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## **ON FREEDOM OF SPEECH AND EXPRESSION** **CONCERNING SOCIAL AND ELECTRONIC MEDIA**

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### **ABSTRACT**

*The Constitution of India provides freedom of speech and expression to all its citizens which is subject to reasonable restrictions namely in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or about contempt of court, defamation or incitement to an offence. The said restrictions ensure that the freedom of speech and expression is not transgressed by the citizens in any manner but so utilized to bring out the best in them. Media plays a major role in shaping the nation by way of broadcasting 24x7 news channels, science and technology channels, sports channels, etc. Amidst all these, as news channels are a major form of informing the news events, and news stories from nations and the world, they have been termed as the fourth pillar of democracy. Though the Constitution of India did not specifically provide any rights to the press, freedom of the press was guaranteed time and again through consistent judicial decisions which specified that the press had the same rights of free speech as any other citizen under the Constitution of India and the same were also subject to reasonable restrictions. As the use of newly found social media kept increasing due to its unique concept of sharing live videos, and photographs through social networking sites such as Facebook, Instagram, WhatsApp, Twitter, etc. the right of freedom of speech and expression found a new platform to stand on. Anyone and everyone can now use social media to make himself heard or to give his opinions and share his views with anyone else on a public platform. The widespread use of social networks also came to be used by news channels. News channels created their websites which continuously updated the news headlines through reports, photos and videos. Anyone on the go could stay abreast with the latest happenings through social media and even give his views on any issue, be it political, social, national or international.*

**Keywords:** *freedom of speech and expression, broadcasting 24x7 news channels, social media, Judiciary, India, etc.*

## 1. INTRODUCTION

The Constitution of India is the basic document of the nation. Amongst various other provisions that state the working of the executive, legislature and judiciary, it also sets down the rights, duties and freedoms available to every citizen and the restrictions thereupon. These rights were considered inevitable by the framers of the Constitution to guarantee a proper living for all citizens of the nation. Article 19(1)(a) of the Constitution of India specifies that:

*All citizens shall have the right to freedom of speech and expression.*

**Article 19(2) provides that:** *Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or about contempt of court, defamation or incitement to an offence.*

A combined reading of both provisions creates the result that all the citizens of the nation are entitled to freedom of speech and expression but only to the extent that it does not violate the restrictions which have been laid down on the said freedom. If any individual during the exercise of his freedom of speech and expression steps upon a right of the same/similar kind of any other person, such an exercise will be violated under Article 19(2). Thus, the Constitution has taken care that nobody can overuse his freedom at the cost of overstepping on the same rights of another citizen. Article 14 of the Constitution provides for “equality of law” and “equal protection of law”. Every citizen is equal in the eyes of the law and there is no scope for discrimination on any ground. Hence, the freedom as provided under Article 19(1)(a) shall also be equally available to every citizen. The said freedom is immensely important and the same can be figured out considering that media which has been considered the “Fourth Pillar of Democracy” has also been equipped with the freedom of speech and expression meaning that even the major forms of media, namely the print media, electronic media as well as the recently evolving social media have been provided freedom of speech and expression while performing their functions.

Though nowhere specifically provided for in the Constitution, media has been conferred with freedom of speech and expression by the judiciary under Article 19(1)(a) as it has been conferred to every citizen. It is of utmost relevance to media because media expresses itself to the world at large. Its news stories, news reports, articles, advertisements, editorials, etc. are read by one and

all to update themselves with the who's who of the world. If the said right is ever taken away from the media, it may result in a chaotic situation where journalists and editors are unable to produce news stories as and when they happen. The news channels cannot conduct interviews, debates or opinion polls thus resulting in total unawareness for the general public regarding what's happening in the world and who is to be held accountable for the same. Decisions will be taken bureaucratically as nobody with authority would be responsible to the public.

Media is the fourth estate in a democracy. It plays a major role in informing the public and thereby shaping perceptions and through it the national agenda. Considering how literacy levels are increasing across the world, every individual requires information of one kind or the other mostly relating to current affairs, political scenarios, scientific developments, social upliftment, art and culture, sports, finance, etc for survival in the world.

Due to continuous developments in science and technology, the media has developed modern manners of presenting its news stories. Gutenberg's invention of the printing press in the 14th century has proved to be a boon to the world. The newspapers that can be printed in millions of copies every day now would have been impossible otherwise. But today print media alone is not the sole pioneer of the media landscape.

Today, even though newspapers have created a firm space amidst the people, the news carried through electronic and social media is equally utilized by the public. The invention of the internet and its easy accessibility through computers, smartphones, notebooks and other electronic devices has changed the way people get the news. E-papers, online news, expression of views, opinion polls, online surveys, tweets and comments have made the news system not just a one-way communication from media houses to the public but an informal and prompt exchange of views and ideas concerning current affairs or any political event. People have found a platform where they can express what they feel in respect of anything that is happening in the world. Gone are the days when the major sources of communication, news and entertainment were just selective national and local newspapers, All India Radio and Doordarshan.

While newspapers and magazines were a form of print media which was the earliest form of media communication, it was taken over by electronic media which mainly included television and radio. Today, media offers several other forms of communication which are faster, easier and

more easily accessible than any of the earlier sources of communication like smartphones, laptops, tablets, etc.

It would be impossible to imagine living sans the various forms of media that are available today. But like everything that in excess becomes unhealthy and eventually harmful, even media can be held responsible for several flaws emerging out of the freedom of speech and expression that has been provided to it. India under Article 19 has given the media, freedom of expression because governmental functions must be transparent and the perennial duty of a free press, even under grave risk, is to prevent the three instrumentalities of the State from deceiving people.

Alas, the literacy indigency and amenability to clever misrepresentation of lies by the news media is a syndrome and the vast agrestic are victims. Starting with freedom of expression, three well-known justifications are often advanced. The first view is that freedom of expression is essential to a person's autonomy and self-fulfilment.

The second is the marketplace of ideas, that minimal government regulation will allow robust debate between citizens that are most likely to lead to the truth. The third justification is that freedom of expression is necessary.<sup>1</sup> There is an overlap between these justifications and all have been subject to extensive criticisms. Even the judiciary has time and again recognized the freedom of the press. Though neither the Constitution of India nor the legislators have anywhere specifically provided for the freedom of speech and expression as available to the press, the Indian judiciary has through its various landmark judgments specified that the freedom of speech and expression as available to the citizens of India is also available to the press and media houses.

Likewise, just like the citizens' rights are restricted by reasonable restrictions as mentioned under Article 19(2), the rights of the press and media have also been curtailed by these reasonable restrictions.

### **1.1 RIGHT OF PRESS AND MEDIA IN LIGHT OF ARTICLE 19(1)(A) AND 19(2)**

Article 14 of the Constitution provides for "equality of law" and "equal protection of law". Every

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<sup>1</sup> Justice V.R. Krishna Iyer, "The Regional Media and the Democratic Process" Pg. 26 (2008) Madras Law Journal 4 component of democratic government.

citizen is equal in the eyes of the law and there is no scope for discrimination on any ground.<sup>2</sup> Hence, the freedom as provided under Article 19(1)(a) shall also be equally available to every citizen. The said freedom is immensely important and the same can be figured out considering that media which has been considered the “Fourth Pillar of Democracy” has also been equipped with the freedom of speech and expression meaning that even the major forms of media, namely the print media, electronic media as well as the recently evolving social media have been provided freedom of speech and expression while performing their duties. Though nowhere specifically provided for in the Constitution, media has been conferred with freedom of speech and expression by the judiciary under Article 19(1)(a) as it has been conferred to every citizen. It is of utmost relevance to media because media expresses itself to the world at large.<sup>3</sup>

The value of media freedom comes from the way it serves the interests of the public and the audience.<sup>4</sup> Hence, the researcher has surveyed questionnaires from different groups of professionals in society. Chapter Six deals with suggestions and conclusions based on the research work. The same has been made after thorough research carried out through doctrinal and non-doctrinal studies. It has been concluded that since social media came into existence and its usage started being spread to the common man, electronic media has somewhere lost its grip of monopoly. With electronic media, most of the information communication was a one-way path with only news channels broadcasting the news reports and events.

But with social media, information communication is both-sided and can be responded to through tweets, videos, images, etc. Anyone who is not a professional journalist also can report a news event by sharing photos and videos around him on the platform of social media. For the reason of continuing to have the upper hand in journalism and news reporting, the media has resorted to indulging in activities of media trials and sting operations.

At the same time, running a media house requires huge budgets which if the media undertakes only the objective of social service, cannot be fulfilled. Hence, media has to balance between earning respectable amounts without making profit only as its sole motive on the one hand and

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<sup>2</sup> *ibid*

<sup>3</sup> Jacob Rowbottom, *Media Freedom and Political Debate in the Digital Era*, Pg. 491 (2006) 69(4) *Modern Law Review* 489-513

<sup>4</sup> Jacob Rowbottom, *Media Freedom and Political Debate in the Digital Era* Pg. 492 (2006) 69(4) *MLR* 489-513

the other hand it has to give service to society as its powers of presenting a picture of the world before society are enormous. For this reason, the media uses its powers to present party-specific positive reports instead of monetary favours which results in paid news.

## **2. DEVELOPMENT OF MEDIA**

### **2.1. INTRODUCTION**

The steady growth of science and technology has given many gifts to modern-day man. Endless research and continuous experiments have made many inventions possible. Today, devices that were once merely a dream for millions have become a part of common day-to-day equipment. Thanks to scientific growth, the world that was once extremely difficult to even comprehend, has come down to man's fingertips. Anybody in any part of the world can be contacted within a couple of minutes without any hassles. Likewise, what happens in one corner of the world can be informed to the rest of the world in just a couple of minutes. Not only informing, but with the help of modern-day powerful satellites, the event can be broadcast live to the entire world. Gone are the days when people used to eagerly wait for morning newspapers or evening news to be broadcast to find out what's happening across the country and throughout the world.

Older forms of media like publishing books and newspapers used to require expensive and huge-sized printing presses but their circulation was limited only to a fraction of people, i.e. those who lived in the same nation or state. When electronic media took over, broadcasting via radio and television again relied on expensive equipment, satellites and studios to transmit signals around a country, regionally or globally. The rise of social media in recent years has made a significant change in the way communication is made, be it a personal one like chats and conversations or a public, one like sending news and other information. Communication today can be made merely with the help of a mobile phone and internet connection instead of having to rely on newspapers, letters, telegrams, huge television sets or radios, cable connections, etc. Not only that but sending information through social media is also comparatively faster than any other previous mode.

Thus, before social media, both print and electronic media were expensive as well as time and space-consuming forms of news transmission. Talking of media, today it is an entity in itself.

It is powerful enough to not only inform people but even influence their decisions. Print and electronic media, which were once upon a time the only forms of media have taken a major

setback against modern-day forms of media, namely social media. Needless to say, the journey has been long and difficult but the fruits that are being reaped today have made it a worthwhile one. News, be it political stories, election polls, sports events, share market prices, weather forecasts, global events, festive celebrations, etc. is now easily accessible due to the continuous progress of social and also to an extent, electronic media. The main advantage of social media is that once a user connects to the internet, he has access to a platform that is at once global and free. Modern-day devices like smartphones, laptops, Bluetooth, WIFI-enabled cameras, etc. have made news reporting much faster as compared to the previous forms of news communication.

The major functions of media can be summed up as under:

- (i) Media as a mass communicator is the most suitable and effective instrument to act as a catalyst of social change;
- (ii) Media can educate both, people and those in power about the need for change and facilitate debate and discussion on the pros and cons of different measures suggested for bringing it about and at the same time suggest such measures themselves.
- (iii) Media can organize public opinion in support of the best of such measures and also pursue them with political and administrative executives and keep constant pressure on them to adopt and implement the same.
- (iv) Media can monitor the performance and progress of the measures and expose the inaction, inefficiency, negligence, waste and corruption in implementing them.
- (v) Media is the best means to keep reminding people of their duties and responsibilities for building the new society and exhorting them to discharge their obligations to attain the goals.
- (vi) Media can enlighten the people about difficulties and obstructions created by national and international forces and vested interests in achieving progress towards the goals by using various means and devices.<sup>5</sup>
- (vii) Media can warn people of the dangers to national interests and guide them to redouble their efforts.
- (viii) Media makes democratic rule real and effective by acting as an intermediary between people and the authorities. It informs the people of acts of omission and commission of public administration and in turn, serves as the forum for ventilating the grievances and aspirations of the people and for reaching them to the concerned authorities.

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<sup>5</sup> Sawant P.B. "Tasks for a New Society", 3 Mainstream Nov. 20, 1999.

- (ix) Being the fourth organ of the estate, it is the responsibility of the media to help in building the nation to implement the objectives of the Constitution and to promote social justice and equality, stability and unity and peace, progress and happiness for all. The list by no means is exhaustive because the reach of each form of media has increased as compared to its predecessor. For instance, debates, interviews, live coverages, etc. were possible only after electronic media came into existence after print media and hence electronic media was dutybound to responsibly conduct the same.
- (x) Likewise, when social media got over, it gave freedom of expression a new meaning with people finding themselves a new platform to make themselves heard. Thus, the functions of media have increased with each step. Social scientists in general argue that the media performs three basic functions namely reporting events, interpretation of events and socialization. The ways these functions are performed affect the course of both domestic and international politics. The composite processes of gathering, evaluating, editing, producing and presenting news are illustrative of the enormous salience of media in domestic and foreign policy-making.<sup>6</sup>

## **2.2 DEFINITIONS**

Some of the major terms that need to be conceptualized for this study are as under:

### **2.2.1 COMMUNICATION**

Communication can be said to be a two-way process of reaching a mutual understanding between two or more persons through a medium in which participants exchange information, opinions and views, news, ideas and feelings but also create and share the meaning of this exchange of ideas. In general, communication is a means of connecting people or places.<sup>7</sup>

Communication is a process by which information is exchanged between individuals through a common system of symbols, signs or behaviour. If the term is pluralized, the same comes to mean a system for transmitting or exchanging information, i.e. wireless electronic communications. In general, the word 'communication' refers to people interacting in ways that at least one of the parties involved understands as messages.<sup>8</sup> Thus, a mutual transfer and exchange of information

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<sup>6</sup> Vora Batuk, "Media Manipulation: A Fast-growing Business" Pg. 26 May 14, 1994, Mainstream

<sup>7</sup> [www.businessdictionary.com/definition/communication.html](http://www.businessdictionary.com/definition/communication.html) (Visited on April 26, 2017)

<sup>8</sup> [www.merriam-webster.com](http://www.merriam-webster.com) (Visited on April 26, 2017)

through a commonly understood medium can be termed as 'communication'. Personal communication may be between two persons or more through a conversation, chat, etc. while public communication may be between a larger group e.g. communication of news through a news channel to the audience. In either case, the essence of communication lies in sending information, thoughts or ideas from one side to the other and being reciprocated with a response thereto.

### **2.2.2 MASS COMMUNICATION**

Mass Communication involves sharing ideas across a large audience either at a given point or through an extended time frame and usually involves a professional communicator. Mass communication includes newspapers, magazines, books, films, television, radio and recordings.<sup>9</sup> Mass communication is the technology-enabled process by which messages are sent to large faraway audiences.<sup>10</sup>

Mass communication is a process in which a person, group of people, or organisation sends a message through a communication channel to a large group of anonymous and heterogeneous people and organisations. The sender of the message is usually a professional communicator who often represents an organization. Some of the major types of mass communication are: - Journalism, such as news. - Political campaigning.<sup>11</sup>

### **2.2.3. JUDICIAL BASED REVIEW**

**Singh G. (2017)** in her research titled "**Role of Freedom of Electronic Media in Indian Democracy**" has worked on the research question of whether the mischief of censorship has been correctly addressed by the existing laws and legislations. **Iyer Venkatesh B. (2017)** in his research titled "Study of the impact of the Internet and other media before print media" has conducted the research with the following objectives, i.e.

1. To understand the present scenario of print media in India specifically concerning the state of Gujarat.
2. To understand the evolution of print media in India and analyse its current challenges

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<sup>9</sup> Joseph Turow, Media Today – An Introduction to Mass Communication<sup>7</sup> (Routledge, 3rd Ed., 2009)

<sup>10</sup> Jean Folkerts and Stephen Lacy, The Media in your Life – An Introduction to Mass Communication, 24(Pearson Education, 2004)

<sup>11</sup> 17Vivian, The Media of Mass Communication, 27 (Pearson Education, England, 11thedn., 2013)

3. To understand the adaptation of print media in the current competitive scenario
4. To study the readership behaviour of consumers in Gujarat.
5. To study the consumer's and industry's perceptions of newspapers about other media.

**Mittal AK (2016)** in his research “**Trial by media and its impact upon judicial trial a critical study**” has undertaken research with the following objectives i.e. to analyse the role of investigative Journalism in the social downfall or enlistment, to judge the effects of judicial activism by media on the society and Government machinery, to determine the subsequent effects of media trial on the society, to access the pressure groups affecting the media activities, to evaluate the legislative & constitutional provisions relating to electronics media activities, to develop new legal concepts to tackle and control media activities, to discover control mechanism to restrict media in fleshing wrong news, to disclose the mystery of scams through electronic media & effecting judicial approach

Following were the research questions of the said research:

- (a) What is the role of investigative Journalism in social downfall or enlistment?
- (b) What are the effects of judicial activism by media on society and Government machinery?
- (c) How determine the subsequent effects of media trials on society?
- (d) How does access to pressure groups affect media activities?
- (e) How to evaluate the legislative & and constitutional provisions relating to electronic media activities?
- (f) How to develop new legal concepts to tackle and control media activities?
- (g) How to discover a control mechanism to restrict media from fleshing out wrong news?
- (h) How to disclose the mystery of scams through electronic media & and affect the judicial approach?

The research titled “**Right to freedom of speech and expression with special reference to decency and morality**” by **Sen, Shameek (2016)** has been made based on the hypothesis that freedom of Speech and Expression is a sacrosanct Human Right that needs protection in all its facets. Pre-censorship of any form leads to a serious compromise of such rights.

Although there have been differences between human rights systems on the necessity, extent and basis of imposition of prior restrictions on speech owing to cultural specificities, there has been an overall consensus on the need to minimise the imposition of any prior restraint.

Apart from very specific situations where it is necessary, mandatory pre-censorship of any form across all types of media especially on grounds of obscenity should be largely done away with and replaced by other forms of post facto imposition of liability.

The pre-censorship mechanism should be replaced by a normative system of regulation based on scientifically determinable parameters, and such regulation should be predominantly carried out by stakeholders of the concerned sector of the media, rather than by the state.

Another research has been conducted to analyse the role of investigative Journalism in the social downfall or enlistment, to judge the effects of judicial activism by media on the society and Government machinery, to determine the subsequent effects of media trials on society, to access the pressure groups affecting the media activities, to evaluate the legislative & constitutional provisions relating to electronics media activities, to develop new legal concepts to tackle and control media activities, to discover control mechanism to restrict media in fleshing wrong news, to disclose the mystery of scams through electronic media & effecting judicial approach.<sup>12</sup> The present research considers not only media trials but also the menace of fake and paid news which have taken a rise as social and electronic media have given new platforms for reaching out to the public.

#### **ARTICLE 19(1)(A) AND PRINT MEDIA:**

Print media which pertains to communicating news, entertainment, advertisements and other information through paper form in newspapers, magazines, tabloids, journals, etc. was the only source of media during the initial years. As electronic media was not that developed and social media was hardly in the picture, print media carried the entire weightage of imparting all sorts of news across the nation. Being the single source of communication, it gave birth to numerous issues from time and again which were challenged in the Supreme Court. In the case of *Srinivas vs. the State of Madras*,<sup>13</sup> it was held that the freedom of speech and expression includes the liberty to propagate not one's views only. It also includes the right to propagate or publish the views of other people. In the case of *RomeshThapper vs. the State of Madras*,<sup>14</sup> the circulation of the petitioner's weekly journal was prohibited by the Madras Government in their State by exercising powers u/s. 9 (1-A) of Maintenance of Public Order Act 1949. It was held that the

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<sup>12</sup> [Mittal AK "Trial by media and its impact upon judicial trial a critical study" (2016)]

<sup>13</sup> AIR 1931 Madras 70

<sup>14</sup> AIR 1950 SC 124 232

expression “freedom of speech and expression” connotes also publication and thus the freedom of the press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through press. The freedom of propagation of ideas is secured by freedom of circulation.

Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation, the publication would be of little value. The said law was held invalid as it banned the entry and circulation of journals. Thus, the factor of circulation was heavily harped upon in the judgment given in this case considering that ideas through the press can be shared with one and all only by having liberty of circulation failing which the ideas though available cannot be shared. Liberty of circulation as well as liberty of publication of views and ideas were equally important and absence of either of them would fail the purpose of the entire structure itself.

## **CONCLUSION**

Conclusion In this Article, the researcher has attempted to study the freedom of speech and expression concerning social and electronic media focusing mainly on the right of free speech in new age social and electronic platforms as well as media’s misadventures by indulging in media trials, sting operations and paid news. The research has been done with the following objectives:

- 1. To find if existing laws related to media in India are sufficient to deal with media trials.**
- 2. To study the existing laws governing the media.**
- 3. To study the powers of regulatory bodies.**

The present bodies and legislations mainly aim at improving the current standards of news broadcast, compliance with the code of conduct, maintaining standards of public taste, promoting the interest of news broadcasters, and so on. However, no single body or legislation has defined media trials, paid news, social media, sting operations, etc. Considering this, such cases will be dealt with like any other cases in available provisions and punished accordingly. However, considering the gravity of the matter, it is suggested that an enactment is brought into force that exclusively deals with such cases because they involve sensitive issues of rights of media as against the rights of the accused, corruption and purchase of airtime to broadcast news stories favouring a single political party and privacy rights of suspicious persons by arranging for sting

operations. In Nov 2006, former Chief Justice of India Y K Sabharwal expressed concern over the recent trend of media conducting ‘trial’ of cases before courts pronounce judgments and said that “if this continues, there can’t be any conviction. Judges are confused because the media has already given a verdict.”<sup>15</sup>Citing pressure on the judiciary during the Nirbhaya rape case, Supreme Court Judge Kurian Joseph said media trials in pending cases should be avoided and thereby judges be saved of the enormous strain created by it. He further said that a judge is expected to speak only through his judgment. While performing work as a judge, if he comments on the bench, the media should not ever build upon that. By doing such things the media will do a great service to the nation and democracy.<sup>16</sup>



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<sup>15</sup> Such is the force of media trial that the judges who are yet to decide the case themselves feel the force of media  
Available on <https://m.timesofindia.com/edit-page/Media-on-trial/articleshow/1460248.cms> (Visited on 15.1.2024)

<sup>16</sup> Supra Note 16