

# **Chapter I**

## **Introduction**

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# Chapter I

## Introduction

The title of the present research is '*The Role and Accountability of the Media in the Indian Democracy- a Critique.*' As the title reflects the role of the media is assessed; along with its issues of accountability. Today, the word media is used by the general public in all the spectrums of life. It is not a surprise because no industry has grown, expanded and flourished as that of media in the present times. Under the garb of speech and expression, the media has encroached upon all the facets of life of an individual. This fact is not only applicable to the Indian soils, but is global. Not only this, the media has become so powerful that it can make or break the government by influencing the people. The public also heavily depends on the media to secure information. In this scenario the question of the accountability of powerful media arises. Is it that the media has just got a fundamental right of freedom of speech and expression which it can use as per its whim or wish? Is the media answerable at all, and if yes, to whom and how? A humble attempt has been made by the student of research in the present thesis to deal effectively with these issues.

### **(a) The scope of research.**

This research is purely a legal research and all the sources of legislations are included in the ambit of the research. The scope of the research includes the aspects of Jurisprudence, the Constitutional law, Constitutional Assembly Debates (CAD), research methods, statutory enactments, delegated legislation in the form of rules, bylaws, orders, regulations etc, and precedents. All the above mentioned subjects are dealt with only to the extent of which they are related to the topic of the research. The scope also includes the organisations, autonomous bodies, agencies which are related to the different modes of the media. The powers, functions, limitations which are prescribed to these bodies have been included in the research. Further all the aspects which are related to the different modes of the media constitute an integral part of the scope of the research. Some fleeting reflections to the areas of Criminal Jurisprudence, Environmental Law and the International Law are made in this research, but only to the extent of their relevancy to the topic of the research.

**(b) Objectives of the research**

The following objectives have been identified for the purpose of this research.

- (i) To identify the rights of the media.
- (ii) To assess the limitations imposed upon the rights of the media
- (iii) To find out the methods of transgression of these limitations by the media.
- (iv) To critically analyse the concept of media trial. To assess the impact of media trial upon the public as well as the legal system.
- (v) To find out whether the media is accountable; and if yes, to what extent.
- (vi) To make an endeavour to strike a balance between the two conflicting rights, that is the right to privacy of an individual versus the right of free press to report.
- (vii) To suggest a few steps to curb the dictatorial aspirations of the media.

**(c) The problem statement of the research**

The main research problem is that what criteria can be evolved in order to strike a balance between the rights of the press versus the right of the individual. This problem includes the issues like what would be the restraints to be imposed upon the free press. In spite of the fact that there are a number of restrictions already prevailing over the freedom of press, but still the press has extended its scope, to such an extent that the day will not be far away when the press will rule through its pen.

**(d) Hypothesis of the research.**

The tentative solution in the form of hypothesis is that the media should not exceed the limits of its rights for the sake of extraneous considerations, so that the rights of the individuals are secured. It is the hunch of the present researcher, that the media does overstep its limits to gain popularity and publicity. The problem of balancing of conflicting rights can be solved if the media before reporting, itself analyses, whether their reporting is unbiased, free, well informed and neutral. Freedom of press is important for every democratic country. Every organ of the state is accountable to each other and

to the people in general. No one is above law and media shall not be an exception to this. The media should be accountable to themselves and should adhere to the ethical codes, rather than be forced by law making agency all the time.

**(e) Nature of the research**

Primarily this research is a doctrinal research as the library method is employed while conducting this research. So also primary sources of data collection are not used, hence this research can be classified as a purely doctrinal research. This research is a legal research as only the legal principles or precepts are analysed here. The researcher has followed the analytical and critical method in this research. The researcher has tried his best to analyse all the relevant concepts in an objective manner. The focus of this research is to give a critical evaluation of the role of the media and its impact on the public and the legal system.

**(f) Sources of data used in this research**

As this research is doctrinal research the sources of data involved in this research are secondary sources of data which are as enumerated below.

- (a) Text books
- (b) Reference books
- (c) Journals
- (d) Index to Indian Legal Periodicals
- (e) C.A.D
- (f) Articles
- (g) Supreme Court Reports (A.I.R, S.C.C, S.C.R)
- (h) News papers
- (i) Internet
- (j) Legislative enactments

**(h) The applications of the principles of research methods in the present research**

The researcher has tried to incorporate the principles of research method in this research. The steps involved in the present legal research are as follows, the identification of the problem, the formulation of hypothesis, the collection of data through the secondary sources, the organising and arranging of data, the analysis of the data, the interpretation of data and the drawing of the conclusion or the resultant based upon the interpretation of the data. The steps of the sampling techniques are not included in the research, as this research is purely doctrinal. So also the techniques of coding and decoding are not included in the research. The research design includes all the steps from the identification of the problem, till the scheme of chapterisation which are explained in this chapter of introduction.

**(i) Incorporation of the theories and the principles of Jurisprudence in this research.**

The relationship between fact and theory is undeniable. Every theory has to co-relate to facts and the happenings of the facts can be based upon a theory or can be explained by the theory. It is a universally known fact that the principles of Jurisprudence are the foundation of every legal system. To put it in other words, the entire fabric of laws is based upon the principles of Jurisprudence. The researcher has made an attempt to base the research on the relevant principles of Jurisprudence. The ‘concept’ of the balancing of conflicting interest, which has been evolved by the eminent jurist, Roscoe Pound- Harvard Law University; is the theme of the present thesis. The objective of this research is to provide criteria for the balancing of the conflicting interest of the media’s freedom of reporting information with the individual’s right of privacy and the rights of accused. This aspect has been dealt in detail in the present thesis. The conclusion of this research is based upon the theory of the modern natural law or the revival of the natural law. According to the revival of the natural law theory, the natural law rights should prevail within the sphere of legal limitations. No right is absolute and has to be curtailed reasonably. Hence the rights of the media as well as the

rights of the individuals cannot prevail absolutely that is without restrictions. Each right has to be limited so that another person's right can prevail. So also few other principles from Jurisprudence have been referred where ever it is thought to be necessary and relevant.

**(j) Introduction of the topic of the research**

The media is regarded as the founding stone of the democracy. This is because it gives to the people requisite channel to express one's own thoughts. The democracy is founded on the principle that the public has a say in the governance of the state, and the press gives them a forum to say what they want. A very different position prevails in the socialist's states which are based upon the Marxian concept, where the people are prohibited from expressing themselves against the government or the government policies. The democracy is founded exactly on the opposite principles of a socialist state, where the democracy rests upon the principle ie the government of the people by the people and for the people. So if the government is going to prevail for the people it is necessary for the government to know what the people desire or aspire. Such desires or aspirations are communicated to the government only and only by the media. That is why it is often said that the media plays a crucial role in the effective functioning of the democracy. The media plays an important role in imparting information to the public. In the absence of the media one cannot imagine the mess caused by lack of information leading to ignorance. In such a situation the public will be unable to know what the government is doing and what they are to do; in which case the society will be in a complete chaos. Realising this situation the media is granted the freedom of speech and expression through which information regarding almost all the aspects of human life should be imparted to the public at large.

The term freedom of press means, the press has the freedom to express its opinion, to inform, to disseminate the information etc. But the freedom of press does not mean that the press has got no limitations. The researcher has tried to distinguish four different but related notions of the freedom of speech,

the freedom of expression, freedom of press, and the freedom of information in the second chapter of the thesis<sup>1</sup>.

The researcher before analyzing the different dimensions of the freedom of media has given a cursory glance to the history of the freedom of press. Aspects like the ancient modes of communication and information are briefly dealt with. The history of the freedom of press is divided into two parts:

- (i) Existence of the press in pre British era. Here the nature of the press has been described which was prevalent in the Mughal era. The informal press which prevailed in the mughal era had a very limited role to perform. The information which was gathered, was generally for the King; and the public received only very limited information.
- (ii) The status of press in British era. The role of the press changed and became wider after the East India Company set its foot on the Indian soils. The rulers were the Britishers and the ruled ones were the Indians. The Indians being the ruled ones used the press as an instrument to incite and instigate the people to join the freedom struggle. A remarkable fact to be noted here is that the press for the first time was used to impart and circulate the news. So also the evil of the pre –censorship was started by the Britishers to curtail the freedom of press. The Britishers wanted to crush the attempts of revolts of independence and they used the weapon of censorship to curtail the independence of the press. The Britishers knew that the press was capable of uprooting their rule in India and hence a number of regulations and statutory enactments were passed to curtail the press like the Indian Mirror, Samachar Darpan, Kesari<sup>2</sup>. Battle between the press and British Government has been dealt in the second chapter of the thesis. The Britishers had recognised the power of the media; and this power has not only consistently, but has also rapidly grown in the present times.

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<sup>1</sup> *Infra*; p. p.37

<sup>2</sup> *Infra*; p. 33

The founding fathers of the Indian Constitution were aware of the struggles of the press to gain freedom and were sensitive to the hurdles in the form of censorship which were faced by the press and hence decided to give a firm footing to the freedom of speech and expression.

The Constitution confers the right of freedom of speech and expression in the Article 19(1)(a) The freedom of press is included impliedly in Article 19(1)(a) of the Constitution. Hence the media enjoys the fundamental right of speech and expression. The aspect of this right has been covered in this research<sup>3</sup>.

Further the researcher has moved on to the components of the press; which includes the correlated aspects of press such as the right of printing, publishing, circulating, disseminating the information<sup>4</sup>.

Apart from these aspects the scope of the press is very broad and includes the right to criticize which is considered as one of the pre requisites of a healthy democracy. If the right to criticize is not incorporated in the freedom of press then the press loses its life and may become only a puppet in the hands of the government. The power to criticize, of the press is very crucial and acts as a deterrent check on the government or its officers<sup>5</sup>. Some other powers of the press which are scrutinised include the power to conduct interview and the power to report court proceedings. Both these powers are very important and subjects of debate. The power to conduct the interview can be exercised only if the interviewee has given the consent<sup>6</sup>. This technique of conducting interviews has been employed by the media on very extensive scale these days. Thus the media conducts and hypes the interviews of the prominent people, just to impart information, or for any other purpose; such issues are dealt in the forthcoming pages. The researcher has dealt with the aspects of merits of the power of the press to conduct interviews. Another most controversial power of the media is to report the court proceedings. Many a times the media while reporting the court

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<sup>3</sup> *Infra*; p. 35

<sup>4</sup> *Infra*; p. 42,43

<sup>5</sup> *Infra*; p. 46

<sup>6</sup> *Infra*; p. 47

proceedings affects the process of the court thereby causing interference of the smooth functioning of the courts. This aspect is analysed with the relevant case laws<sup>7</sup>. Another controversial power of press is to report the legislative proceedings. Here the power of the press to report the legislative proceedings is in direct conflict with the parliamentary privileges. In such a situation, whether the parliamentary privileges should prevail or should they give way to the democratic right to know, which the press protects and promotes<sup>8</sup>. An attempt has been made to deal with such complicated issues. Aspects like the power of the press to advertise have been dealt with the help of the case laws, which have given a wide meaning to the term advertisement<sup>9</sup>.

Another very important power of the media which constitutes the life and the blood of the media is the power to broadcast. A detailed description of the power to broadcast has been attempted, so also the various types of electronic broadcasting have been dealt along with their impact<sup>10</sup>.

The researcher has then moved on to analyse and evaluate the press commissions which were constituted in the year 1954 and 1982; a brief account of their objectives has been outlined. The main purpose of the appointment of the commissions was to seek recommendations from them, for the development of the press. These recommendations have been analysed by the researcher.

Every right in a legal system is demarcated by limitations and so the Indian Constitution on one hand confers the freedom of speech and expression to the individuals; and on the other hand empowers the state to place the restrictions on the said freedom. Again the Constitution does not give a free hand to the state to impose restrictions, but imposes restriction of “reasonability” upon the limitations, which the state can place upon the freedom. That means the state can curtail the right of free press only by imposing reasonable restrictions on the freedom. The question which

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<sup>7</sup> *Infra*; p. 48

<sup>8</sup> *Infra*; p. *Id*

<sup>9</sup> *Infra*; p. 49

<sup>10</sup> *Infra*; p. 57

often arises is that whether the restriction is within the purview of reasonability or not; and there are a number of judicial pronouncements dealing with the 'reasonable' aspect of the restrictions<sup>11</sup>. The researcher has analysed the landmark judicial pronouncements regarding this aspect. Sometimes the judiciary has given a broad aspect to the freedom of press and sometimes, a narrow scope of right has been granted. With the help of the case laws the researcher had tried to cull out the scope of the freedom of press.

But one cannot get the exact scope of freedom of media by just analyzing the Constitutional limits, because the freedom of media is further limited by various enactments. Actually the enactments had started from the censorships which were imposed by the British Government. Some very stringent enactments which prevailed were the Gagging Act and the Vernacular Press Act. After the Constitution many enactments are passed which deal with the limitations of press and the media<sup>12</sup>.

For the sake of the convenience, the researcher has evolved the classification of the statutes based upon the nature of the statute. If the statute puts the general restriction on press and the media, it is classified as a general statute such as the Indian Penal Code, Information Technology Act, Monopoly and Restrictive Trade Practices Act etc.

The Information Technology Act 2000 can be considered as a statute which is responsible to bring a structural change in the modes and methods employed by the media to impart the information to the public. This statute has been analysed in depth in this research. Some other statutes which impose general restrictions on the press are also analysed and evaluated herein. Another type of legislations which further curtail the freedom of speech and expression inclusive of freedom of press are the specific legislations. Such legislations are described as specific legislations by the researcher because they deal with specific aspect of restriction imposed upon the freedom of press like The Press and Registration of Books Act 1867. This statute deals with the regulation of the press, related only to the aspect of the printing of books and the

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<sup>11</sup> *Infra*; p. 61

<sup>12</sup> *Infra*; p. 72

newspapers by the press. The issues like the impact of this statute on the freedom of press have been dealt in depth by the researcher<sup>13</sup>. This part of the research comprises the analysis of many more statutes<sup>14</sup>. The Official Secrets Act 1923 was enacted by the British government mainly to protect its secrets against the Indian and other foreign countries. The object of this statute was to penalise any person who leaks the official secret in any way. The question that is raised is of the utility of this statute in today's times; especially after the enactment of the Right to Information Act 2005, which has an overriding effect over the Official Secret Act<sup>15</sup> subject to the provisional condition mentioned in the statute.

One statute which constitutes a high level mark of authoritarian view is the Prevention of Publication of Objectionable Matter Act, 1976 (repealed in 1977). This statute is no doubt repealed but is still analysed for the perusal of academic interest. The analyses of this statute points out the conditions which amount to vast curtailment of freedom and which reflect upon the government's intention to cut the throat of the press.

The Press Council Act 1978 has been dealt in this chapter for the reasons it provides for the establishment of the Press council. The origin of the Press Council has been dealt in brief, along with the powers and functions of the Press Council<sup>16</sup>. How far the recommendations of the Press Council are really implemented by the news agencies is a question which requires to be answered. The Prasar Bharati Broadcasting Corporation of India Act 1990 is considered to be the most dynamic and the liberal legislation regarding the press and media in India. This statute is termed as the most crucial statute because it has for the first time granted independence to the media from the control of the government. The main object of this statute is to promote the freedom of the press and to ensure a balanced growth and expansion of the broadcasting of the modes of the media. This statute imposes the regulations upon the modes of the media for the sake of the advancement and development of media itself. It mandates the projecting of such programs which furthers the Constitutional values.

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<sup>13</sup> *Infra*; p. 78

<sup>14</sup> *Infra*; p.p. 78 - 96

<sup>15</sup> *Infra*; p. 90

<sup>16</sup> *Infra*; p. 92

The study on media would be incomplete without analyzing The Prasar Bharati Broadcasting Corporation of India Act 1990.

One of the landmark legislations which ensure the implementations of the principles of democracy in practise is the Information Technology Act 2000. One can state that the freedom of press and media and Information Technology Act 2000 are supplementary and complementary to each other. The Information Technology Act strengthens the right of the media. This statute brings transparency in the governance, because the access to the government records is permissible as a matter of right to the individuals. This statute acts as an indirect check on the government; the function which the media also tries to perform. Since this statute is considered to be very vital, in the protecting and promoting of the freedom of press and media, it finds place in the present study<sup>17</sup>.

Many more statutes including The Cinematograph Act 1952 have been scrutinised in this chapter with the focus of assessing the ambit of the freedom of the press guaranteed by these statutes. The Cinematograph Act 1952 seems to be very frequently challenged before the courts of law as the government has made many rules and orders under this Act, which leads to the infringement of this statute. The battle between the press and government regarding the freedom of speech and expression has been incorporated in this research work<sup>18</sup>.

The circuit of the regulations imposed on the press and media would be incomplete if the regulations made by the statutory bodies are not included here. The researcher has incorporated a number of statutory bodies, which governs the press and media.

The first and the most important body which is considered to be the fountain head of the media and broadcasting, is the Government department of Information and Broadcasting. The function of this department is to suggest such measures which would promote the imparting of the information and help in broadcasting. Further it has to perform a number of important functions which have been enumerated in this part of the thesis. The issues like whether this government department really allows the media to work independently or not, is dealt here. The statutory body like the Press Council who have been given the powers to control and regulate the press, have

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<sup>17</sup> *Infra*; p. 97

<sup>18</sup> *Infra*; p. 108

been discussed here. Whether the Press Council has been given sufficient powers, so that they are really in a position to constitute an effective check on the press is a matter of importance, which have been included in this study. The researcher is clouded with the question as to why the Press Council is created, if it is not armed with the appropriate powers to constitute a check.

The Advertising Standard Council of India regulates the content and quality of the advertisements. The powers, the functions of the council have been analysed and assessed. If the Cinematograph Act 1952 is controversial, the central board of film censors is no exception, the rules and the regulations made by the board has given rise to a number of conflicts.

The exercise to deal with the various legislations and the statutory bodies is undertaken with the focus of finding out how these legislations, the regulations and orders made by the legislators affect the freedom of speech and expression inclusive of press. When one glances at these numerous restrictions, it is felt that the media cannot take undue advantage because its freedom is restricted by the string of legislations. So the question before the researcher is that, in the fabric of restrictions, where is the chance for the media to misuse its freedom. But the reality reveals that the media by misusing its freedom infringes the individual's rights. In such a situation what are the factors which aid and assist the media to misuse the freedom in spite of the various restrictive legislations, remains to be explored.

The crucial part of the present study consists of the role of the media and its impact upon the society. The media is one of the most important agencies in a democratic set up because it plays the crucial role of imparting information to the public. It would not be wrong to say that the taking and receiving of the information mobilises the society.

The role of the media prevalent in the ancient times, as compared to the media of the present times has undergone a tremendous change. It occurs to the mind of the researcher that the development in the other spheres of the community is responsible for the change in the role of media. The role of the media in the ancient times was only to give information regarding the wars and the whereabouts of the enemies. A little later this role of the media was enhanced, as the personal information related to

family was being sent and received. From this marginal role of the media, to the all encompassing role of today is a matter of concern and worry, because one has to see the consequences of the very diverse spectrum of the role of the media today.

The prime and the essential role of the media is to impart information. It is for the performing of this role that the media has come into existence. The media has to inform the public the information regarding the Government policies, intentions, plans and schemes. When it is allowed to do so it can be stated that the freedom of press prevails. Imparting information is a very intricate activity because the informer may project the news in such a manner that it wants the receiver to receive. The researcher attempts to find out whether the media imparts the information in an unbiased manner or not.

The function of the media is not only to impart information but also to educate the masses through information. Hence the function to impart information becomes more important as it also includes education through information. Now it has to be seen what type of education is imparted by the media through information. When the children are continuously glued to the television and watching the programs which project either anti social activities, or immoral activities; one can just imagine the quality of education imbibed by those children. The whole civilised society is founded on good ethical and moral education. The question which props up here is that should not the media be more responsible in imparting education through information. The researcher has also tried to lay down the mandates to be followed by the media when it is imparting educative information.<sup>19</sup>

The media not only informs and educates the masses but also acts as a mentor. The responsibilities of the mentor are very heavy as he is responsible for the development and achievements of his ward. The media is a very influential medium and its impact lasts for a longer period. It is for this reason that the media has become powerful and rules the minds of the people through its influence. As a mentor the media should enable the public to make an independent decision or to formulate an independent opinion. The media should perform the role only to this extent and should not indirectly by using its influence dictate to the public its own opinion. But as can be

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<sup>19</sup> *Infra*; p 117

seen today the media while imparting information colours it or twists and turns it in such a manner that the public forms the opinion which the media projects. The question is how to prevent the media from moulding the public opinion and imparting information in an objective ethical manner. Another very positive role of the media that it acts as a guardian of the individual's right. The issues which are dealt here is that, what are the modalities the press resorts to in the cases pertaining to the protection of the individual rights.

The role of the media as an informer, educator, mentor and guardian is not only very applauding but is also very beneficial to the society. As this research comprises of the critical analysis of the role of the media, it becomes imperative on the part of the researcher to assess the positive and the negative consequences of the role and the function of the media. Before one criticizes the role of the media one has to see the positive aspects of the media. The positive impact of the media is commendable. The first and the most important aspect of the media is that it makes the democracy effective and meaningful. It is the media which acts as a linkage between the government and the public; as the thoughts are exchanged of each other, only through media. The pros and cons of this aspect have been given a considerable thought in this part of the thesis<sup>20</sup>. Significant impact of the role of the media is that it helps in the implementation and application of the Doctrine of Rule of Law as propounded by A.V Dicey<sup>21</sup>. Many a times the media assists in enforcing the Constitutional values such as equality, fraternity, nationality etc. The media enforces such Constitutional values by way of imparting information to the masses. So even if the masses are not aware of what has been embodied in the Constitution; such values are imbibed by them just because of the influential projection of the media.

The media acts as a strong agency to formulate organised public opinion. The relevance and importance of the organised public opinion<sup>22</sup> has been adequately dealt in this research. It is only through the advertisement and programs like the beti bachao, beti padhao, building and maintenance of clean toilets, swachh Bharat, green

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<sup>20</sup> *Infra*; p 123

<sup>21</sup> A.V Dicey; The Constitutional law (8t Ed)

<sup>22</sup> *Infra*; p 124

India, saving of water and saving of fuel etc, that the media is quite successful in promoting the social values and protecting the environment to some extent. The media is also responsible to grant aid, assistance and help to the needy people in the situations like any other catastrophe. The media provides the help lines in the cases of adverse contingency. All of these issues have been dealt under the relevant chapters

For these activities the media has to be applauded, however unfortunately this is not only the side of the impact of the media. The other dark and unhappy side which prevails as far as the impact of the media is concerned is assessed and evaluated by the researcher. Sometimes the media not only helps in the formation of the public opinion but thrusts its opinion upon the public by imparting information in such a manner that it makes the public believe, what it wants the public to believe. As a result, the society is completely misled by the media. The point to be noted here is that the media has to guide the society but it is doing exactly the opposite. The dangerous consequences of this issue have been dealt in the forthcoming pages. The media sometimes plays havoc with the public's emotions and sentiments by highlighting the scandalous news in a very catching manner. Not only this, but the media sometimes hypes the news for its personal benefits like the Television Rating Points popularly known as the TRP. These grave issues have been tackled and some suggestions have been put forward to minimise this negative impact of the media.

The liberalising policy of 1991 has a dual impact on the media. On one hand it grants independence to the media from the government control while on the other hand it has promoted unfair competition between the different channels of the media. This unfair competition among the different channels of the media has resulted in the race of, which channel projects the news first, and for doing so, the channels adopt unfair means. This unfair practise of the channel jeopardises the public opinion. The liberalising policy of 1991 and the after effects of it have been analysed in the relevant chapter. Another very grave consequence of the liberalising policy is that the media has become commercial. Now it has so happened that the guardian or the mentor or the watch dog, only projects the news in favour of the person who is able to pull the money strings. If the media indulges into 'paid news', one can just imagine

the consequences of this on the democracy, the Constitutional values and the Rule of Law. Such grave and important issues have been incorporated in the present study.

The media trial is the most popular concept which is in vogue today. The researcher has briefly dealt with the origin and the concept of media trial. In order to get exact perception of the concept of media trial in India the researcher first has dealt with the aspects which are related to the media trial in the United States of America and then England. The issues like the origin of the media trial, the extent of the right of the media to hold the media trials which prevail in the United States of America have been dealt in detail. Then what is the position of the media trial which prevails in United Kingdom is also dealt with in the light of legislative enactments. The concept of media trial prevailing in United State of America and England has been incorporated in this thesis for the reason of giving a comparative analysis. After analyzing the concept of media trial in these two legal systems, the researcher has turned his attention to the concept of media trial in India.

At the outset the researcher has dealt with the important issues of the principles of criminal justice which are completely ignored by the media trial. One of the fundamental principles of criminal jurisprudence which is the presumption of innocence unless proven guilty is totally ignored by the media trial. It is the right of the accused that he is presumed to be innocent, unless and until he is proved guilty. In the case of media trial the media without abiding to the legal issues pronounces a person to be guilty. In such a situation, not only the public opinion is created against him but also the judiciary may feel itself under the pressure of public opinion and the overpowering influence of the media. This is a very grave situation as the balance of the case may tilt in favour of the accused or it may go against him. Another important principle of criminal law which prescribes the parameter of the degree of proof is of “beyond reasonable doubt”. It means the guilt of the person shall be proved beyond reasonable doubt. In the case of media trial the person is declared to be guilty even on allegations and the degree of proof of “beyond reasonable doubt” is conveniently forgotten. The consequences of sidelining of the fundamental principles of criminal jurisprudence which endanger the system of criminal justice have been elaborately

dealt with herein<sup>23</sup>. The adverse aspects of media trial such as moulding the public opinion, in favour or against any individual are in contravention with the ethical principles of journalism. Further the media trial even contravenes the doctrine of separation of powers and the Constitutional mandates which state that, each branch of the state has to perform the assigned functions. In case of media trial the media tries to perform the function of the judiciary to adjudicate the conflicting matters which is allocated by the Constitution. The pertinent question is who has given the right to the media to step in the shoes of the judiciary? The present researcher has dealt with these complicated issues in the forth coming pages. Further a comparison between a fair trial by the court and trial by the media has been attempted by the researcher, in which the violation of legal issues, the pressure which is imposed upon the judiciary etc are also incorporated in the relevant chapter. The media trial also has a repercussion on the social status and the image of the accused. If the media has declared a person to be guilty and the judiciary has acquitted such a person then the society believing the projections of media is not very willing to attribute the acceptable social status to him; as he has lost image and social status due to the media projecting him as a criminal. This also has another more severe impact which is losing of the faith in the judiciary. If the media has projected a person to be guilty and consequently a competent court has acquitted him then the public may have the apprehension that the person was acquitted due to extraneous consideration. The public imposes a lot of faith in the media, it always feels that media is their spokesman and functions for their rights. So also the influence of the media is so powerful that the public takes the verdict of the media to be correct, fair and objective; nobody questions the intentions and the motives of the media. So many a times it happens that the media misleads the society by conducting the media trial.

The recommendations made by the Law Commission in its 200<sup>th</sup> report, and the suggestions made by Hon'ble Mr. Justice K.G. Balakrishnan<sup>24</sup>, Former Chief Justice, Supreme Court of India have been incorporated in this work. The researcher has made a humble attempt to suggest a few guiding principles which if followed by the media, would make the reporting of judicial proceedings more in consonance with the

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<sup>23</sup> *Infra*; p 130

<sup>24</sup> Law Commission 200<sup>th</sup> report (2006)

principles of justice. The present researcher feels that there is a difference between two notions, which are media trial and media activism<sup>25</sup>. The researcher has dealt in depth these two concepts. Today instead of media trial media activism would be beneficial for the society; but the media trial is popular among the public. So one has to see the factors which make the media trial so popular. These factors are elaborated and analysed in the forthcoming pages. An attempt has been made to find out whether the media trial prevails only for the commercial gains for the media or it is the public demand for such trials. One query which arises is that, is the media responsible to create the public demand. Why media trials are in demand and what alternatives can be forwarded, are the challenges faced by the present researcher.

The crucial aspect of this research work constitutes the issues and challenges of the media. The media is regarded as indispensable postulate of the society. One can compare media to a mirror which reflects the realities. The media should not twist or distort information, but merely should reflect the reality as it is. No other medium is as influential as the media, so one ponders to think as to what are the reasons for the media's highly influential powers. The researcher has analysed and accessed the theories of the media influence. Ideally the culturist theory should prevail, however in the reality; the class dominant theory of media influence prevails.

The challenges faced before the media today are very complex. The concept of paid news goes grossly against the very foundation of the democracy, as it cheats the people by giving them false or incorrect information for some monetary or other consideration. In a democratic country like India, the people rely on the media while making their choices. When the media itself misguides the people for some selfish gains, then the entire democracy is endangered. The researcher has tried to throw light on this aspect.

Cross media holdings is another impediment to democracy. Multiple channels are encouraged so that the multiple views can be appreciated, but when one person or a particular agency holds multiple channels, then the view of that person or that particular agency is projected in different ways and people tend to accept it without appreciating the other side. Few other challenges which are dealt are the glorification of crimes, low literacy rates, aliteracy etc. Some aspects of the social media is also

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<sup>25</sup> *Infra*; p 149

dealt in this research. The advantages and the disadvantages of the social media along with the social implications of the social media are dealt in detail. Further aspects of criminal activities on the social media are dealt with in brief. An important aspect involved in social media is violation of right to privacy. It can be stated that the social media channels are innocently or neutrally conducting their functions, and only when their applications are misused the danger of violation of right to privacy arises.

After elaborating and evaluating all the aspects mentioned above the researcher comes to the conclusion that the media should perform its function neutrally, objectively and ethically. Only then the adverse impact on the media will be minimised.

#### **(k) Scheme of chapterisation**

This research is divided into six chapters, and the scheme of chapterisation is as follows :

Chapter I - Introduction<sup>26</sup> of this research deals with the research methodology, which is followed while conducting this research. The objectives, the research problem along with the hypothesis the nature of research, the sources of data are mentioned in this research. It is a well known fact that the principles of jurisprudence are not only very important, but are considered as the fundamental postulates of every legal system. Hence any concept from a legal system has to be based or is originated from the arena of jurisprudence. Keeping this in mind the researcher has tried to apply the research aspects to some of the principles and theories of Jurisprudence. The relevant principles and theories and principles of Jurisprudence, which have been incorporated in this research, have been mentioned in this chapter.

Chapter – II Freedom of Press: The Constitutional Perspective<sup>27</sup>. The nucleus of this research is the role of the media. Over the years the media has developed as a significant tool to effectively exercise the freedom of speech and expression. To analyse the role of the media, it becomes imperative for the researcher, to deal with the history of the press. The history of the press has been analysed into two segments (A) the pre British era (B) and the British era. Through the historical angle one can easily appreciate as to how the press has performed the various roles from the Mughal period to the British period. After dealing with the history, the researcher has dealt in depth, with the constitutional status of the freedom of press. The researcher has made

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<sup>26</sup> *Supra* p 1-4

<sup>27</sup> *Infra* p 29

a humble attempt to deal with the constitutional provisions, which deal with the press, the rights of the press, the powers of the press. It is a well known principle that no right can be absolute and the scope of the right can be elucidated by demarcating the restrictions imposed on that right, and hence the restrictions are dealt in this chapter. This chapter also contains the reports of the Press Commissions. Lastly the chapter deals with judicial activism, which give an insight as to how the judiciary time and again have protected the press, when the rights were being encroached upon, and also has imposed reasonable restrictions upon the press to uphold the spirit of justice.

Chapter III - Important Legislations Relating to Media in India, the researcher has stated briefly about the some important legislations which govern or control the media. Apart from the constitutional provisions there are number of statutes which deals with the press. It becomes imperative on the researcher to deal with these statutes exhaustively (only the provisions related to the press) to make his research comprehensive and complete. Sixteen statutes have been divided according to their content into two groups, namely general legislations and specific legislations. Further some statutory bodies which deal with the aspects of the press are also dealt in this chapter.

Chapter IV- Role of Media in Democracy, the researcher has tried to examine the role of media in a democratic set up, especially in a country like India, where the people rely heavily on the media, and the media plays a pivotal role in forming the opinion of the people. This chapter is one of the most important limb of this research. The researcher has dealt in detail the various counters of the role of the media, to mention a few, role of a informer, mentor, guardian, educator etc. As the media dispenses a central, conspicuous and the vital role, it is said to be the oxygen of the democracy. To put it in other words, the democracy survives only because of the effective and the objective functioning of the press. After dealing comprehensively with the role of the press, the researcher has turned his attention to another crucial aspect of the research that is the impact of the media upon the society. In today's times no agency is as influential as the media as it has tremendous potential to influence the masses on the large scale in all walks of life; which is why, the media is regarded as omnipotent. The impact of the media is dual; on one hand there is positive impact of the media upon the society, on the other hand there is a negative impact of the media on the society. The positive as well as negative impact of the media, upon the society has

been dealt exhaustively in this chapter. Further the researcher has also projected as to how the media sometimes in a quest to provide spicy news, ends up infringing the rights of the accused, paving way for media trial. In order to study the impact of the media trial, the researcher has also done a comparative analysis of the position of media trial prevalent in the United Kingdom, United States of America, and India.

Chapter V- Issues and Challenges before the Media, the researcher has tried to analyse the responsibilities of the media. The media is not only bridled with the task of shouldering a very heavy, important and crucial duty in the present times; but also has to face stiff challenges. At the outset of this chapter, the researcher has dealt with the issues, like the responsibilities of the media and the theories of the media influence. Further, the researcher has tried to deal with the challenges which are faced by the media, such as problem of paid news, cross media holdings, neglecting important issues, aliteracy etc. Later the researcher has also dealt with the concept of social media, its development and its legal implications. Another important aspect of social media vis a vis the right to privacy has also been dealt in this chapter. However the vast and diverse subject of the social media, the researcher has only given a brief overview of the concept of the social media and has refrained from dealing with the minute details of the concept of the social media.

The final chapter of this research deals with the concluding remarks, a few suggestions in the light of the objectives of this research are also made, so also the researcher has tried to state that his hypothesis is correct.

#### **(K) Review of literature**

- (i) Manoj Ranjan; *Media in Modern Law* (Deep & Deep Publication 2011)
- (ii) Ram Jethmalani, D.S. Chopra *Cases and Materials on Media Law* (Thomson Reuters 2012)
- (iii) Madhavi Goradia Diwan; *The Facets of Media Law* ( Eastern Book Company 2013)
- (iv) Dr. S.R. Myneni *Media Law* (Asia Law House 2014)
- (i) The book '*Media in the Modern India*' written by Dr. Manoj Ranjan consists of 318 pages and is divided into five chapters. The first chapter is the introduction, which introduces the topic and deals with the pioneers of Indian Journalism. Further the author has dealt with the types of journalism such as print journalism, advocacy journalism, yellow

journalism, environmental journalism etc. The second chapter consists of Media in Indian perspective: the Gandhian era. This chapter deals less with the concept of history of the media and more with the Gandhiji's journey to journalism. Each and every minute details of Gandhiji's freedom movement and the role of the media in the freedom movement have been dealt elaborately in this chapter. Media and the Globalised world is the title of the third chapter of this book. Initially in this chapter, author has commented on the impact of the globalisation and the technology upon the media. Further the author has analysed the journalism freedom in twenty five countries altogether. So also the comparative analysis of the legal restraints prevalent in various countries has been dealt with, along with the problem of the global journalism.

The fourth chapter deals with the concept of media trial. Issues like the political expedience, ethics of the sting operations, violation of the law and the sting operation, impact of the pre-trial publicity etc, has been dealt with. The author is of the view that the media should be regulated by evoking the courts power to punish for contempt. Further he has expressed that the media trial has more negative impact than the positive.

The last chapter is titled as the impact and analysis. In this chapter the author has analysed the role of media from pre independence till to date. The author is very critical about the role of the media and has stated that the media should not indulge in shallow reporting for any personal or professional gains, but only be a neutral messenger.

- (ii) The book, *Cases and Material on Media Law*, authored by Ram Jethmalani and D.S. Chopra, consisting of 1675 pages, and ten chapters; is a very exhaustive and informative text on Media Law. The authors of this book have analyzed not only the constitutional provisions, but also almost all the statutory provisions relating to the media law. The endeavor of the authors was to analyze the judicial pronouncement which falls under the legislative enactments related to media law. In this book, first and foremost, the constitutional provisions related to freedom of speech and expression is discussed in detail with ample case laws. The complicated

counters of freedom of speech and expression have been explained with the help of case laws. A whole chapter has been devoted to the limitations on the freedom of speech and expression. The term reasonable restriction is discussed at length in the light of case laws. The authors have dealt with some of the restrictions on the freedom of press at great length. The act of defamation which occupies, a conspicuous place in the restrictions on the freedom of speech and expression is dealt comprehensively. A whole chapter has been devoted to defamation including the provisions of the Indian Penal Code relating to defamation. As compared to defamation the author has dealt with the concept of contempt of court, more exhaustively. How contempt of court is a limitation on the freedom of press has been illustrated by the Supreme Court cases. The restriction of the obscenity has also been dealt in brief by the author. The concept of Trial by Media has been handled by the authors with the help of illustrations in a very objective manner. Further the authors of this book have explained and analyzed no less than twenty five legislative enactments pertaining to media law. Each statute is systematically and comprehensively dealt with. Each provision of the statute has been stated and the amendment by which it was inserted in the statute has been stated in the book. Even the original statutes and the amended versions are included in the book. The exhaustive text pertaining to the statutes reflects upon the author's efforts taken to write in detail the content, the sections, the substituted and amended versions of the parts of the states.

No doubt that this book is very a comprehensive study material for the students of Media Law. It contains the case laws as well as the statutes which are related to media law. The remarkable aspect of this book is that it contains most of the statutes related to Media Law. The students of Media Law can at one glance and in one text book can find the case laws as well as the statutes pertaining to media law.

- (iii) The Book *Facets of Media Law*, is authored by Madhavi Gorakh Diwan. The book deals with the multiple dimensions of the various media laws and consists of 638 pages and seventeen chapters.

This book in its first chapter deals with various dimensions of freedom of press, like Right to circulate, right to receive information, right to report legislative proceedings, right to report judicial proceedings etc. The right to freedom of speech and expression is considered to be the offshoot of the Article 19(1)(a) of the Indian constitution. There is a lot of scope of judicial activism, and the judiciary has from time to time protected the freedom of press and media, whenever there was an attempt by the legislature to wrongfully curtail the same. This book also provides various cases laws where the judiciary has successfully protected the rights of the press and media.

However no right is absolute and the right of freedom of speech and expression also comes with certain limitations. In the very same chapter the limitations imposed on the media, under Article 19(2) are also mentioned. Sometimes, the need arises, where the judiciary has to restrict or limit the right of the press and media in the interest of justice, a glaring example of which is the pre censorship on cinematograph film. In the second chapter a very sensitive issue like the morality, obscenity and the censorship is very well handled by the author. The author does not prefer the rigid standards of the morality as laid down by the law or by the traditional tenets. She further states that the attempts to prohibit a publication because of indecency or immorality have adverse effect. It is difficult in today's era of technology, to abide by the traditional parameter of morality and decency. The author further has given guideline to the judiciary to interpret the laws in a liberal manner so as to expand the scope of the terms indecency and immorality.

A number of cases regarding the contempt of court have been very well analysed in this third chapter, the author has stated that a few criticisms on the judiciary, will not hamper the reputation of the judiciary and its high respect. The fourth chapter deals with the defamation. The author has dealt this chapter in great detail. All the ingredients for the offence of defamation are mentioned. The chapter is rich with case laws.

With the development of media, one of the most affected legal rights is, the right to privacy. The fifth chapter deals with this aspect. According to the author, in today's age of communication and information, the right against which a heavy

prejudice is caused is the right to privacy. In other countries there are several legislations which are intended to protect the privacy of the individuals, the law in India to that effect is not yet developed. In this chapter, the sting operation is also dealt with considerable detail, along with its legal implications.

The concept of Copyright has been adequately dealt in the sixth chapter. The author has dealt with almost every aspect of copyright law concerning the media. There are immense judgements of various High Courts on the issues of copyright.

The seventh chapter deals with cinema. In this chapter the author has dealt with the Cinema as an instrument of exercise of right of speech and expression, right to portray the historical events etc. The author has also dealt in detail about how the visual medium is more influential. Various judgements and the opinion of the judges have been analysed in a remarkable fashion. The author has not only dealt with the Cinematograph Films Act 1952 in considerable detail, but also has at length dealt with the concept of censorship. Madhavi Gordia Diwan has also mentioned the regulations of the cinema halls, and has concluded the chapter with the self regulations.

The rights of publicity have been dealt in a concise manner in the eighth chapter of this book. The right to information constitutes the spirit of the press and the media which occupies an important place in the book. Several statutes, which deal with the right to information, have been briefly dealt with. The salient features of Right to Information Act 2005, has been dealt in lucid manner. Apart from these aspects, right to information in United Kingdom and European Court has also been mentioned. The aspect of hoarding political advertisements and paid news etc has been covered under the chapter of advertising.

The eleventh chapter consists of a very controversial aspect – that is the hate speech. The comparative analysis of the legal provisions of hate speech has been incorporated in this chapter. The issues of the parliamentary privileges along with the leading case laws have been dealt in chapter number twelve. The author have urged for the need for codifications in this respect. The reporting of the judicial process has been discussed in the light of the importance of open justice rules, which includes the concept of media trial in chapter thirteen. Media cannot function without the system of broadcasting; hence the concept of broadcasting is

dealt in detail in chapter fourteen of this book. Each and every aspect of the broadcasting from the evolution of the broadcasting till the TRAI recommendations has been dealt exhaustively. A cursory glance has been given to the concept of taxation on the media including the impact of taxation on the circulation of the newspapers.

The sixteenth chapter can be considered as the highlight of the book, which contains the emerging trends, media ethics and regulations. The last chapter that is chapter seventeen deals with the number of statutes which can be considered as the historical foundation of the right to media and the press

(iv) The book '*Media Law*' written by Dr. S.R. Myneni consists of 560 pages and is divided into five units and further sub divided into twenty three chapters.

The first unit deals with the meaning, characteristics and history of the mass media. It also deals with the classification where the media is classified as print media, books, magazines, newspapers etc. Even the media such as mobiles, video games, blogs etc are discussed. The organisational structure and management of the mass media are also dealt here in. Along with the impact and importance of the mass media on the people, the author has pointed out the difference between the visual and the non visual media. The last part of the unit consists with the number of self regulation codes.

The second unit begins with the meaning and the concept of the press. The constitutional provision of the freedom of speech and expression, inclusive of freedom of press, has been dealt in detail. The entire unit has been devoted to analysing of thirty one statutes. Some statutes are dealt in detail such as The Press and book Registration Act 1867, The Press Council Act 1978, The Contempt of Courts Act 197. Whereas the other statutes are only dealt partially to the extent of their relation to the concerned unit, such as the Official Secret Act 1923, Civil Defence Act 1968, Indian Penal Code 1860 The Criminal Procedural Code 1973 etc.

The entire third unit is devoted to 'films'. Aspects such as origin and impact of film, role of dramas, film censorship, are dealt herewith. The Cinematography

Act 1952, along with the rules and orders 1961 are dealt extensively in this unit. Further the author has dealt with cine workers welfare, many other rules and orders related to this statute in the same unit.

Electronic broadcasting media radio and television constitute the content of unit four of this book. The concepts of electronic broadcast media, effects of television on the people etc are dealt here with. Government policies along with the freedom to telecast are also dealt upon. The Prasaar Bharati Act 1997 and the rules made there under are also dealt in the same unit.

The fifth unit deals with the right to information. The salient features of the Right to Information Act 2005 are discussed exhaustively and extensively under this unit.