

Chapter –VI

Conclusion

As the nomenclature of this research indicates, the researcher has made a humble attempt to assess the role of the media and elements of its accountability. The subject matter of this research has fascinated the present researcher, because of the breath taking or dynamic growth of the media industry throughout the world. Naturally one ponders to think, upon the various counters of the media industry such as the rapid growth of the media, role of the media, the hurdles and challenges faced by it, etc. One thing is for sure that the media has grown rapidly, and definitely, it has a powerful potential, so much so that, it is capable of making or breaking the government, by influencing the minds of the people.

Every research begins with the research problem, and in the present research the problem statement of the research was, how to balance the conflicting rights of the press with the rights of the individuals. Here the researcher would like to rely upon the Roscoe Pound's theory of Social Engineering. Each interest should be defined and limited so that one interest does not overshadow the other interest so that the conflicting interests can be balanced. The rights of the press as well as the rights of the individuals are very well defined by the law. Sometimes the media for other extraneous considerations oversteps its limits, and the balance gets tilted towards the side of the media which results in the violation of right to privacy of an individual. Here the humble submission of the research student is that the media should confine itself within the jargons of ethical, neutral and objective standards apart from the legal limitations, so that the right to privacy of the individual is secured; and the conflicting rights can be balanced. The researcher would also like to state that the modern natural law theory can be made applicable in the cases of right to privacy and right of reporting of the press. According to the modern natural law, the natural rights will prevail within the framework of the positive law, and the positive law will prevail with minimum moral content. Here the media's right of reporting and imparting information should prevail within the legal limits; however the media should adhere to the minimum content of the morality in the form of ethical and unbiased reporting.

After the completion of the research ie the collection of the data, arranging of the data, analysing the data and interpreting the data it can be said that the hypothesis

forwarded in the initial stages is proved to be correct and the concluding remarks are based upon the hypothesis.

In the Indian Legal system every institution, be it the state or the private institutions, including the branches of the state are accountable to some higher authorities. Now the media being so powerful, should it not be accountable? It is humbly submitted, that the accountability of the press is quite vague and weak, as the media is accountable to the public at large. Even the parliament is accountable to the people, but this accountability is effective or strong as the members of the lower house are elected by the people and hence the elected members are to a certain extent, deterred from doing anything, which goes against the public. However in the case of media, even though it is accountable to the people, it is not elected by the people. The media can only be criticised by the public, and sometimes the TRP ratings of the media may fall. This is the only check on the media exercised by the people and hence the media has become a self declared boss- a free, independent, and above all (to some extent.) The media should act, responsibly, neutrally, objectively and abide to the ethical standards of journalism on its own, and should not wait for the law, forcing it to be ethical or neutral in dispensing its duties. Every time the law cannot interfere and set standards for neutral and unbiased reporting, because if the law does so, then the independence of media will be at peril. At the same time the media should not take undue advantage of this fact and confine itself to self imposed ethical limitations.

The Chapter - II of the present research deals with the constitutional framework of the freedom of the press. To deal with the concept of media, it is mandatory to analyse the constitutional provision, which deals with the freedom of speech and expression, inclusive of the concept of press and media. Hence the entire second chapter is devoted to the constitutional provision of the freedom of speech and expression- Article 19(1)(a) of the Indian Constitution¹⁸⁰. The right of freedom of speech and expression has prevailed, since the times immemorial as the necessity of expression is very natural and inborn in human beings. So it can be stated that, expressing oneself is inherent in human beings, which is beyond the scope of any legal parameters. To put it in other words, freedom of press has not prevailed because of any sanctions but is

¹⁸⁰ *Supra.*, p. 29

born with the human beings. In the ancient times, expression prevailed in very crude forms, such as paintings or carvings on stone or woods. The first informal press can be traced to the Muslim era, where the Mughal rulers, used to select people to report to them on the on goings or the happenings in their regions. The severe drawback in this system was that, the reports which were prepared for the king, were exclusively for him only and the public did not have access to it¹⁸¹. The establishment of a formal press is evident in the pre British era¹⁸². It can be seen that the Indians were very keen and adamant to establish and use the press, with the motive to unite the Indians and to revolt against the British government. In those days, the media was prevalent in the form of the press only. Press was used as an agency to promote the independence activities. The Indian freedom fighters such as Girish Chandra Ghosh, Gangadhar Bhattacharya, Tilak, used the press aggressively to promote their freedom struggle. On the other hand the British government tried to impose stringent restrictions on the press, in order to curtail or suppress the freedom movement. One can draw the analysis that the press has tremendous potential even in those days, as the freedom fighters used it as a popular platform, to achieve their own motives. On the other side, the British Government was aware of the power of the press media, which had the capacity to destabilise its rule in India, and hence kept on imposing such stringent rules, that ultimately the press should suffocate and die.

After analysing thoroughly the press in British era, the researcher has turned his attention to the post Independence status of the media¹⁸³. After Independence the Indian Constitution was enacted and the Fundamental Rights are rooted in the constitution. Media and press are incorporated in the right to freedom of speech and expression which are enshrined in the Article 19(1) (a) of the constitution and the preamble of the constitution. It has been time and again stated by the Supreme Court that the freedom of speech and expression includes press¹⁸⁴ and the various aspects related to the press. A point to be noted over here is that in those days press was the only form of media, and hence when the word press is used, it includes the entire

¹⁸¹ *Supra.*, p. 31

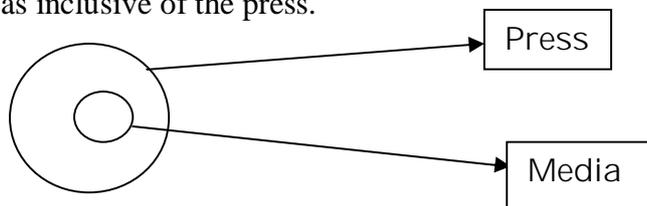
¹⁸² *Supra.*, p. 32

¹⁸³ *Supra.*, p. 35

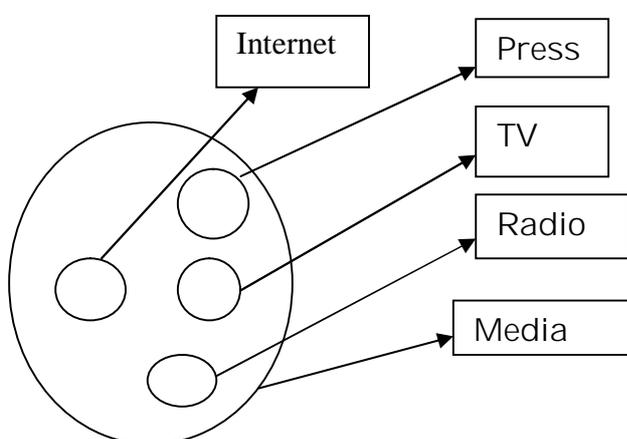
¹⁸⁴ *Supra.*, p. 39

sphere of the media. But today, the media is a larger term, and the press is a part of media.

In ancient times (pre- independent period) the press was a larger term and the media was inclusive of the press.



In the modern times, the media is the larger term inclusive of press, TV, internet etc



The media is regarded as the founding force of a democracy and hence the rights of the media have to be guarded zealously; so that the press can function freely and effectively. But again this does not mean that the media's powers should go unfettered. Limitations on the powers of press and media are must, as the scope of their powers is very vast¹⁸⁵. The scope of the press includes the power to circulate the information, which can be regarded as the most prominent aspect of the press. If this power is not attributed to the press, the press cannot survive, as it is through circulation only that the press reaches out to the masses. So many a times the government has tried to curtail the size of the circulation in order to reduce the influence of the newspapers¹⁸⁶. The power to receive information is also a vital power enjoyed by the press, because if the information is not received by the press, how can the news be created and circulated by the press.

¹⁸⁵ *Supra.*, p 45

¹⁸⁶ *Supra.*, p 67

Other types of powers of the press are also analysed in detail. One of the powers of the press is to conduct and hold interviews. It is necessary to bring out all the facets of the information or the event related to the interview. No rights are without restrictions and so is the case with the right to interview. These restrictions are dealt in the appropriate places; however the present researcher would like to humbly state an aspect regarding the restrictions on the right to conduct interview. The interviewer should ask only such questions which are related to the subject matter of the interview, and if the interviewee refuses to give an answer or remains silent, the interviewer should not be in a hurry to draw his own conclusions and should not at any cost insult or pass an adverse comment upon the interviewee. In the present television interview sessions it is seen that the interviewer becomes the judge, and passes a judgment upon the interviewee's committal or non committal answers. It seems that the present interviewers or the interviewing agency has forgotten one basic limitation that the purpose of the interview technique is to only cull out the information and put it before the public and allow the public to formulate its own opinion based upon the information obtained through the interview. Unfortunately the interviewer passes the judgment himself creating the bias in the minds of the people, especially when the interviewer is a renowned personality in the media field. Some other limitations of the interview technique are as follows

- (i) The interview will only commence if the interviewee gives his consent.
- (ii) The interview shall stop at the will of the interviewee.
- (iii) The interviewee will not be forced to answer any question, which he does not want to answer.

Another type of the power of the media is to report the court proceedings. This is a very important power and is widely used by the media. The publicity brings transparency, and transparency leads to justice. In a democracy even the judiciary has to be accountable. As it is popularly stated, that justice must not only be done, but it should also be seen to be done.

Though, both, an ordinary citizen, and press enjoy the same right under constitution of India, in reality, the press enjoys more liberty or rights as compared to the individuals.

The press enjoys the privilege of sitting in the press bench and also receives any information regarding any proceedings on account of the citizens right to be informed on matters of public importance.¹⁸⁷

An exception to this right to report was carved out by the Supreme Court in *Sahara India Real Estate Corpn ltd v SEBI*¹⁸⁸ case where the superior courts could postpone the reporting of the case proceedings in the interest of the justice, however the court should not postpone the said reporting of the case for some duration without reasonable cause. Even the in camera proceedings shall be used only if it is in the interest of justice.

Another special power of the press is to attend and report legislative proceedings. In a democracy, even the legislative is also accountable to the public, and hence the Article 361 of the Indian Constitution confers the right of publishing a true report of the parliamentary proceedings. The limitation of this right is that the publication of these legislative proceedings should not be done with malicious intentions. However the legislature has always attempted to curtail this right of the press, the glaring example of which is the *Searchlight case*¹⁸⁹.

Today the power to report the parliamentary proceedings has become more vital as there is a live telecast of the parliamentary proceedings.

Another conspicuous power of the press is to act as an advertising medium. Initially the advertising did not fall under the ambit of Article 19(1)(a) of the Indian Constitution, as the rule was laid down in *Hamdard Dawakhana v Union of India*,¹⁹⁰ where the court stated that advertisement were made with intention to have commercial gains and hence they cannot avail the benefit of freedom of speech and expression. However this judgment was overruled in *Tata Press v Mahanagar Telephone Nigam*¹⁹¹, where the Supreme Court stated that even advertisements were

¹⁸⁷ *Supra.*, p. 48

¹⁸⁸ *Supra.*, p. 48

¹⁸⁹ *Supra.*, p. 49

¹⁹⁰ *Supra.*, p. 49

¹⁹¹ *Supra.*, p. 50

covered under Article 19(1)(a) of the Constitution. A point here to be noted is that today the media, especially the television and newspapers give a lot of weightage to the advertisements rather than the substantial news. Sometimes advertisements occur on the first page of the newspapers instead of the most important or the prime news. Ethically the news and the advertisements should be arranged in a proper sequential manner. The first page of the newspaper should be devoted to national or the international happening of the day before. So the reader is enabled to get the information at one glance at the first page, which is the prominent page of the newspapers. Advertisements should be dealt with last two or three pages of the newspapers.

Another type of power of media which is increasing day by day is the power to Broadcast. In the 21st Century there was rapid growth of technology, the concept of broadcasting emerged. Right of broadcasting was also considered to be the part of free speech and expression. Not only this but along with radio, television, the emails also were brought into the purview of Article 19(1)(a).

Even the films were the part of freedom of speech and expression. In *Bobby Art International v Om Pal Singh Hoon*¹⁹² The Court held that the film must be judged in its entirety from point of view of its overall impact.

The Court however has clearly accepted the fact that though the motion picture is nothing but a medium of speech and expression, still it has to be kept on different footing as laid down in the case of *K.A Abbas v Union of India*¹⁹³.

In the present times the electronic broadcasting has not only made tremendous progress in the quantum, but also a vivid progress of the procedure of broadcasting, such as direct to home broadcasting, Wifi, mobile networks, cable television networks, radio networks etc. The reason or the focus of all types of broadcasting is to receive, store and impart information. All these types of broadcasting modes should

¹⁹² *Supra.*, p.52

¹⁹³ *Supra.*, p.52

perform the function of receiving, storing and imparting the information neutrally. If the broadcasting agencies of the media tamper the information in any way then the fear of the nation being ruled by the press rather than the elected government cannot be denied.

If one has to see the scope of the powers of the press, then it is mandatory to identify the end line or the zone or the extent where the scope of the powers finish. These end lines or the zones or the extent can be termed as limitations or restrictions. So in order to get the scope of powers of the press, it becomes necessary for one to analyse the limits of that power, hence a few pages of the research are devoted to the freedom of speech and expression. Here the reference can be made to the Hohfeldian table of rights and duties, that every right has a corresponding duty. If some rights are enjoyed by the press or media, then the duty is upon the state, not to infringe these rights by making certain drastic legislations. It is accepted that the principle of jurisprudence should prevail, which states that no concept in any legal system can exist without limitations. It follows that there should be a balance between the rights of the media and the restrictions imposed on these rights. The question is how to balance these seemingly opposite interests. Many a times the free press is considered to be a thorn in the throat of the government, and hence the government through its shrewd schemes tries to clip the wings of the press by various orders and statutes, for instance the word 'public order' was inserted by Constitutional (First Amendment) Act 1951. This clause was inserted to reduce the effect of *Romesh Thappar v State of Madras*¹⁹⁴, where the court had held that the right to circulation is a part of right to freedom of speech and expression. Many other cases have been dealt under the topic of judicial activism and press.¹⁹⁵ The powers of the press have always been the bone of contention between the executive and the media agencies. The judiciary has played a very conspicuous and remarkable role to settle the battle between the state and the press. The judiciary being the guardian of the fundamental rights of the citizens has tried to protect the freedom of speech and expression of the press, zealously as reflected in many cases. It can be stated that there was a time when the state was in a mood to axe down the powers of the press, right from the pre independence regime, to

¹⁹⁴ *Supra.*, p. 45

¹⁹⁵ *Supra.*, p. 62

the post independent period (especially during the emergency times.) Here the press managed to survive through all the hurdles and become one of the prominent factors of the independent state, by performing vital function of imparting information. However in the present times the entire media inclusive of the press has diverted from their focus of imparting the information and knowledge objectively and fairly; to the adaptation of modalities of popularity and financial gains even by some times resorting to misinterpreting or distorting information thereby misleading the masses or camouflaging their opinions. This is a severe hindrance for the effective functioning of the democracy.

The press is considered to be the backbone of the democracy and hence is profoundly important and significant. It has a dual role to perform. On one hand it acts as a medium to impart information to the public of the state activities. On the other hand it gives an insight to the government about the public opinion regarding its activities; hence the press is sometimes known as the pulse of the society. Not only is this, the media acts as a linkage between the different regions of the entire nation as the information regarding these regions is circulated by the media. This being an undeniable fact, a heavy responsibility lies upon the media to discharge its functions objectively, without bias or any personal or emotional favour.

This entire chapter is devoted to the scope of right to freedom of speech and expression along with the restrictions. The people staunchly favouring the liberties or the rights will no doubt try to minimise the restrictions placed on the media, as it is in consonance with a flourishing democracy. However it is humbly submitted that seeing the present scenario of the powers and the functioning modes of the media, not only legal restrictions, but also ethical restrictions should be imposed upon the media.

After scrutinising the constitutional restrictions upon the right to freedom of speech and expression a few statutory restrictions are analysed.

Chapter III of the present research deals with the important legislations relating to the press and media in India. The researcher has classified the legislations into two groups.

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

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

A few legislations have been analyzed according to these criteria. Out of the much general legislations, which have been dealt before, the researcher would like to comment upon the Information Technology Act 2000. This statute can be considered as a landmark legislation, as it has brought the revolutionary change in the methods of communication and storage of the information. This statute has introduced the electronic medium of the communication, which is very significant for the convenience and the development of the state. The entire lengthy, complex and manual labour of indulging into paper work is done away with the replacement of the electronic medium of communication. Not only this, but as the new vistas of the communication channels have come up setting up an entire world of networks and communication, which has really given a boom to the media's scope. This statute lays down the powers the procedures and the penalties regarding the electronic medium of communication. The statute has got far fetching implications and four statutes had to be amended to incorporate the provisions of the Information Technology Act 2000.

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

In the group of specific legislations some of them are not in consonance with the concept of freedom of speech and expression as envisaged in today's times; and the most glaring example is of the Official Secrets Act 1923.

A very grave demerit of the statute is that, any information covered under Official Secrets Act 1923 is exempted from The Right to Information Act 2005. This complicates the matter because the term secret is not defined in The Official Secrets Act 1923 and the same secret information is exempted from The Right to Information Act 2005.

Lastly it has to be remembered that this statute was passed by the Britishers, whose utmost endeavour was to protect their official secrets to stop the growth of mutiny. But today India is a democracy wherein there is people's participation in the government, and there is no question of mutiny. So also all the secret information regarding defence forces are protected under the various defense statutes; hence there is no point in protecting the official secrets under a separate statute. It is humbly submitted that The Official Secrets Act 1923, is not applicable in present times, and hence should be repealed.

The Cinematograph Act 1952 needs a special mention as it deals with two types of censorships. According to the Act the censorship is to be imposed by the Censor Board, which is constituted by the Act. Whereas the second censorship is imposed by the state, even before the film is released. There are a number of movies¹⁹⁶ which are released by the censor board, but are banned by the state. Now a question which

¹⁹⁶ *Supra.*, p. 83

arises here is that; what is the validity and authenticity of the censor board. If the Censor Board passes a film, then it means that the film is capable of being shown to the public. The state in its apprehension that it will cause unrest in the society bans a movie. The researcher would like to pose a question here that, is the Censor Board not capable of assessing the impact of the movie on the society? If the state is going to override the decision of the board, then what is the utility or the functioning of the Censor Board?

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

One important statute which furthers or enhances the ambit of the freedom of speech and expression is the The Prasar Bharati (Broadcasting Corporation of India) Act, 1990. The credit goes to this statute because for the first time in the history of India, two important channels of media viz. radio and television were made independent from the government control. This was a very major step in bringing about the transparency in the functioning of government. The government was so apprehensive regarding the independency of radio and television channels of communication that this statute was not implemented for seven years after its unanimously passing by the legislature. Eventually in the year 1997 the statute was implemented and the radio along with the television channels of communications were made independent from the governmental control. The implementation of the statute was regarded as a landmark step towards the democracy because of the implications of the statute. Prior to the year 1997 the government could influence the news as the broadcasting channels of radio and doordarshan were under the government control. So it is but natural that these channels could not impart free and objective views which were against the government policies. After the independency the radio and the doordarshan channels, can broadcast freely and fearlessly any news or program. So it can be stated that the Prasar Bharati Act is the real foundation of the democratic state, within which a free press exists. It is humbly submitted that the Radio and television channels of communications should be independent from the governmental control,

only then they can impart news or information of the government's activities objectively, fairly and neutrally. But it should be remembered, that this independency from the governmental control should be cautiously and carefully enjoyed. The media channels should not take undue advantage of the extended independence or liberty. Just because the radio and television channels of communications are free from governmental control, should not telecast programs which show disrespect to the government officials of high stature. So also while imparting information the radio and television channels of communication cannot implant their own views on the public minds for financial or any other personal motive. Just to give an example if a government official has some conflict with media personal then the media devotes so much of time in projecting him as villain, rather than imparting meaningful news.

Another huge leap in bringing about transparency in the functioning of the government is the enactment of the Right of Information Act 2005. The very essence of the executive to work in closed chambers has been done away for good with the implementation of Right to Information Act 2005. This statute has put the last nail in the coffin of the doctrine of denial of government records and documents in the so called 'public interest'.

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

A very positive impact of this statute is that it acts as an indirect check on the public authorities. As all the information relating to the records and documents can be accessible to the public. This makes it compulsory for them to maintain their

documents and records according to the prescribed procedure and order; and hence apart from acting as an indirect check on the executive, it helps in improving the efficiency of the executive setup. According to this statute, the public may have access to the government records which can be scrutinised by the public, and if any mistake, or negligence, or fraud is evident in the records, that official or department can be questioned. Hence it can be stated that essential feature of this Act is that it has brought accountability of the public authorities. One can say that the Right to Information Act, 2005 has really brought a revolution in the functioning of the government and other public authorities.

The statute in a way acts as a supplementary asset to the press and the media for the broadcasting of news. The Right to Information Act 2005 can be regarded as the most 'happening' statute of the present media era.

The cumulative effect of the three statutes viz., The Information Technology Act 2000, The Prasar Bharati (Broadcasting Corporation of India) Act, 1990 and Right To Information Act 2005 is that the media has got gigantic qualitative powers, of course within certain limits. Few years before the above mentioned statutes were enacted; there was always the grievance, that the media especially the television communication channel did not enjoy the freedom in the real sense. The concerned governmental set up in those years was constantly blamed or criticised for imposing restrictions or curtailing the liberty of the media channels. Finally the above three statutes were implemented and the media channels were freed from the chains of the governmental control. Now it is to be seen how the media channels use these gigantic qualitative powers for betterment of the state or the society. It is sad to note that many a times these precious powers are not utilised in a sincere manner to promote the welfare of the society, but under the garb of imparting information, the media channels hype an insignificant event, or make a mountain of a molehill regarding any issue. So also many a time's privacy of individuals, especially the celebrities is infringed. The worst aspect of the misuse of media's powers is that they tarnish or cover up the image of any government official or a public figure for some personal or financial benefit.

The massive powers of the press were confirmed in order to enable the press to perform its functions effectively in the society. To access the role of the media in the democracy the researcher has devoted the chapter IV of the present research for this task.

The first part of this chapter is devoted to the role of media¹⁹⁷, the second part of the chapter is devoted to the impact of the media on the masses¹⁹⁸ and the last part of the chapter deals with media trial¹⁹⁹. The researcher has classified the role of media in four categories

i. The role of media as an unbiased informer

The first and the foremost duty of the press is to be unbiased informer. This duty of the press to act as an informer of the society is very demanding, complicated and crucial. It is very essential to understand this role of the media. It is not only to impart information, but to impart unbiased, true, impartial, neutral information. These adjectives unbiased, true, impartial, neutral affixed to the noun information, casts a very demanding duty upon the media. The media has got no right to turn, twist and tamper any information and then project it to the public. The media cannot impart any false information or play an active part in spreading any rumor. If the information is false, it will give rise to one grave consequence that the foundations of the democracy will be shaken as the public will not be able to know and understand the real facts. The other aspect of this criterion is that the information should not only be true but should pass the test of verification. That means the information which the media passes on to the public should be supported by evidence. The media cannot project the information based upon some vague assumption or wishful thinking.

¹⁹⁷ *Supra.*, p. 113

¹⁹⁸ *Supra.*, p. 122

¹⁹⁹ *Supra.*, p. 130

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

A necessary collateral factor of the fair and objective imparting of the news is that the news should be imparted impartially. But many a times there are some alluring motives to impart the news. It sometimes happens that the news reporters report the news for some considerations. In the cases where the news which is actually an advertisement, but is disguised as a news item, thereby misleading the public who believes it to be news; is virtually misguided. Hence the news agency or media who adhere to such practice will not be considered as a free media, irrespective of the fact that there was no external compulsion on it to do so. If the media continues to adhere to this practice of projecting any good or bad news based on the considerations received by them, then the whole spirit of democracy will collapse; as the media will project only what the rich people will want, and people believing the media will act likewise, depriving themselves from enjoying the real democracy.

Apart from financial considerations another hurdle in imparting the impartial news is the issue of TRP ratings. Unfortunately the news is imparted on the basis of getting high rating of TRP. In the unhealthy competition of TRP ratings the media channels end up projecting news which is inconsequential but is spicy and appealing to the peoples taste; and ultimately the news which is of public importance may be over shadowed.

ii. The media's role as an educator.

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

Further the media also educates by bringing awareness of the rights of the individuals. The credit goes to media for making the people aware of their rights. Another feather in the hat of the media is that, it is responsible for such a high rate of voting as the people were made aware of the importance of the constitutional right to vote. Similarly it was the media who has enlightened the weaker section like women, children, senior citizen, and other disadvantaged groups of their rights, privileges and the concessions given by the state. Even the advertising modalities educate the people, such as 'Jaago grahak Jaago' in respect of consumer courts. So also the advertisements which bring ill effects of the vices such as smoking, drinking etc educate and make the people aware of the consequences.

It is no doubt that the media has played a crucial role in imparting education through various modes and on varied subjects to the public at large.

iii. Media's role as a mentor.

People in India believe the media channels completely and take the opinion of the media as the parameter of true facts or information. So also the media not only imparts information, but also is capable of helping the public to formulate the opinions. Hence it is said that the media dispenses the role of a mentor. The role of the mentor is to educate the ward, and make him independent to take his own decisions. The media also should adhere to this principle and impart knowledge and the education to the public and allow the public to take its own decisions. The media should not put its own opinion in the mouth of the public. In other words the media should not project information in such a manner that while imparting the information it makes the people think and act as it wants. This is where the crucial aspect lies because it is very difficult to impart news impartially. The influential journalists of the media are so skillful that they project the information mixed with their comments and commentaries, which the people believe to be objective and real, and act according to the journalist's opinion.

iv. Role of the media as the guardian

There is no doubt that the judiciary is regarded as the guardian of the rights of the people; however the media is also regarded as supplementary guardian of the rights of the people.

The role of the media as the guardian is implicit in the existence of the media. To put it in other words, the media has come into existence to protect the interests of the public by the way of imparting information and education. Entertainment is the secondary role of the media. Media protects the interest of the public at large by publicizing mistakes or negligent activities or any tyrannical acts of any state officials. It is frequently said that publicity is the best antidote for the arbitrary rule.

Exposure of the wrong or illegal actions of the public officers brings a discontentment or dislike of the public, which constitutes as deterrent check on their arbitrary actions.

The judiciary acts as a guardian only in those cases which come before the court. But in the case of media this limitation is not applicable. On the other hand the media can operate *sue motto* and can expose the infringement of a right or liberty of any individual in the society. It does not wait like the courts for the individual to approach it for the publication of the infringement of that right. This is definitely a very important advantage of the media over the judiciary, and hence it can serve to do justice more effectively.

It should be appreciated that the media performs vital role in imparting the information and educating the masses; however one note of caution would be liked to be given here that while performing its role the media should bear in mind that it has to act in objective and impartial manner.

The second part of the chapter deals with the impact of the media on the masses. It would not be very wrong to state that the media seems to be omnipotent because there is no aspect of life upon which the media has not touched upon. Hence the impact of the media is also tremendous and far fetching. Every concept has got a positive as well as a negative aspect, and media is no exception to it.

The positive impact of the media on the society is that the media makes the democracy effective and efficient. As stated earlier the media abridges the gap between the government and the people. The media communicates the government's policies, plans, schemes, programs to the public. Simultaneously the media helps the government to know the pulse of the society by communicating to it the moods and reactions of the public. It is very correctly stated by Von Savigny, that the government

which is sensitive and alert to the public's mood that is the pulse of the society is a very stable and efficient government²⁰⁰.

On the other hand the media aids and assists the government in implementing its policies. It also helps the people to participate in the functioning of the government, by expressing their opinions. The media is so influential that the opinion it indirectly projects before the people is accepted and acted upon during the elections. The press or the media projects the electoral candidate in a good or bad light which plays a significant role in influencing the people to make their appropriate choices.

The media helps in the implementation of the Rule of the Law. The media acts as check on the governmental actions and compels the government indirectly to functions within its legal framework. The media makes the government officials to act in accordance with law and if they don't their activities are immediately projected before public; and hence it can be stated that the media implements the rule of law. The only apprehension to be expressed here is that the media while helping in the implementation of the rule of law with excess zeal and enthusiasm should not over step its limits and end up with the rule of media.

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

²⁰⁰ *Supra.*, p123

A good and an active media helps the society in formulating a public opinion. It is one of the basic functions of the media to impart information to the public so that the public can formulate its own opinion. It is a known fact that the strong public opinion is the deterrent check on the government. The media should not only enable the public to formulate the public opinion, but should also organize it and then communicate it to the government. Then one can say that the role of the media is successfully achieved.

Today the protection of environment has become a major global issue, and all countries are trying to protect the same by legal measurements.

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

It is the welfare function of the state to provide aid or assistance or help to the people affected by such a disaster or a calamity. The media acts as an extended arm of the state in such situations and provides the necessary relief with the help of the public. It provides the aid to the victims, by informing to their relatives their whereabouts or other details. The secondary role of the media is that it acts as a source of entertainment. There are many modes of the entertainment available through the media channels today. Sometimes these entertainment channels or the media are more popular and hence the organisers from the media give more attention to these channels as compared to other channels. Because of these positive aspects of the media it has become really very strong organised and is exercising dominion almost at all levels. The media knows its power, and hence sometimes acts in a dominant or dictatorial manner.

The negative impact of the media on the society is to a large extent. Sometimes excessive coverage to hype certain sensitive news may lead to unrest in the society.

Commercialisation and liberalisation has led to a cut throat and unhealthy competition in the media. A serious concern is this that the private channels of the media are continuously engaged in combating with one another for the Television Rating Points (TRP). As a result of which the channels instead of imparting objective and fair news, they mould, twist and turn the news to make it more spicy and appealing to the public. So now the thrust of the channels is to project such news which is catching and appealing, rather than the real and factual news. The consequences of this are very grave because the main objective and the focus of the media is totally grounded and the financial considerations are allowed to play a major role in the function of imparting information. Today the media instead of only imparting the news, bombards the public with their views, opinions and comments to an extent that the public gets psyched by their comments, opinion and takes a decision which suits the interest of the media, rather than their own interest.

No one can deny the contribution of the media in the development of the society at large, but the media sometimes oversteps its powers because of which the focus of the welfare is lost and is replaced by media's selfish interest.

Another controversial aspect which prevails is the concept of media trial, and the last part of the chapter IV is devoted to the few aspects of media trial²⁰¹. Few of the media trials have been discussed in detail in this chapter. Today the media trial has become very popular in the public as well as in the media sections. By projecting the media trials the media channels TRP ratings increase; and the media trials are liked by the public also. The whole world knows that media plays an important role in the preservation and promotion of democracy. It is also known that the media performs an important function of imparting fair, objective, and true information to the public. This image has been acquired by the media over a period of time and the public believes in the same image of the media. Hence whatever has been projected by the media in media trial; the public believes the same to be correct and in consonance with justice. Nobody questions the intentions or the objectives of the media while

²⁰¹ *Supra.*, p.130

projecting the information, and hence whatever is shown in the media trial is chewed and digested by the public.

In the cases of media trial, the principles of criminal jurisprudence are violated, such as the accused should be presumed innocent unless proven guilty beyond reasonable doubt.

In 2006, the Law Commission in its 200th report has clearly stated that the consequences of media trial, not only affects the system of Criminal Justice, but also affects the rights of the accused, and damages his images in the society.

It is humbly submitted that the media and the judiciary should play a supportive role to each other. The media should bring out the wrong happenings and ensure that the prosecution against such wrong is commenced. However, once the prosecution commences, the media should limit itself to mere reporting. Whenever the reporting of the pending cases is done by the media then the guidelines which are forwarded by the researcher should be strictly adhered by the media.²⁰² The guidelines are based upon Roscoe Pound's theory of balancing the conflicting interest. The guidelines stated by the researcher are to balance the interest of the media to report the court proceedings and also to safeguard the right of the accused to fair trial. Thus the clash of rights of media and the rights of the accused will be averted, without anybody having to sacrifice their interest entirely.

After accessing the concept, restrictions and role of the media the researcher has moved his attention to the challenges which are encountered by the media. It is not very easy for the media to face the difficult challenges posed before it. The media, especially the print media has faced tremendous difficulties right from the pre-independence era and has managed to not only to survive, but is also successful in shouldering its responsibilities. The media has to be applauded for the various functions it discharges efficiently in the society. However sometimes the media oversteps its authority and power, and hence one is a little worried that it should not infringe someone's rights. The media is like a mirror which reflects the bare realities as it exists. The media should not be a concave or a convex mirror. To put it in other words, the media like a mirror should only reflect the facts and not magnify or change

²⁰² *Supra* p148

or shrink,(like the concave or convex mirror) the facts, while projecting them before the society. This aspect should never be forgotten by the media, however today the media plays the role of the concave or convex mirror and skilfully distorts or changes the information, while projecting it before the society.

Imparting information and educating the masses through information is the essential function of the media. Technology has played a pivotal role in enabling the media to discharge its function efficiently. The modern age is regarded as the era of information and technology. The consequence of the increased volume of information and technology has led to the fact that; the society not only thrives upon the voluminous information, but the societal life exists on the vast and diverse information. Not only vast, diverse and varied information is imparted to the society, but information from every aspect of the society or from every nook and corner of the entire global arena is bombarded on the society.

In addition to the diverse information which is projected by the media, another very crucial aspect is this that this diverse information is imparted very easily and quickly. In fact the vast information is available at the tip of the fingers of a person. So the advantage of the media is two folds : one -vast varied, diverse, and multifarious information is imparted to the public at large, and the second – such information is made very easily and speedily available to the public at large. As a result of the fact that the information is easily and speedily available, the public heavily relies upon the media. Due to which the media enjoys its influencing powers and hence it has become the most powerful influential instrument today. No other agency is able to leave the lasting impact upon the minds of the people, as that of the media. There are some theories which try to explain the reasons for the influential powers of the media which are analysed in chapter V of the present research²⁰³

The researcher humbly feels that the Culturalist Theory²⁰⁴ should prevail ideally. It means that the media broadcasts the news and each person is influenced by the news

²⁰³ *Supra.*, p.156

²⁰⁴ *Supra.*, p. 157

according to his or her personal and social factors such as financial limitations, region, religion, social strata etc. Here the media does not influence the public, but the public is influenced by the news or information according to their own attitude, understanding, and personal circumstances. The Culturalist theory clearly projects the media as a mirror which merely reflects the facts as they exist.

Unfortunately the culturist theory is an Utopian concept, at least in today's times. The present researcher feels that the Class Dominant theory²⁰⁵ of media influence prevails. According to this theory the Bureaucrats and the rich and the powerful people control the media corporation. It is these people from the executive or the legislature pressurise the media to impart information or withhold the information. So ultimately only that information and in the manner and extent the Bureaucrats want to be circulated, is projected by the media. It can be deduced that the media becomes the mouth piece of the rich, powerful, and the dominant class.

A formidable challenge before the media is the concept of paid news.²⁰⁶ Paid news is an advertisement which is designed as news and the viewer is made to believe that it is news, when actually it is not. Such a disguise is made to either promote or defame someone, in exchange for consideration.

The paid news concept is detrimental for the basis of a democracy as it is an attempt to misguide the people. In today's world the people believe in the media, and when media indulges in such a practise of paid news, the people who will believe that news, which is a paid one, may end up making a very wrong choice.

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

²⁰⁵ *Id.*

²⁰⁶ *Supra.*, p. 159

opponents. The concept of paid news is like dynamite, which blasts the very essential or the original function of the media, of imparting the impartial news, which is the foundation of any democratic setup.

Cross media holdings is another impediment in the smooth functioning of the democracy. The basic concept of having multiple channels, or different editions is that the diverse views could be available to the public, however in cross media holdings, the diversity itself is cut down, as though the number of channels or magazines may be sizable, but the number of operating such media may be very less (The South Indian Channel Sun T.V has 14 channels, four magazines and two newspapers.)²⁰⁷ It is quite obvious that, the same opinion is reflected in various media platforms, which is owned by the same person. People are aware about the existence of many channels (400 channels are been provided) but very few people are aware that the said number of channels are operated by only 11 cable distributors.²⁰⁸ This means that though we are having access to 400 channels, we are only accessing the views of 11 people, who are operating those channels. Further because one person may operate many channels, his views and the same news are projected in those many channels, the people profoundly believe those views merely because they are repeatedly projected by the different channels, but by the same persons. Hence the media misleads the public by projecting similar views in different channels which are actually owned by very few people.

The print media faces a number of challenges with the advancement of technology as different sources of news agencies, apart from the print media have emerged. One prime problem, which is faced by the print media, is the concept of Aliteracy²⁰⁹. The print media already faces the limitation because of the low literacy and the problem of the print media is enhanced severely because of aliteracy. The print media cannot perform its function of imparting knowledge to the people who cannot read and write; but what can be done in those cases where the people can read and write, but refuse to read the newspapers. Another severe limitation to the print media is due to the

²⁰⁷ *Supra.* p 162

²⁰⁸ *id*

²⁰⁹ *Supra.* p 168

advancement of technology; which projects the news more speedily and easily as compared to the newspapers.

One of the threads in the entire fabric of the media network is the social media²¹⁰, which has gained tremendous popularity. As one can see that the social media from a primitive stage, has developed to the most sophisticated mode. The social media has also undergone a sea change in its function; because initially the social media's function was only to cater to social communication, and today, the social media is playing an important role in almost every aspect of human life. With the help of social media, the users of it use it to promote their business, trade, advertise their occupation. The artists use the social media to promote and advertise their work, including music. The professionals use the social media to promote their profession and intellectual work; sometimes education is also imparted through the social media. Cultural, religious and political events are promoted with the help of social media. It can be said that the ancient social media performed the function of social communication, and the today's social media, 2016 is omnipresent because almost every activity of human beings as well as the institutions cannot be carried out without the help of the social media.

However the social media is not free from complications and problems which are content ownership²¹¹, defamation and other torts²¹². Defamation is most rampant and can be said to be a curse, that social media suffers. The social media has also become a place for criminal activities. Lot of criminal activities is taking place through the social media; and sometimes it is stated that the social media is a hub for posting offensive text, posting morphed or private, or porn videos etc.

Sometimes in its over enthusiasm the media exceeds their limits and treads upon the private arena of the individuals resulting into infringement of right to privacy. Right to privacy is invaded with the misuse of number of websites such as Facebook, Whatsapp, My space etc. Through the browser multiplayer games personal

²¹⁰ *Supra*. p 170

²¹¹ *Supra*. p 176

²¹² *id*

information through the profile is made available to any person, which in turn may be misused and hence the right to privacy is violated.

Today it is a compulsory fashion to put each and every, and sometimes even the minute information about oneself, family, friends, etc on social media like the facebook. Such posts on the social network can be easily accessible to the cyber criminals, who do not hesitate to invade the privacy of the person for their gains.

Not only this, but the social media may be used as a tool of harassment.

Apart from this the one more concern about the social media is that it ruins the marriages. Social media, especially the Whatsapp is one of the reasons for the increase of the divorce rate. The social media not only harasses the people in their personal circle but also may be reason for the loss of people at the professional circle as well.

The threat of social media is also stretched beyond the personal or professional circles. It has also become a hub for carrying out terrorist activities. The terrorists can plan as to which type of attack is to be carried, when it is to be carried out, whether the attack to be carried out is physical or a cyber. There are also professional unethical hackers who hack the websites for exchange of hefty fees, or do it for carrying out terrorist activities.

Democracy thrives upon the people's participation in the governmental activities. People can participate in the governmental activities only if they are aware of government's actions and policies, and the government is aware about the people's aspirations and needs. It is the media which acts as a linkage to communicate the thoughts of the public and government to each other, and hence it is stated that the media is the backbone of the democratic setup or the fourth estate of democracy. As the media enjoys an indispensable fundamental place in the democracy it is flooded with the liberties and powers. The media has to use these liberties and the powers in an objective, neutral and impartial manner to promote and strengthen the principles of democracy. However it is seen in today's times that the media utilizes its strength and power to fulfil its own objectives such as the TRP ratings or it acts or some

commercial or financial considerations. This aspect of media completely water downs its image and shakes the foundations of the democracy.

It can be said that the journey of the media has travelled from the north pole to the south pole because, few years ago the focus was on how to curtail or minimise the restrictions on the media, but today the focus is upon how to control or make the media more accountable. Today the media is so powerful and almost omnipotent that one has got the apprehension that the rule of law and the role of the media might be replaced by the rule of media and the role of law.

