restrictions and at the same time even the people whom are being interviewed have the freedom whether they wish to answer any questions or not so, since they are also not bound to answer the questions put to them.

FREEDOM TO REPORT THE PROCEEDINGS OF THE COURT

Ordinarily the freedom granted to the press is of higher status than that of the ordinary people. The ordinary people are not granted similar freedom as the press. The members of the press are granted the seat in the press bench just like the privileges which are being granted to the journalists. The right to witness the court proceedings is being granted to the members of the press on the account that every citizen has the right to be informed against all matters of the public importance. These rights are being granted to the media persons not because they enjoy certain special interests or positions but these rights are granted to them because media serves the role of the eyes and ears of the general public. Media serves as the mirror of the society.

They have the right to know and later provide the information to the general public. They play the role of "trustees" of the general public of the nation. The media has the right to observe the daily proceedings of the court and at the same time publish the true proceedings of the court so as to provide information to the people at large, on the basis of what they have seen and heard. The right to observe the proceedings of the court of the media persons is available in the judicial and quasi-judicial tribunals. The significance of this right lies in the fact that is essential to bring out the transparency while deciding the cases. Justice should not be only done within the closed walls of the court but it should also be brought into the notice of the citizens of the nation. In the case of *Naresh Shridhar Mirajkar v. State of Maharashtra*¹⁵, the court held that "In the Interest of Justice" the court shall be free to restrict media to publish certain proceedings. Only in those the court can conduct its proceedings "in the camera" and that would be conducted with exceptional great caution in which the court has the reasonable belief that the interests of the justice will be defeated if the proceedings of the court is published by the media.

FREEDOM TO REPORT THE PROCEEDINGS OF THE LEGISLATURE

The media is granted with the freedom to report about the proceedings of the legislature. The article 361-A of the Constitution of India in which no liability shall arise against the media persons if they publish the true proceedings of the Parliament or the legislature of state and this right is available to them only if they report

¹³1978 AIR 597,1978 SCR(2)621

¹⁴1982 AIR 6,1982 SCR(1)1184

¹⁵ 1967, AIR 1966 SCR(3) 744

the legislative proceedings in true faith. This similar privilege is also enshrined in the Parliamentary Proceedings (Protection of Publication Act) 1977.

This privilege to report the legislative proceedings has been bestowed upon both Parliament and the legislature of the State. In the parliamentary system of the government the representatives elected by the people have the complete freedom to express their ideas, views and thoughts without any kind of the pressure of fear of any legal proceedings. It is the age of globalization in which the right to publish the proceedings of the legislature has become significantly necessary and due to this reason the contempt has become anachronistic.

FREEDOM TO MAKE ADVERTISEMENTS

The right to make advertisements is a kind of commercial speech. In the case of *Tata Press Ltd. V. MahanagarTelephone Ltd*¹⁶. The Supreme Court in this case held that the freedom of speech and expression under article 19 (1) (a) shall include the right to make advertisements and regarded it as the part of the “commercial speech”. Before this case the advertisements were kept outside the purview of the freedom of speech and expression.

In the case of *Hamdard Dawakhana v. Union of India*¹⁷, the Apex Court held that the advertisements made with the motive to increase the commercial gain would not fall within the purview of the article 19(1)(a). In this case the Drugs and Magic Remedies (Objectionable Advertisements) Act 1954 was passed for the purpose of eliminating the self-medication. The court gave its decision on the basis of reasoning that even though the advertisements constitutes the part of freedom of speech and expression but in this case the advertisements could not seek the protection within the purview of the free speech since it was in the form of commercial advertisements for the commercial gain.

In the case of *Indian Express Newspapers v. Union of India*¹⁸, In the following case the newspapers were charging import duty upon the newsprint which led to difficulty in their circulation and subsequently also affected their revenues from advertisements. In this case the Supreme Court overruled the Hamdard DawaKhana Case and held that just the reason that the commercial advertisements are being issued by the businessmen, that could not form the basis to deny the right to make commercial advertisements and to refuse protection to such advertisements under article 19(1)(a).

In the case of *Bennett Coleman v. Union of India*¹⁹, In this case the court recognized the importance of newspaper advertisements and held that the newspapers form the important role and affects the circulation of the newspapers to a great extent, imposing any such restrictions upon the advertisements would definitely hamper the basic fundamental rights particularly the right to make publication of the newspapers, their propagation and circulation.

In the case of *Hindustan Times v. State of U.P*²⁰, the Supreme Court upheld the significance of the newspaper advertisements and held that the newspaper advertisement are of great value they help the newspapers to meet the cost of newsprint and other liabilities which they are facing in the financial sphere. It is because of these advertisements only, that the reader is capable of purchasing the newspaper at a reasonably affordable price.

RIGHT TO REBUTTAL

The freedom of speech and expression includes the freedom of rebuttal. In the case of *LIC v. Manubhai Shah*²¹, a newspaper article was title was published by the trustee of the consumer rights. This article had faced a lot of criticisms since LIC was indulged in highly unfair practices against its policy holders. The article published in the newspaper was challenged by one of the member of the LIC who challenged that article in the same newspaper. The piece of the article was also published by the counter author in the Yogakshema, which was the in house magazine of LIC. The main issue which arose when the trustee tried to get his rejoinder published in the same article but his request was turned down on the ground that it was the in house magazine of LIC. The matter came before Gujarat High Court which made use of the fairness doctrine principle and permitted the writ petition of the trustee. Later the Supreme Court held that LIC was obliged to publish the rejoinder at any circumstance and cannot refuse to publish it since it had already published the counter. The trustee’s freedom of speech and expression guaranteed under article 19(1)(a) of the Constitution of India entitled him to express his views and to get them published and circulated amongst the readers so that they get a clear picture of the unfair practices being adopted by the LIC. The court further held that LIC constituted the “monopolistic state

¹⁶ 1995 AIR 2438,1995 SCC(5) 139

¹⁷1960 AIR 554,1960 SCR(2) 671

¹⁸ 1986 AIR 515, 1985 SCR(2) 287

¹⁹1973 AIR 106,1973 SCR(2) 757

²⁰WP(CIVIL) 328 of 1992

²¹1993 AIR171,1992 SCR(3) 595

Instrumentality” which was operating on the basis of the public funds and it had no right to act in an arbitrary manner on the ground that it had no absolute right to publish or refuse to publish the matters which would affect greater public interest.

RIGHT TO BROADCAST

After the progress made in the field of Science and Technology the means of communication have undergone widespread changes. This also includes the changes in the field of electronic and broadcast media. The broadcast revolution occurred during the year 1990’s in which there was rise in the television viewers. The invention of the satellites constituted one of the epic developments in the field of media and broadcasts. But the main issue in this field is the lack of effective legal framework which would regulate the media and broadcasts.²² Today there are roughly around 300 television channels which are dominating the airwaves, but sadly, there are no effective regulating mechanisms to control the workings of media and the broadcasts.

In the case of *Odyssey Communications Pvt Ltd v. Lok VidayanSanghatan*²³; In this case it was held that it was the right of the citizens to telecast the films in their State channel. This right constituted the part of the freedom of speech and expression guaranteed under the ambit of section 19(1)(a). The similarity of the right could be traced from the rights granted to the citizens to express and publish their views in the form of various other media such as magazines, newspapers, advertisements, hoardings etc.

OUTLINING THE LAW OF PRIVACY IN INDIA

The right to privacy is not specifically defined within the ambit of the Constitution of India. Privacy is also not mentioned within the lists of the reasonable restrictions stated in the article 19(2). Even this grey area has not prevented the courts to frame the laws covering the right to privacy by resorting to the technique of interpreting the article 21 and right to freedom of movement enshrined in article 19(1) (d) of the Constitution of India.

Constitutional law of India upholds the right to privacy under the umbrella of article 21; it means the situation of being alone and not bedisturbed by other people. The right to privacy is an inseparable part of the right to life in article 21. There is a need of maintaining a harmonious balance while enjoying the right to privacy and the fundamental right of the media to publish any news which affects the greater public interests. The law also does not clearly define privacy but it only illustrates the conditions in which legal protection could be granted to the right of privacy.²⁴

The subject of privacy has not been mentioned in any of the three lists of the Schedule VII of the Indian Constitution. But if we look into Entry 97 of the List I which also depicts that -If any matter is not listed in either list II or List III then in that case the Parliament of India shall have the power to enact laws. Thus so far as the laws relating to the privacy is concerned the Parliament will have the power to make laws since it is not mentioned in both the lists II and III. Until now there has been no specific legislation concerning to the right of privacy. The Constitution of India grants certain basic rights to every citizen, these are called the Fundamental Rights which have been enshrined in the Part III of the Constitution of India. These Fundamental rights cover article 14-30 of the Constitution of India. Article 13(2) prevents the State from making those laws which would encroach the Fundamental rights in Part III of the Constitution. Article 32 of the Constitution grants the rights to the citizen of India to move to the Supreme Court in case of the infringement of the rights in Part III. This right is available against the arbitrary acts and abuses of the State defined under article 12.²⁵

The right to speech and expression contains certain restrictions which have been enshrined within 19(2) and it includes certain reasonable limitations such as defamation, contempt of court, decency, morality, security of state, friendly relations with the foreign states, incitement to an offence, public order and maintenance of the sovereignty and integrity of India.

In the case of *Malak Singh v State of Punjab and Haryana*²⁶; In this case the constitutionality and powers of surveillance granted to the police by the Police Act and Punjab Police Rules were challenged. The Supreme Court recognized the importance of all those rules and regulations which supported surveillance for the purpose of the prevention of the crime. The court in this case held that sometimes keeping a close watch over the habitual and other serious crime offenders is very important to maintain the peace and order within the society. But the surveillance could sometimes turn out to be excessive restrictions upon the liberty of the people. It could encroach upon the privacy of the people and would abrogate the basic fundamental rights and personal liberty granted by the Constitution. There were three important grounds which was settled through the case first of all court sought to establish the right to privacy through the philosophical part of the dignity of the Individual. Secondly the surveillance should not be just aim to crime prevention strategies of the government and is not just

²²J.N Pandey, Constitutional Law of India,, 69, (51st edition 2018)

²³1988 AIR 1642, 1988 SCR (1) 486.

²⁴ Justice K.S Puttaswamy (ret.d.) v. Union of India(2018), WP(CIVIL) No. 494 of 2012.

²⁵ IBID

²⁶ 1981 AIR 760,1981 SCR(2) 311

limited to the suspected criminals, repeat offenders or serious offenders. Thirdly this case opened the doors of judicial review as it examined the grounds of surveillance in the following case.

R. Rajagopal v. State of Tamil Nadu²⁷; the famous “Autoshankar case” was one of the landmark development in the laws of privacy in India. The right to privacy was explained by way of the freedom of press. The case was concerned to the rights of the publisher with respect to publication of the autobiography of the person named as “Autoshankar” who was one of the condemned prisoners. The respondents in the case had objected the publication of the autobiography on the ground that the autobiography was of defamatory nature and so it could not be permitted to be published at any cost. The issue of right to privacy now came into picture. The Court held that the press also had the right to publication and on this ground they had the right to get the autobiography published and for this they do not require any kind of permission or authorization. But at the same time if the publication of autobiography extended beyond the public record and the publication of the autobiography would also harm the privacy of the prisoner. Thus the Supreme Court further held that the government and prison officers who were thus involved in protection of the privacy of incarcerated offender by imposing prior restrictions upon the publication of the autobiography could not be permitted in the first instance. But their remedy could be maintained only after the autobiography is published. In this case the court gave its reasoning that the even in those cases where the publication seems to be untrue, the public officers would not be able to restrict its publication, in order to claim the remedy it has to be first proven that the publication was recklessly made thus disregarding the truth.

In the case of **Kaleidoscope (India) Pvt. Ltd. v. Phoolan Devi**²⁸; this case is famously titled as “Bandit Queen Case”. In this case, Phoolan Devi, one of the dire dacoits in the history of India sought an injunction to stop the telecast of the film based on her life “Bandit Queen” both nationally and internationally. The trial court pronounced its judgments based upon the remark that the telecast of the film would infringe the right of privacy of Phoolan Devi, irrespective of the fact that she had assigned the copyright to the makers of the film. Later on the case appeared before the Division Bench which also held even though the life of Phoolan Devi became the subject of the Public observations and her private life was also exposed to the public through the media exposures due to the severe crimes committed by her, but those items should not be used against her for the commercial exploitation to be committed under the veil of public interest.

In the case of **Mr. X v. Hospital Z**²⁹; the most important issue which arose in this case was that would it amount to infringement of the right to privacy of the patient if the hospital discloses his medical condition to his fiancée? The Supreme Court in this case tried to maintain the harmonious balance between the two rights on one hand the right to life of the patient suffering with AIDS, this right would also include the right to privacy of the patient. And on the other hand the right to health of the woman with whom he was engaged. The Supreme Court held that concealment of the fact of the patient suffering from AIDS would endanger the life of his fiancée after the marriage. She also has the right to be informed about the medical condition of the man with whom she will be marrying. Thus the court held that disclosure of the medical condition of the patient by the hospital to his fiancée would not amount to the infringement of the right to privacy.

OVERLAP OF MEDIA AND COMMUNICATION

In earlier times the modes of the communication were of distinctive nature. The communication system constituted of the different broadcast, television and online computer system. Different media have been regulated and controlled by the different laws and regulations. Due to the evolution of digital technology there has increase in the capacity of the traditional and new services so that they could be easily transported over same networks and the use of the various media and communication devices such as telephony, television and communication services.³⁰ After the wave of globalization the media and communication technology has been used side by side. There has been convergence of media and communication technologies which have led to the evolution of web televisions, web casting of the radio and Internet assisted television programming. There have been various changes which have occurred if we look back to the past. One of the best examples to prove this is the Smart television sets which have replaced the traditional box televisions. Convergence of the media and television have proved to be beneficial for the social and democratic progress of the nation as it enables the people to perform both tasks of generating and receiving of the information. This would further lead to speedier democratic and economic growth.

²⁷1995 AIR 264, 1994.

²⁸AIR 1995 Delhi 316

²⁹Appeal (Civil) 4641 of 1998

³⁰Anamika Ray & Ankuran Dutta, Media Glare or Media Trial: Ethical Dilemma between two Estates of India Democracy, (Volume 5 Issue 2 2015).

There have been variety of technological developments which are taking place at a higher rate and the impact of this is that speedier transitions are taking place in the field of the information and technology which has created a pressure upon the legal regulations since new modes of communication system are able to escape from control of regulatory norms. Thus there is a need of strengthened laws and policies which would be able to effectively tackle the convergence of media and communication.

LEGISLATIVE ENACTMENTS IN FIELD OF MEDIA LAW

Laws of the Press:

Print media has always played a significant role in the well being and growth of the nation. Print media has always faced tough competition from the electronic media, but has overwhelmingly tackled the stiff competition and has successfully created its own independent importance in the field of Media Communications. Even though there has been widespread growth of the information and technology but still the newspaper has never faced the dearth of fan followings. Press has created its own space in the minds of the readers. The print media constitutes one of the well regulated media in India. There have been comprehensive legal frameworks which have been designed in such a manner to regulate the functioning of the Print media. Some of the important legal frameworks which cover the Print Media are Press and Registrations of Books Act, 1867; Press Council Act 1978; Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.³¹

PRESS COUNCIL ACT 1978

The main aim behind the creation of the Press Council Act, 1978 was to grant legal protection to the Print Media and at the same time determine standards of print media agencies in India. The act led to the establishment of the Press Council of India.

- In the Section 5 of the act constitutes the establishment of the Press Council of India which would include the Chairman and 28 other members.
- Section 6 denotes the tenure of the Chairman and other members. They hold the office for the period of 3 years.
- the Section 7 compose the conditions of services of the members. The Chairman of the Press Council of India shall be appointed on the whole time basis and he shall be paid the salary which has been fixed by the Central government. Other members would be provided with the allowances and perks for the purpose of attending the meetings of the Council.

Powers and Functions of the Press Council of India

The powers and functions of the Council are as follows:

1. The aim and the motives of the council shall always be to protect the freedom of the press as well as to determine the standards of the print media and its agencies in India.
2. The Press Council would undertake to follow the following tasks as follows:
 - To enable the newspapers and news agencies to upkeep and maintain their independent status.
 - To maintain the standardized conduct of the newspapers, news agencies as well as the journalists on the basis of their respective professional standards.
 - To maintain the great standards of the public taste especially with respect to the newspapers and magazines and at the same time create awareness about the rights and duties of the citizens.
 - To develop a sense of the national responsibilities towards the nation, at the same time create dedication and passion amongst the journalists for the public service.
 - If any news is received from India or abroad, it shall be the primary responsibility of the council to review the sources of the news and it shall also review all the cases which are received from the Central government or the individuals, associations or other organizations.
 - The Council shall undertake the responsibility to study the foreign newspapers including the ones which are brought by the foreign embassies or any other foreign representative in India to study their circulation and impact.
 - To maintain the balance of the functional relationship of all the categories of the people who are engaged in working in the news agencies.
 - To concern with the developments and at the same time take up steps to prevent the issues and problems which would create an obstacle in the Independence of the press.
 - To undertake all those tasks which are being entrusted to the Council and to answer the questions which are being posed by the Central government.

The Section 14 deals with the Power to Censure: the Council has the responsibility to conduct an inquiry with the aid and support of the newspapers or news agency in cases it receives any complaints with respect to the any breach of the journalist ethics and norms or anything which degrades the standards of the public taste or those

³¹B.Manna, Mass media and related laws in India, 68(2nd edition 2006).

cases in which working journalists is involved in any kind of misconduct. In all these cases as mentioned the Council shall have the responsibility to conduct an inquiry and will record the reasons in writing in which it has the responsibility to give the warning and reprove or grant the disapprobation to the newspaper, news agencies and the editor or journalists engaged in such misconduct.

THE YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT 1956

This act was designed to prevent the circulation of all those publications which would have a negative impact upon the minds of the Young persons. This act was formulated upon the English legislation titled as the “Harmful Publications Act 1955”

The term “Harmful Publication” constitutes a very broad definition as stated in the concerned legislation. It shall include all reading materials chiefly books, magazines, pamphlets, leaflet, newspapers, or any such publications which gives the demonstrations of any kind with the aid of the pictures especially the stories depicting mainly:

1. The commission of the crimes
2. Any such offences of the cruelty
3. The incidents which depicts violent repulsive nature in way which creates a negative impact upon the minds of the Youth encouraging the criminal tendencies which would incite them towards the path of crime and encourage the commission of the violent activities which would disturb the societal peace and order.

The act also gives the definition of the “Young persons” as the people who are beyond the age of 20 years.

DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENTS) ACT 1970

The main motive behind the enactment of this act was to formulate an act which would restrict the advertisements of all the drugs and remedies which possess the characteristics of the magical nature.

The word “advertisements” was defined in a very wider form to include all such notices, circulars, label, wrappers or any such demonstration in the form of picturization transmitting light and sound.

Drugs constitute all those medicines used for the purpose of both the internal and external use of the human beings. Any medicine used for the benefit of the cure and prevention of the diseases of the humans and animals. Any such thing other than the food which purposes to bring about the transition in the natural structure and functions of the human beings and the animals. The magic remedy constitutes any kind of the sorcerous enchantment or “mantras” which deem to possess the marvelous powers of the cure and prevention of those mortal diseases affecting the natural anatomical structure of the human beings.

MEDIA RELATED LAWS

Prasar Bharti Act, 1990: The Prasar Bharti constitutes one of the legal frameworks designed for the national telecast in India. The act has led to the establishment of the Prasar Bharti Corporation which is responsible for managing the public broadcast in India. The Prasar Bharti constitutes the statutory body which is of autonomous nature constituted through the Parliamentary legislation. The Prasar Bharti regulates the different news and programs telecasted on “Doordarshan Television network” and the All India Radio which were earlier regulated and managed by the media units of Ministry of Information and Broadcasting.

The Cable Television Network (Regulation) Act 1955

The Cable Network Act, 1995 was enacted to provide the comprehensive legal framework for the regulation and management of the cable television networks in India. The act was amended in the year 2003 and after the amendment the cable operators could sue “addressable systems”. The act is very well defined and legally structured constituting various rules and regulations in the procedural forms. The act also describes about different punishments concerning to the cable television networks in the nation.

In the year 2006 the government enacted the Broadcasting services regulations bill 2006. The bill was enacted for the purpose of regulating the broadcasting and cable services. The main objectives of the bill could be stated as:

- The bill constitutes well designed and comprehensively planned legislations which would carry out the task of broadcasting in a properly planned and designed manner
- The broadcasting services of the nation constitutes the different things such as news, entertainment, providing the knowledge in fair, competitive and objective ways and the also includes the public reviewing of all such information.
- The bill contains the provision for enabling the establishment of the Independent body known as “Broadcast Regulatory Authority of India”. This body was established with the aim of to bring about growth and development in the sphere of broadcasting services in India.

- The air wave also constitutes one of the public properties. It has now become an important task to control and manage the airwaves in the interest of the nation to enable the proper distribution of the information in the widest form.
- The Government of India is also engaged in enacting the laws and regulations with respect to the broadcasting services. The government grants life to these statutory rules and regulations which would have retrospective impact upon the legislations.

THE FILM MEDIA

In India the Parliament has enacted the “Cinematographs Act, 1952” for the regulation and management of the operations of the films media. The important features of the Cinematograph Act 1952 are as follows:

The Section 3 of the act constitutes the provisions dealing with the “Board of the Film Censors”. The Central government by way of notification in the official gazette shall constitute an autonomous body known as “Board of Film Certification” which shall constitute minimum 12 members at least and not more than 25 other members.

Section 4 of the act deals with the “Certification and Examinations”. Any person who wishes to exhibit any film could apply to the board to secure the certificate.

1. The board shall grant “U” certificate which would permit the unrestricted public exhibition of the film.
2. If any question concerning the issue comes before the board that whether the children below the age of 12 years could watch the film as considered by their parents. The board shall grant the U.A certificate for the unrestricted public exhibition.
3. If any film is to be viewed specifically by the adults the board shall grant “A” certificate
4. In case if the film is concerned with the persons belonging to any specific profession and category of the persons differing in the nature, content and theme concerning only those persons. In that case the board shall grant the “S” certificate.
5. Before granting the approval and sanction to the film, the board shall carefully see that the applicant should carry out the decisions given by the board and make the modifications accordingly. Only after the applicant brings out the necessary modifications as per the decisions of the board after which the film could be open for the public exhibition.

LAWS RELATED TO THE TELECOMMUNICATION

The constitution of India has the great influence over the legal rules and regulations with respect to the telecommunication. The Constitution of India has greatly influenced the communication and this could be discussed under four divisions : the first and foremost the Federal System of India, the Constitution of India clearly outlines the relation between the Centre and states and to which extent it has the powers and capabilities to regulate and control the communication services. The Second classification would be that the Constitution of India guarantees certain basic rights to the citizens of India; however some of the basic fundamental rights are also available to the non-citizens in India. One of the basic fundamental rights granted to the citizens is the freedom of speech and expression. The third category relates to the Part IV of the Constitution of India also known as “Directive Principles of the State Policy”. The directive principles are non-enforcing principles which are to be used as the guiding principles also called as “*Gandhian principles*” by the government and the legislature while framing the laws and policies for the governance. The Directive principles help in the better democratic governance of the country. And at last the Constitution of India also contains the provisions for the equal protection of the administrative laws concerning which help in the better governance of the nation through the licensing and regulatory actions.

EXTENT OF THE CENTRE'S POWERS OVER THE COMMUNICATION SERVICES.

The Constitution of India grants the both the legislative and executive power of Control to the Central Government over the Communication systems. It is only the Parliament of India which shall enjoy all the powers to make laws and regulations for the proper governance of the Communication systems in India. In the Entry 31 of the Seventh Schedule under the List I concerning to the Union List mentions the inclusion of : Posts, Telegraphs, Telephones, wireless, broadcasting and other forms of the communication. Under this provisions the Union has the implied powers to also formulate the laws concerning to the new technological systems and services evolved in coming years of their invention and evolution. For example even though the Internet and Satellites are not currently included in the entry 31 of the Seventh Schedule the Union government would still formulate the laws for its regulation and management just like it frames for the other communication systems and services.

States are however excluded from formulating the laws for the regulation, control and management. Article 240 of the Constitution of India shall grant the exclusive powers to the Parliament to make laws on the entry 31 of the Union List. However the entry 13 of the State list is also based on the communication but the

interpretation of the word “Communication” here is different as it includes the physical means of communication and it does not override the “radio visual communication which had been the subject of the Union list under entry 31 of the Seventh Schedule.

STATE AND LOCAL CONTROL OVER THE COMMUNICATION

Even though the Central government plays an important role in the regulation and management of the communication system in India. But still the Local and state government shall play a major role in the ground level management of the communication system in India. The state government has greater responsibility in the enforcement and implementation of the Union laws within the territories of their respective jurisdiction. For example there could be health and safety laws which would lead into the implementation of the telecom and communication networks. States for the concerned purpose could impose various kinds of taxes for the better regulation and management of the communication services.

Maintenance of the public peace, laws and order are within the control of the State. It is the responsibility of the State police and other law enforcement agencies to effectively implement and enforce the laws concerning the Telegraph and Communication services made by the Central government.

In the case of *PUCL v. Union of India*³², the Supreme Court in this landmark case held that the State law enforcement agencies have the responsibility of Controlling and monitoring the communication systems.

CONCLUSION AND SUGGESTIONS

The freedom of speech and expression is construed as the basic foundation of civil liberty. The Constitution of India has included the freedom of press not as a separate right but as an implicit right under freedom of speech and expression so freedom of speech and expression could be regarded as a “genus” and freedom of press could be regarded as the “species”. The Supreme Court regards the freedom of media and press as “an ark of democracy”. The freedom of press has a great significance since it provides information to the people and makes them politically aware about their rights, liabilities and their role in democratic set up. Media acts as a medium of extraction of the truth from the facts and brings forth the actual reality before the public. As we have seen that media has played an important role in unveiling the corrupt practices in the society and in shaping and structuring the governance in the nation. The role of information and technology has expanded and due to this recent evolutions of news media there have been many instances which have been witnessed fake news, fake sting operations, trial by the media and breach of privacy which have consequently prompted the courts take up measures for regulating and controlling such activities. Those who violate the basic code of conduct should be punished by the courts. The charges of contempt of court could be applied against the newspapers and media channels as we have seen in the later part of the research thesis. Media is the mirror of our society so it should always reflects its dedication for truth and this could be only possible if media is able to see the profession beyond the commercial purposes. Media needs to play the role of an impartial facilitating scale rather than acting in a one sided manner.

The present situation urgently demands that there has to be limitations enforced upon the freedoms of media and this could only possible if media is deterred from making such prejudicial publications since it seriously affects the fair administration of the justice. As it is reflected earlier the Contempt of Court Act contains certain lacunas and the concerned act in the present times inefficient to regulate and control the persistent violations of the human rights of the people. Therefore what is urgently required is the amendment of the Contempt of Courts Act , 1971. As it has been recommended in the 200th Law Commission Report any person who has committed any offence could not be labeled with the tag of an accused or guilty of committing an offence merely on the basis of the chargesheet submitted against him but he would be called as an accused only, from the date of his arrest and not before that. Any such prejudicial publications against him before the date of his arrest would be regarded as the “criminal contempt” and any person liable for such contempt should be punished and fined.

Secondly the Press Council Act, 1978 has granted very limited powers to the Press Council of India which is the statutory body established to determine the standards of the print media in India. The Section 14 of the Press Council of Act which has only assigned the powers to “warn, admonish and censure the newspapers” even in those cases violates where the media violates the ethical principles of journalism and commits professional misconduct. In all these cases mere warning would not be sufficient to control and regulate the professional misconduct of media but there should be penalty imposed in the form of fine.

Further the Press Council Act 1978 is only concerned with the print media and there is no mention of electronic media. It is high time now that the concerned legislation should be amended. Both the print as well as electronic media should be made equally responsible in case of the arbitrary exercise of their freedoms guaranteed by the Constitution. Self regulation is not sufficient solution to media trial but only the fear of punishment could successfully help in controlling the instances of the media trial.

³² AIR 1997 SC 568

And finally since journalism is a composition of the responsible professionals. Minimum basis of qualification should be prescribed for all the persons who are joining this profession. Media laws and ethical principles should be taught to the students joining this professional field. This would serve as awareness for the ones who are interested in serving in the field of media. Media as an institution should be cautious and careful while they express their opinions on any aspects and they must know that media trial is not something to appreciate.