

# Media, the Fourth Pillar of Democracy: A Critical Analysis

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Received: January 31, 2019

Accepted: March 09, 2019

**ABSTRACT:** *In the Indian constitution, the words "Freedom of Press" is not expressly mentioned, but it is implicit in Article 19(1) (a), i.e. every citizen's fundamental right to free speech and expression and media also exercise the same right. The apex court of India has also stated that though freedom of speech and expression of Media is not explicitly guaranteed as a fundamental right, it is implied in the Constitution as freedom of free speech and expression. The freedom of press has always been considered in all democratic and civilized countries and also Edmund Burke described the freedom of press as the Fourth Estate of Democracy. But in recent times, the fourth pillar needs an urgent restoration because of its ill-effect. Once the media was highly regarded as the voice of people, but now it has become the synonyms of lies, hatred, propaganda, blackmailing etc. it can be perceived through its notion that the standard of media has deteriorated by leaps and bounds. Hence, new laws, rules, framework or guidelines are the need of the hour to control the ill-effect of media and to bring back its lost glory and to bring back to the mainstream which seems lost in the contemporary India.*

**Key Words:** : Freedom of Speech, Media, Democracy, Rights, Restrictions, Regulations, Expressions, Communications.

## Introduction

Media is the plural form of medium, which (broadly speaking) elaborates any channel of communication. This can embrace anything from printed paper to electronic data and encompasses art, news, educational content and numerous other forms of information. Digital media, which makes up an increasingly vast portion of modern communications, is comprised of intricately encoded signals that are transmitted over various forms of physical and virtual media, such as fiber optic cable and computer networks<sup>1</sup>.

According to Edmund Burke media is considered and regarded as the fourth estate of democracy<sup>2</sup>. The media has the power to influence the people with ease as compared to any other means, it has a direct impact and has a wide appeal it can easily change the perception of an individual towards the way they like too. Media nowadays playing with the emotions of the society in order to take undue advantages and to make more money. It is the same media which was once the eye, ear, and mouth of society, but now it is shamming the society with its false and fabricated substance in the form news.

The Constitution of India did not specifically talk about the media in particular but an inference is drawn from the **Article: 19(1)(a)**. A free and fair media is a key aspect in civil society and any oppression on media through any means is unjust, unbearable, and a threat to free speech and expression in a civilized society. Media is the voice of masses. It is the platform where voices are made, spread and heard like a fire in the jungle as its ambit is that far. It connects one with the other and helpful in many ways.

A media also has another side which is quite unrealistic in context with it and many will never accept the ugly side of it. Media can be very cruel as well, the race of competition and market control has badly affected its reputation to a great extent. Media is big billion enterprise and with better connectivity and reach the ugly and uncanny aspect are in front of the common people that how media tends to create hatred, provide false information, manipulated facts, secured information of public on public domain are just a few things in context with the ugly side. The media do play a vital role as well if we talk in context with its positivity but the cons have risen up so much that the pros of media are being overshadowed. Media is still regarded as the need of the hour and no one can't deny the fact that how important media is but the question remains the same that will be it same media where people use to say that, '*a pen is mightier than the sword*', or media is just a puppet of the government in party or those who're having the money.

<sup>1</sup>Available at: <https://www.techopedia.com/definition/1098/media>. (last visited on March 10, 2019).

<sup>2</sup>Available at: <https://www.thoughtco.com/what-is-the-fourth-estate-3368058>. (last visited on March 10, 2019).

## Emergence of Media in India: Brief History

Indian Media consists of several different types of communications: television, radio, cinema, newspapers, magazines, and Internet-based Web sites/portals. Indian media was active since the late 18th century with print media started in 1780, radio broadcasting initiated in 1927, and the screening of Auguste and Louis Lumière moving pictures in Bombay initiated during the July of 1895. It is among the oldest and largest media in the world. Media in India has been free and independent throughout most of its history, even before the establishment of the Indian empire by Ashoka the Great on the foundation of righteousness, openness, morality, and spirituality. The period of emergency (1975–1977), declared by Prime Minister Indira Gandhi, was the brief period when India's media was faced with potential government retribution<sup>3</sup>.

## Laws Governing Media in Pre and Post Independent India

### Pre- Independence Legislations-

#### ❖ The Censorship of Press Act, 1799

Lord Wellesley enacted the regulation anticipating the French invasion of India. It had almost imposed wartime press restrictions including pre-censorship. These restrictions were relaxed under Lord Hastings, who had progressive views, and in 1818, pre-censorship was dispensed<sup>4</sup>.

#### ❖ The Licensing Regulations, 1823

The then acting Governor-General John Adams, who had reactionary views (to what?), enacted the regulation. According to these regulations, starting or using a press without a license was a penal offense. These restrictions were directed chiefly against Indian language newspapers or those edited by Indians. Rammohan Roy's Mirat-ul-Akbar had to stop its publication with the emergence of this act<sup>5</sup>.

#### ❖ The Press Act of 1835 or Metcalfe Act

Metcalfe Governor-General (1835-36) repealed the obnoxious 1823 ordinance and earned the epithet, "liberator of the Indian press". The new Press Act (1835) required a printer/publisher to give a precise account of premises of a publication and cease functioning if required by a similar declaration. The result of a liberal press policy was the rapid growth of newspapers<sup>6</sup>.

#### ❖ The Licensing Act, 1857

Due to the emergency caused by the 1857 revolt, this Act imposed licensing restrictions in any addition to the already existing registration procedure laid down by Metcalfe Act and the government reserved the right to stop publication and circulation of any book, newspaper or printed matter as it deemed fit<sup>7</sup>.

This act replaced Metcalfe's Act of 1835 and was of a regulatory, not restrictive, nature. As per the Act, (i) every book/newspaper was required to print the name of the printer and the publisher and the place of the publication; and (ii) a copy was to be submitted to the local government within one month of the publication of a book.

#### ❖ The Vernacular Press Act, 1878

A bitter legacy of the 1857 revolt was the racial bitterness between the ruler and the ruled. After 1858, the European press always rallied behind the Government in political controversies while the vernacular press was critical of the Government. There was strong public opinion against the imperialistic policies of Lytton, compounded by terrible famine (1876-77), on the one hand, and lavish expenditure on the imperial Delhi Durbar, on the other. The Vernacular Press Act (VPA) was designed to 'better control' the vernacular press and effectively punish and repress seditious writing<sup>8</sup>.

<sup>3</sup>Available at: <https://www.thehansindia.com/posts/index/Hans/2015-03-13/Pre-independence-regulation-of-Indian-newspapers/137007> (last visited on March 10, 2019).

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Supra note 1 at p. 3

<sup>8</sup>Ibid.

❖ **The Newspaper (Incitement to Offences) Act, 1908**

Aimed against the extremist nationalist activity, the act empowered the magistrates to confiscate press property which published objectionable material likely to cause incitement to murder/ acts of violence<sup>9</sup>.

❖ **The Indian Press Act, 1910**

This Act revived the worst features of the VPA—the local government was empowered to demand security at registration from the printer/publisher and forfeit/deregister if it was an offending newspaper, and the printer of a newspaper was required to submit two copies of each issue to the local government free of charge<sup>10</sup>.

❖ **The Indian Press (Emergency Powers) Act, 1931**

This Act gave sweeping powers to provincial governments to suppress propaganda for the Civil Disobedience Movement. It was further amplified in 1932 to include all activities calculated to undermine government authority<sup>11</sup>.

**Post-Independence Legislations-**❖ **The Press Enquiry Committee, 1947**

The Committee was set up to examine press laws in the light of fundamental rights formulated by the Constituent Assembly. It recommended repeal of Indian Emergency Powers Act, 1931, amendments in the Press and Registration of Books Act, modifications in Sections 124-A and 156-A of IPC, among others<sup>12</sup>.

❖ **The Press (Objectionable Matters) Act, 1951**

The Act was passed along with the amendment to Article 19 (2) of the Constitution. The Act empowered the government to demand and forfeit security for publication of “objectionable matter”. Aggrieved owners and printers were given the right to demand a trial by jury. It remained in force till 1956<sup>13</sup>.

❖ **The Press Commission under Justice Rajadhyaksha in 1954**

The commission recommended in 1954 the establishing of All India Press Council, fixing the press-page schedule system for newspapers, banning crossword puzzle competitions, evolving a strict code of advertisements by newspapers, and the desirability of preventing concentration in the ownership of Indian newspapers<sup>14</sup>.

Other Acts passed include Delivering of Books and Newspapers (Public Libraries) Act, 1954; The Working Journalists (The Conditions of Services) and Miscellaneous Provisions Act, 1955; The Newspaper (Price and Page) Act, 1956; and The Parliamentary Proceedings (Protection of Publications) Act, 1960<sup>15</sup>.

**Various Dimensions of Media**❖ **Media as a Player**

From time immemorial legal history and beyond legal memory, man has expressed his ideas through various channels like symbols, signals, speech, script, print and now computer language as well. Since ideas and information are so important for the growth and survival of a free and democratic society, such a goal cannot be achieved unless every citizen has a fundamental right to give expression to his ideas and opinions. This came to be known as the right to free speech and expression. The Preamble to the Constitution of India resolves to secure for the citizens of India, liberty of thought, expression and belief. Focusing on the core objective of the Indian Constitution, the Preamble assures every citizen of India the freedom of speech and expression, religious independence and choice of going by one's own belief. The part III of the Indian Constitution deals with Fundamental Rights. The Constitution contains the right to freedom, given in Articles 19, 20, 21 and 22, with the view of guaranteeing individual rights that were considered vital by the Framers of the Constitution. The right to freedom in Article: 19 guarantees the Freedom of Speech and Expression, as foremost of the six freedoms.

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<sup>9</sup>*Ibid.*

<sup>10</sup>*Ibid.*

<sup>11</sup>*Supra* note 2 at p. 4.

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*

<sup>14</sup>*Ibid.*

<sup>15</sup>*Ibid.*

All Indian citizens enjoy a constitutional right to give free expression to their views, opinions, and convictions. They have, for this purpose, the right to seek, receive and impart information and ideas. As the exercise for freedom of expression requires a medium through which information and ideas may be communicated, it naturally follows that the medium shall also be free. Our Constitution does not specially mention the freedom of the media as in the US Constitution, it is implicit in Article 19 (1) (a) of Constitution of India<sup>16</sup>. However, the Supreme Court has, following very explicitly ruled that freedom of the press is included in the guarantee of the freedom of expression, which also includes the liberty to publish and circulate. The Apex Court has held that there was, therefore, no need to make a separate provision for the freedom of the press<sup>17</sup>.

#### ❖ **The Freedom of Media**

Freedom of speech and expression is a vital cog to democracy. It is being assured by the Constitution of India as well as by the virtue of Universal Declaration of Human Rights, and through other international charters and treaties as well which are adopted to ensure the protection of human and fundamental rights. It flows from these guarantees that the people are entitled to receive news and views, without interference and to disseminate it regardless of the frontiers, and that is an integral part of the democratic process. In practice, it is the media which daily exercises this right.

Thus, two key fundamental rights are involved in the right to free speech and expression, namely

- The right to receive news and views,
- And the right to communicate news, information, and views.

These rights largely depend on the freedom of all those indulge in the media to exercise their role as collectors and communicators of news and views, without interference.

#### ❖ **Right to freedom of speech and expression not confined to national boundaries**

The question of whether an Indian citizen's right to freedom of speech and expression extends beyond the geographical limits of India was considered by the Supreme Court in the case of *Maneka Gandhi v. Union of India*<sup>18</sup>.

In this landmark judgment, the Supreme Court held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thoughts with others not only in India but abroad also.

The court observed:-

*Freedom of speech and expression carries with it the right to gather information as also to speak and express oneself at home and abroad and to exchange thoughts and ideas with others not only in India but also outside.*

The Court observed that the authors of the Constitution had deliberately chosen not to use words confining the right by refraining from the use of words 'in the territory of India' at the end of Article 19(1) (a).

#### ❖ **Press as the Mother of all Other Liberties**

One of the most exhaustive and illuminating exposition of the importance of the press and its being regarded as "The mother of all other liberties" in a democratic society is contained in the judgment of Venkataramiah, J. in *Indian Express Newspaper v. Union of India*<sup>19</sup>. This case raised important questions about the freedom of the press *vis-à-vis* the State's power of taxation. Several writ petitions were filed in the Supreme Court by newspaper owning companies in which the validity of imposition of duty on newsprint under the Customs Act, 1962 was challenged.

It was contended on behalf of the petitioners who consumed large quantity of newsprint in the publication of the newspapers, periodicals, magazines, etc. that the imposition of duty had the "direct effect of crippling the freedom of speech and expression as guaranteed by the Constitution as it led to the increase in the price of newspapers and the inevitable reduction of their circulation". In this case, Venkataramiah J. considered that press plays a very significant role in the democratic machinery and pointed out the importance of freedom of speech and expression in the following words -

*"Freedom of expression has four broad social purposes to serve: (i) it helps an individual to attain self-fulfillment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in*

<sup>16</sup> Dr. B.R. Ambedkar in Constituent Assembly Debate.

<sup>17</sup> Available at:

[http://www.academia.edu/6609357/FREEDOM\\_OF\\_MEDIA\\_IN\\_INDIA\\_A\\_LEGAL\\_PERSPECTIVE](http://www.academia.edu/6609357/FREEDOM_OF_MEDIA_IN_INDIA_A_LEGAL_PERSPECTIVE) (last visited on March 10, 2019).

<sup>18</sup> AIR 1978 SC 597.

<sup>19</sup> (1985) 1 SCC 641.

participating in decision making, and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle is the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration."

While recognizing the importance of the right to freedom of the press, the Court held that there could not be any immunity from taxation since the framers of the Constitution had chosen not to provide for constitutional immunity against such taxation. At the same time, they had been careful to protect the press against local pressures by choosing to confer the power to levy taxes on newspapers on Parliament alone and not the State Legislatures.

#### ❖ Tax liability of Media

Newspaper industry enjoys two of the fundamental rights, viz, the freedom of speech and expression guaranteed under Article 19 (1) (a) and the freedom to engage in any profession, occupation, trade, industry or business guaranteed under Article 19 (1) (g). While there can be no tax on the right to exercise freedom of expression, tax is leviable on profession, occupation, trade, business and industry.

Hence tax is leviable on newspaper industry. But when such tax transgresses into the field of freedom of expression and stifles that freedom, it becomes unconstitutional. As long as it is within reasonable limits and does not impede freedom of expression it will not be contravening the limitations of Article 19 (2)<sup>20</sup>. In the case of *Indian Express Newspaper v. Union of India*, Court said that any tax to be levied on press should be "subject to review by the courts in the light of the provisions of the Constitution"<sup>21</sup>.

#### Constitutional Perspective of Media

Freedom of speech and expression is an essential aspect of liberty as stated in *Maneka Gandhi v. Union of India*<sup>22</sup>. In *Tata Press v. Mahanagar Telephone Nigam Ltd*<sup>23</sup>. It was held here that the commercial speech is also a part of freedom of speech and expression. Chapter on Fundamental rights, Part III in the Indian Constitution, was not incorporated as a popular concession to international sentiment and thinking on human rights in vogue after the conclusion of the II World War. The demand for constitutional guarantees of human rights for Indians was made as far as way back as in 1895 in the Constitution of India Bill, popularly called the Swaraj Bill, which was inspired by Lokmanya Tilak, a lawyer and a great freedom fighter. This bill envisaged for India a Constitution guaranteeing to every citizen, among other freedoms, the freedom of press.

One can say that the debut of press in India was made with commercial interests in mind. It was the contribution of the first British MNC -The East India Company. It was one of those instruments of the British, which was later manipulated by the Indians to serve their interests; as the role of the press underwent a major change and it soon turned out to be one of the most effective weapons Indians had at their disposal during their struggle for freedom from the British. The press was always under the control of the company, but after its press role reversal the necessity to clamp harsh curbs became imminent. Repressive laws were passed and judgments were given curbing press freedom. The 'Founding Fathers and Mothers' of the Indian Constitution attached great importance to freedom of speech and expression and the freedom of the press. They believed that freedom of expression and the freedom of press are indispensable to the operation of a democratic system. They believed that central to the concept of free press is freedom of political opinion and at the core of that freedom lies the right to criticize the Government. They endorsed the thinking of Jawahar Lal Nehru who said, "***I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed and regulated press***"<sup>24</sup>.

The Indian Constitution provides for this freedom in Article: 19(1)(a) which guarantees right to freedom of speech and expression. It has been held that this right to freedom also includes press freedom. It is an implied or deduced right. The economic and business aspects of the press are regulated under Article: 19(1)(g) which provides for freedom of profession, occupation, trade or business which is restricted by

<sup>20</sup>*Ibid.*

<sup>21</sup>AIR1985 1 SCC 641.

<sup>22</sup>AIR 1978 SC 597.

<sup>23</sup> AIR 1995 SC 2438.

<sup>24</sup>Available at: [https://www.academia.edu/34368018/Freedom\\_of\\_Press\\_in\\_India\\_Constitutionality\\_and\\_Scientific\\_Development](https://www.academia.edu/34368018/Freedom_of_Press_in_India_Constitutionality_and_Scientific_Development). (last visited on March 10, 2019).

Article: 19(6) which includes provisions for public interest, professional and technical qualifications and state nationalization- total or partial.

### Reasonable Restriction by Constitution of India on Media.

The right to freedom of speech and expression is limited by the restrictions imposed by that right, and the restriction imposed by the state is also curtailed by the factor of reasonability. So even if the state is empowered to restrain the freedom, this restraintment is not absolute and is subject to the limitation of reasonability. So every restriction has to be reasonable restriction to be valid under the constitution. The Supreme Court in *Papnasam Labour Union v. Maduracoats Ltd*<sup>25</sup> has laid down the reasonability of the restrictions under Articles: 19(2) to 19(6).

- i. The restriction in order to be reasonable must not be excessive that is, it should not go beyond the need to avoid the mischief or injustice. It should not be arbitrary.
- ii. The restriction should have a direct or proximate or reasonable connection or link between itself and the object sought to be achieved.
- iii. The restriction to be reasonable should not be abstract. But no fixed principles can be laid down and the standards of reasonability would vary from case to case and time to time.
- iv. While interpreting the term reasonable, the court should keep in mind the complex issues of the society and the intention of the legislature of the statute in question.
- v. The term reasonable is of dynamic nature and hence the judiciary should keep an elastic and practical approach while interpreting the term.
- vi. It is imperative for the court to analyze the social control before any restrictions can be imposed on the fundamental rights.
- vii. For the interpretation of term reasonable, it is necessary for the court to examine the social welfare and the need of prevailing social norms and values.
- viii. The word reasonable has to satisfy the test of procedural reasonability as well as substantive reasonability.
- ix. For a restriction to be reasonable must be in conformity with the test of Article 14 of the Constitution. It means the restrictions should not be excessive or discriminatory.
- x. While interpreting the term reasonability the courts have to keep in mind the Directive principles of the state policy.

Following are the reasonable restrictions provided by the Constitution of India under Article: 19(2) related to freedom of speech and expression:

#### ❖ **Sovereignty and integrity of the state**

This ground was inserted by an amendment to curb the tense reaction of the people, who were demanding separate entity of the different regions of India.

#### ❖ **Security of the state**

The freedom of expression cannot be exercised in such a manner so as to endanger the security of the state in any way. In *State of Bihar v. Shailabala Devi*<sup>26</sup>, The Supreme Court held that the speeches made by individuals which encouraged and incited the people to commit crimes like murder, dacoity, robbery etc. would definitely endanger the integrity of the state.

#### ❖ **Public Order**

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*<sup>27</sup>, where the court had held that the right to circulation is a part of Right to freedom of Speech and expression.

#### ❖ **Decency or morality**

The elaboration of this ground is reflected in Sections 292 to 294 of the Indian Penal Code. In *Ranjit Udeshi v. State of Maharashtra*<sup>28</sup>, the Supreme Court stated that the section 292 of Indian Penal Code is constitutionally valid as it prohibits obscenity and promotes public decency and morality.

<sup>25</sup>AIR 1995 SC 2200.

<sup>26</sup>AIR 1952 SC 329.

<sup>27</sup>1950 AIR 124, 1950 SCR 594.

<sup>28</sup>AIR 1965 SC881.

❖ **Contempt of Court**

In *C.K. Daphtary v. O.P. Gupta*<sup>29</sup>, it was held that the Section: 228 of the Indian Penal Code and Article: 129 of the constitution are valid and fall under the ambit of reasonable restrictions mentioned in Article: 19(2) of the Constitution. So the freedom of speech and expression are subject to Articles: 19(2), 129, and 215 of the Indian Constitution.

❖ **Defamation:**

The right to freedom of speech and expression does not include in any way to cause harm to the reputation to a person. Causing harm to a person's reputation is called as defamation and is a severe limitation on the right of freedom of speech and expression.

❖ **Incitement to an offence:**

In *State of Bihar v. Shailabala Devi*<sup>30</sup> it was decided that any speech which amounts to incitement of any offence could be banned and the order of ban would fall within the reasonable restrictions mentioned in Article 19(2) of Indian Constitution.

❖ **The Other Restrictions on Media in India:**

There are various legislations in India governing the media and having a check over it functioning and working style be it the print or electronic media. The Hon'ble Supreme Court of India, pronounced a judgment recently on 11th September, 2012 in the case of *Sahara India Real Estate Corp. Ltd. & Ors. v. Securities & Exchange Board of India & Anr.* Centered on finding an acceptable constitutional balance between free press and administration of justice. It sparked off a debate on whether the concept of prior restraint on media reporting of judicial proceedings is valid under the constitutional tenets. The most pertinent aspect of the judgment relates to the **doctrine of postponement** whereby the concerned High Court or the Supreme Court can direct that the publication of judicial proceedings be delayed for a certain period of time. The 56-page long judgment, penned by the Chief Justice of India, is built on the presumption that under the Indian Constitution, probably, no values are absolute and that it also follows that in appropriate case one right [say freedom of expression] may have to yield to the other right like the right to a fair trial. Drawing from the above statement, the Court went on to add that even the concept of 'open justice' is not absolute and hence Courts may place a restriction on the same in the interest of administration of justice<sup>31</sup>. This also includes the Press Council of India Act, 1978, the Prasar Bharti Act, 1990.

**Media as a Problem**

We have a rich tradition of fiercely independent journalism. In fact, most of the big scams were busted by the press. The law enforcers merely followed them up. The poorly paid journalist must be credited for extracting those information which looked inaccessible for the top vigilance teams of the country<sup>32</sup>. Media is playing a pivotal role in society and one can hardly deny this statement but it is also correct that there is problem within its own fraternity at the same time. Because media sometimes showcases inaccurate news, views, and reports just to garner TRP for their own channels. Majority of public reports having had a prior knowledge of news even though they were not the part of that story. Sometimes lack of proper editing also led to the downfall and gives a bad name to the media. The media houses are not centric towards the major issues and rather they are emphasizing a lot more on entertainment issues to get hold of the market share. Some of the biggest fallacy in context with media comprises of defamation, contempt of court, and media trails which actually hampers the credibility of media to a great extent.

❖ **Defamation: The demeaning aspect of Media**

In India, Defamation can be viewed as a civil offense as well as criminal offense and may be defined as the writing, publication, and speaking of a false statement which causes injury to reputation and good name for private interest. The remedy for civil defamation is covered under Law of Torts. In civil defamation, a victim can move high court or subordinate courts for seeking damages in the form of monetary compensation from the accused. Section: 499 and 500 of The Indian Penal Code, 1860 provides an opportunity for the victim to file a criminal case for defamation against the accused. Punishment for the

<sup>29</sup>AIR 1971 SC 1132.

<sup>30</sup>AIR 1952 SC 329.

<sup>31</sup>Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2799913](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2799913) (last visited on March, 10 2019).

<sup>32</sup>Available at: <https://www.lawctopus.com/academike/media-trials-india/> (last visited on March 10, 2019).

guilty person for criminal defamation is simple imprisonment which may extend to two years or fine or both. Under the criminal law, it is bailable, non-cognizable and compoundable offense.

The Constitutional validity of Defamation has been explained by The Supreme Court in *Subramanian Swamy v. Union of India*<sup>33</sup> in which it was held the constitutional validity of defamation laws and rules that they are not in conflict with the right of speech. Apex court also said that one is bound to tolerate criticism, dissent, and discordance but not expected to tolerate defamatory attack.

#### ❖ Contempt of Court: The crossing limit of Freedom of speech by Media

Media is regarded as one of the four pillars of democracy. Media plays a vital role in molding the opinion of society and it is capable of changing the whole viewpoint through which people perceive various events. The media can be commended for starting a trend where the media plays an active role in bringing the accused to hook. But when encroaches the limit of free speech it amounts to contempt of court and in the case of in *Perspective Publications (P) Ltd*<sup>34</sup> v. *The State of Maharashtra* and *C.K. Daphtary and others v. O.P. Gupta and others*<sup>35</sup>. Therefore, apart from the fact that a particular statement is libelous, it can constitute criminal contempt if the imputation is such that the same is capable of lowering the authority of the Court. The gravity of the aforesaid statement is that the same would scandalize the court.

Commenting on the pending cases or abuse of party may amount to contempt only when a case is triable by a judge. No editor has the right to assume the role of an investigator to try to prejudice the court against any person.

#### ❖ Media Trial

In recent times there have been numerous instances in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgment. Trial by Media it is the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. This phenomenon is popularly called a media trial.

In *State of Maharashtra v. RajendraJawanmal Gandhi*<sup>36</sup> the Supreme Court observed: "There is a procedure established by law governing the conduct of the trial of a person accused of an offense. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to a miscarriage of justice. Again it cannot be excluded that the public becoming accustomed to the regular spectacle of pseudo trials in the news media might, in the long run, have nefarious consequences for the acceptance of the courts as the proper forum for the settlement of legal disputes."

#### Conclusion

The way, Indian media is facing the wrath of the society is undeniable. The media sector was once considered to be the most important aspect to raise the voice and to be listened too, but with the changing values and the investment of money in it, is hampering its credibility to great extent. The laws and regulatory bodies seem a bit flippant in order to curtail the negative aspects of media. The media has the power to change the perspective of a person about anything, it circulates. It has a great potential to influence individual thoughts and is capable of changing the entire dynamics through people who perceive various views from it. The wrong needs to be condemned and the good must be appreciated by the media on the basis of merit, it should lay more emphasis on a fair reporting in order to reclaim its lost credibility. The media is a vital cog for the masses and hence, it should give more importance on the core issues of the society and present the same before the society in a better way which should be more realistic and is free from all ill-effects that media, nowadays, bear. *The media has to realize its fundamental freedom and should abide by the law, the media shouldn't usurp the functions of State as well as Judiciary and deviate from its objective and unbiased reporting.* While it also needs to understand that any undesired control on media in a democracy, will also jeopardize the society at large hence, the law needs to be construed in accordance with the change of society which assures the people that media is aware about its rights and duties without infringing any provisions of law of the land in force.

<sup>33</sup>AIR [W.P. (Cr)] 184 o 2014,

<sup>34</sup>1971 AIR 221, 1969 SCR (2) 779.

<sup>35</sup>1971 AIR 1132, 1971 SCR 76.

<sup>36</sup>Cr.L.A. No. 838 of 1997 (Arising out of SLP (Cr.L.) No. 1560 of 1997).

### **Suggestions**

From the discussion above mentioned, it is suggested that

- ❖ the new and strict rules are needed to be incorporated to curb the ill-effects of media.
- ❖ the Regulatory Body should comprise of well-known scholars from the field of law and mass communications to control the functioning of media.
- ❖ the media should be restricted to the extent when there is a threat to National Security.
- ❖ the media should lay more emphasis on core issues rather than giving importance to absurd or illogical issues which has no relevancy with the contemporary issues.
- ❖ that it should provide real information and to stay away from all sorts of TRP ratings.