

**DISSERTATION**

“A STUDY ON THE ROLE OF MEDIA IN THE JUSTICE  
DELIVERY SYSTEM WITH REFERENCE TO MEDIA TRIAL”

**SUBMITTED TO**

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*AS A PARTIAL FULFILLMENT OF REQUIREMENT FOR THE*

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**UNDER THE GUIDANCE OF**

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19ML013

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# DECLARATION

I, Ishan. R. Vyas, bearing roll no. 19ML013, do hereby declare that the dissertation submitted is original and is the outcome of the independent investigations/ research carried out by me and contains no plagiarism. The dissertation is leading to the discovery of new facts/ techniques/ correlation of scientific facts already known. This work has not been submitted to any other University or body in quest of a degree, diploma or any other kind of academic award.

I do hereby further declare that the text, diagrams or any other material taken from other sources including [but not limited to books, journals and web] have been acknowledged, referred and cited to the best of my knowledge and understanding.

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# **CERTIFICATE**

This is to certify that the dissertation entitled “A STUDY ON THE ROLE OF MEDIA IN THE JUSTICE DELIVERY SYSTEM WITH REFERENCE TO MEDIA TRIAL” has been prepared by Ishan. R. Vyas under my supervision and guidance. The dissertation is carried out by him after careful research and investigation. The work of the dissertation is of the standard expected of a candidate for Master of Laws [LLM] in Constitutional and Administrative Law and I recommend it be sent for evaluation.

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## ABBREVIATIONS

AIR	All India Reporter
US	United States
U. K	United Kingdom
USSR	Union of Soviet Socialist Republics
Dr.	Doctor
&	And
No.	Number
PCI	Press Council of India
TV	Television
TRP	Television Rating Point
UDHR	Universal Declaration of Human Right
ICCPR	International Covenant on Civil and Political Right
ECHR	European Convention on Human Rights
SCR	Supreme Court Reporters
SCC	Supreme Court Cases
Mad	Madras
UOI	Union of India

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## **CHAPTER -1**

## 1.1 INTRODUCTION

*“According to Mahatma Gandhi, the objective of the newspaper is to understand popular feeling and to express it; also it can arise desirable sentiments among the people, and the last is the fearlessness to expose the popular defects among the people”.*<sup>1</sup>

To analyse the media law in India, let's begin with the word media actually stands for. Media in a simple language it signifies or suggests various ways of communication for such as television, radio, newspapers, cell phone and so on and on.

The term can also be used as a collective noun for the “press” or “news” reporting agencies. One of the types of media that has become gradually more popular in the current period of time is mass media “mainstream media”. The media includes in it many things like - radio, newspaper, television and of course the most important thing in today's time internet. Presently, all the people are aware of the internet and are using the internet, so that all news is easily available on their finger-point as almost all news channels are nowadays having their own apps and pages on social media.<sup>2</sup>

Its primary or we can say the basic purpose and principle are to inform to all, educate to all and they attempt to entertain the largest possible audience. Media is

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<sup>1</sup>. Dr Jhumur Ghosh, *From Gandhi to Mahatma: Journey of an Extraordinary Journalist*, 9GM. J, 1 (2018).

<sup>2</sup> 1 GROSSBERG, *PLACING THE MEDIA 1* (Sage Publication, 2005).

an legal field that refers to the following things :- privacy, advertising, censorship, broadcasting, contempt ,defamation, confidentiality, copyright, corporate law, freedom of information, internet. The mass media system of the world varies from each other according to their economic quality, cultures and regions of the different society to society. In communist countries like China and USSR there were restrictions on the media like what media can say about their government and what not and even in current time in country like China still media is controlled by their Government only, which is openly known to the world. Fearing revolutions, everything said against the state was censored. While in countries like the USA, almost everything is allowed, which even includes criticism of the government.

In India certainly, there are some reasonable restrictions which are sensible restriction imposed by the Constitution of India 1950 as amended Constitution of India.<sup>3</sup> We can see in past before the impact of the globalization it was felt that the mass media was fully controlled by the government only which let the media project only what the government wanted to show to the public and in what way it wanted the public to see it. But however with the time and because of the globalization and privatization the situation has undergone with the drastic change.

Currently, the influence of media has much increased on not only on normal people but also on the judges because in last they are also humans, so they also

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<sup>3</sup> 7 GAURAV MEHTA, UNIVERSAL GUIDE TO LL.M EXAMINATION (Universal, Lexis Nexis 7<sup>th</sup> ed. 2019)



get influenced by the positive and negative comments and things post, published by the media so in current time the electronic or internet media has played an important role in many cases. One of the judges of the Supreme Court Justice A. K .Sikri said that Judging is under stress in the digital era.<sup>4</sup>

For knowing of any person or things we should know the historical means the back ground of that person or things so now evolution or we can say historical development of media. It is now around 100 years the printing press preceded the start of printed news in India. We can see the development in the year 1674 when the first printing device was established in the city of Bombay and it was followed by Madras in the year of 1772. India's first newspaper was known as the Calcutta General Advertise and also known as the Hicky's Beng al Gazette was established in January of the year 1780 and the first Hindi daily Samachar Sudha Varsshan was began in the year of 1854.<sup>5</sup> It is see that the evolution of the Indian media has been with many development difficulties but a thing which creates more difficulties they are colonial constraints, illiteracy and poverty and many others. At that time because of the lack of technology newspapers were not able to expand properly in Indian. And nor did the newspaper grow simply because not more people know how to read and how to write. But media grow because the entrepreneurs find that a growing hunger for information among many sections of India's people and they were potential consumers newspaper and as well as newspaper readers. And because of the growing sections of people a race began

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<sup>4</sup> *Judging is 'under stress' in digital era, says Justice A K Sikri*, T.O.I, Feb 10, 2019.

<sup>5</sup> Dr N. Padmanabhan, *History of Journalism in India*, University of Calicut(2011).

between different newspaper sellers to reach this audience to show that they had more readers than their opponents.

The history says that the development of the free speech and technology is very intimately related to the freedom of the expression. Before many years or we can say the time when there was no technology in communication and because of this at that time the communication was tremendously restricted and also exchange of information were very complex and not only that but even extremely time consuming and not much effective. At that time communication messages were delivered by the way of oral means by the help of a dutt a person who remembers your message and the passes to the other or in written forms. Because at that time proper technologies where not there like phones, computer, telegrams the news and messages where sent and delivered through foot, horse and vehicles of that time. However by the time communication technology has improved significantly and drastic change between the 15<sup>th</sup> century and to the 20<sup>th</sup> century. At that time the mass communication was only for the wealthy people and the powerful people and for the government and it was not for normal people. It was only after creation of Personal Computer and web played the most important role in developments in communication. Unlike the traditional way of printed newspapers, in the current time blogs and online media can provide well-organized and also not expensive and most important thing in this current period timely access to information.

If we see then the legal structure of India is almost built upon its on majestic legacy of the legal statutes and the rules which has been undergoing assured

changes as the India's democracy grows time to time. Right to freedom of speech and expression given to media in our country by the Constitution of India media must make use of this with ethical way and with wisdom of accountability for the society. What we see media today is not the entire media but it is only a part of it. Media adds in it both the traditional way means of mass communication for example we can take books , street plays, pulpit and platform and in the current stage it includes in it big and small screen motion for example like print ,pictures, radio and also electronic media and most used thing in current time internet.<sup>6</sup>

Explicitly mentioning of freedom of press is not seen in India. However it is natural in the “freedom of speech” and “expression”. There is no particular provision regarding freedom of media in Constitution of India. As different kind of the freedoms which are given under the constitution of India, in similar way this freedom also get its flow from the “freedom of speech” and “expression” given under Article 19(1) (a) of the constitution of India. The constitution of India of Bill of 1895 was the first document containing our vision for the constitution. Among other provisions it also had provision for freedom of speech and expression. The above said provision provided every citizen the freedom to express their thought freely without censor through words in writings or in print. However the above freedom had a rider that every citizen was liable for any type of abuse committed in exercise of the above freedom.<sup>7</sup> The above Freedom was also echoed and contained as provisions in subsequent documents like

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<sup>6</sup> Rabindra Hazari, *Media and the law: Freedom of Speech or Unbridled Freedom?*IND. LAWY.(March 6, 2019),<https://indialawyers.wordpress.com/2009/03/06/>.

<sup>7</sup> Supra note 3.

commonwealth of India bill(1925) and Nehru report (1928) which showed that freedom of speech and expression and subsequently freedom of press is essential in the democracy<sup>8</sup>. This type of rights creates an opportunity for discussing freely any type of issues. It is always felt that these kinds of rights should be backed by the laws. But with that it is also felt that there cannot be any freedom which is completely unrestricted or which is absolute. If we talk about the recent time or we can say the present scenario it is frequently seen in the current time that the media houses are performing as public's court and they have also started to interfere with the proceedings of the court's which completely overlooks the vital gap between the accused and an convict keeping at stake the golden principles of presumption of innocence until proven guilty and also guilt beyond reasonable doubt.<sup>9</sup> By this way media is prejudicing the public and even sometimes the judges and because of this the accused that should be assumed as an innocent is presumed as a criminal living all his rights and liberty unaddressed. This type of issues are increasing day by the day and still not properly addressed or resolved which creates an urgent need to address this subject-matter to a proper solution. "The Indian media must make use of the right to freedom of speech and expression that it derives from the Constitution ethically and with a sense of responsibility, contends" Justice P. B. Sawant.<sup>10</sup>

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<sup>8</sup>.David Steinberg, Nehru Report, HOUSE OF DAVID (Sept 1, 2005),<https://www.rgnul.ac.in/PDF/f7ff0636-9075-47f2-8e17-a5ba7be7a3cf.pdf>.

<sup>9</sup> European Convention on Human Rights, Council of Europe, art. 6.

<sup>10</sup> Supra not 6.

### **1.1.1 LITERATURE REVIEW**

**Book- M .P. Jain – Indian Constitutional Law , Lexis Nexis , Eighth Edition- 2019.**

This is one of the best books of Constitutional law. So in the Article 19 it provides six freedoms and “freedom of speech” and “expression” is at the first in hierarchy. From this media gets its power to express its view. Like US in Indian Constitution it not separately given right of press. So for explaining freedom of press we can take the help of Constitution Assembly debates in which Dr. Ambedkar’s sir says in his speech in that he said that “Article 19(1) (a) of the Indian Constitution has not mentioned expressly the liberty of press but somehow it has been held that liberty of the press is already included in the our Constitution”. The press is not provided any type of extra ordinary rights which an individual cannot exercise. He also included in its speech that editor of the press or the managers are basically exercising the right of the expressing and for that reason there is no need of any specific mentioning of the freedom of the press.

**Media Effects on the judiciary process –law teacher- 02/02/18.**

This Article talks about the Media Coverage, Media Effects on the Judicial Process and many other things .This article only talks about United States and not about our India but with the help of this article we can compare India and USA liberty given to their press. In this article it talks about many cases when media

has interfered in the process of the judiciary and by that the judicial dictions also get affected.

**Social media influences how judges decide a case: Justice A .K. Sikri – 10/ February /2019.**

Justice A .K. Sikri while talking on the “Freedom of the press” in a digital era it means the current time at the first Law Association For Asia and the Pacific (LAWASIA) conference in New Delhi said that the freedom of media has changed the pattern of civil and human rights and the current style of the “media trials” is an best example of it. Justice Sikri said that how data is mined, how players like Face book, Whats App, Tik Tok and many other social platforms like this and etc collate data and also said that how they can see that what is consumers preference and what kind of their consumer having choices. Then if this kind of the activity done then it can affects the “freedom of the people, privacy” of the people then this type of activities becomes a very unsafe and extremely dangerous instrument. And an issue of self-respect comes in that. Justice sikri also said that the media has complete transformation in the this digital time or we can say age and now we are in the period of the paid news and fake news. Justice A .K. Sikri also said that “the Judging is under stress in the digital era”.

**Research Article- Problem and expectations of judges from media in judicial decision making – Asian Journal Of Management Research – By- Mili Singh, Amit Kumar Singh Research Scholar, MMM Institute of Hindi**

**Journalism MG Kashi Vidyapeeth Varanasi Assistant Professor-Volume 4  
Issue-1,2013.**

This article first starts with a general talk related to the influence of media of today's society and on each sector. Then it has focuses on the one of the most important part of our society it is Judiciary. And they have deal with this topic in detail and they have only focus specifically on a Jaunpur district. And on the outlook of the judges from the media reporting of court cases at the district level and also it seeks to learn the dilemma faced by the judges throughout the trail because of the media reporting. And they has also make questioners as for doing survey and data collection.

**Arpan Banerjee, Judicial Safeguards against Trial by Media: Should Blasi's  
Checking Value Theory Apply in India, 2 U. Balt. J. Media L. & Ethics 28  
(2010) – Hein Online.**

This article first start with the free press, free trial debate assumes intriguing dimensions in India. Then it talks about the criminal justice system it says that for the years Indian criminal justice system has been in a defective state bogged down by prevalent corruption. Yet following the liberalization of Indian economy at the time of independent many of the different kind of ways are developed in news and many new news channels immerged in today's time. One outcome of this institutional inequality has been the preemptive news coverage of the trials which are pending. Media has showing the attempts by the rich and powerful to threaten justice. And also in this article they have tried to examine Indian precedents

regarding the application of two possible safeguards against prejudicial media coverage, the quashing of a trial and penalty for contempt of court. Then they have talked about the Indian judiciary that they has over and over again refrained from taking any type of disciplinary action against the press for making prejudicial remarks preferring to issue taken proclamations against a trial by media . Then in this article writer has argue that the judiciary ought to be additional confident and at least reflect the use of gentle sanctions against the press. Then in this article they have mainly one question that the feasibility of following Vincent Blasi's checking value theory, which provides a strong theoretical justification for prejudicial media coverage in India.

## **1.2 PRESENT STUDY**

### **1.2.1 Statement of Problem**

Media is also termed as the “fourth pillar” of democracy just like the other three branches of the government they are legislative, executive and judiciary. Media should do its duty but also know where to stop. “No one is guilty unless proven guilty” and media has no right to project someone as guilty before court pronouncement. We can take recent case of Khurshid Anwar in which because of media presser Anwar did suicide .Does prejudicial publication affects the judges subconsciously? Media exercise its right to Freedom of speech and expression in judiciary matters is a questionable point. Media plays a very important and essential role in molding or we say to convert the opinions of society and it is also



capable of changing whole viewpoint of the people. Many examples where media pronouncement of verdict before court like Aarushi murder case, Rk Anand case, Jessica Lala case, Salaman khan case, Nirbhya case and many other cases. Paid news is a most serious issue. The Press Council of India (PCI) defines “paid news as any news or analysis appearing in print or electronic media for consideration in cash or kind”.<sup>11</sup> However we can say that the media cannot take over the functions of the judiciary and deviate from objective and unbiased reporting. While a stringent media regulation by government regulation is not healthy for democracy and the implications of continued unaccountability are even more damaging. So it is a need to take steps in order to prevent media trials from slowly destroying the civil rights of the people who are citizens of this country and whereby the media have a clear definition of their rights and duties and the courts are given the power to punish those who openly ignore them.

### **1.2.2 Conceptual Framework**

**Fundamental right** – The most important thing for all fundamental rights is personal liberty. In our constitution of India citizens are given many basic rights but with some restrictions.

**Freedom of speech and expression**- Constitution of India provides under the Article 19(1) (a) “freedom of speech” and “expression” to its citizens but this

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<sup>11</sup> Alok Rawat, *Issues Related to Paid News*, PRS LEGISLATIVE RESEARCH, <https://www.prsindia.org/report-summaries/issues-related-paid-news>.

right is with some restrictions which are imposed in Article 19(2) of the constitution of India.

**Media** – It means many things like publishing, TV, internet, print media. Mass media and many other forms of the media. Which passes the information's to large population.

**Media Trial** – The word or phrase media trial is not much old it is only around later part of the 20<sup>th</sup> and early part of the 21<sup>st</sup> century this word came to know to the people when media started infusing large population for their internal competition and many a times they also not pass proper information and facts or we can say reality for their T.R.P.

### **1.2.3 Methodology**

#### **Aims of the Study**

- 1) The research aims to study cases in which media has interfered in the administration of justice.
- 2) The research aims to study how the media is outreach more powerful than the trial proceedings of the courts.
- 3) The research aims to study freedom of speech and expression in India, UK and US.

4) The research aims to study the media & freedom of speech and also study of a need of reasonable restriction on the freedom of the press.

### **Significance of the Study**

This study will be beneficial to the law students in their studies and to the media that what provisions are there for the interference. Media is acting in multiple ways like a watchdog for people, a platform which brings voice of people to whole the world and freedom of the media is the freedom of public. And India has witnessed the emergence of the media as the fourth most significant part subsequent to judiciary, executive and the legislature. But these days it is constantly criticized for commercialism and inclining towards entertainment for example like building wealth out of the news. The study will make us understand that how media is infusing the justice delivery system. The study will also throw light on many cases for better understanding.

### **Scope of the Study**

The scope of this study is wide enough to include many aspects related media and judiciary conflicts and benefits in India. The scope of this study includes many things like - This study covers the old and recent cases. This study will also include ethics of media. This study also includes various other country press "freedom of speech and expression". This study gives a chance to compare the media laws of two other countries with India. This study will mainly cover Indian cases and situations. This study lastly covers the concept freedom of press in India

and what urgently need to be amended as per today's time for the betterment control on media so that they do not interfere in judicial matters.

### **Hypothesis of the Study**

- 1) Media verdict is more powerful than actual court judgments.
- 2) Media outreach is more than our justice system.
- 3) Media does not know where to stop and direct interference in the right to privacy as well as responsible for paid news.
- 4) Media is not following its ethics.
- 5) The Freedom of media in India is not absolute and complete like USA.

### **Research Questions**

- 1) Is the obstructive media create a miscarriage of justice delivery system especially to criminal justice system?
- 2) To study the concept of media trial and constitutional restriction.
- 3) Whether media need self-limitation?
- 4) Is there any need for media guidelines and training to journalists?
- 5) Whether the media plays an effective role in manipulating the news and information?

### **1.3 DATA ANALYSIS/DISCUSSION**

The research would be doctrinal in nature. Doctrinal method of research has been adopted based upon secondary source material in the nature of book, reports, articles, cases and the links. The approach towards the research would be a mixture of both quantitative and qualitative with a comparative study on some points which will help in analyzing the research. The researcher will carry out a lot of case analysis. The researcher will refer a lot of Supreme Court landmark judgments and various Courts judgments for better understanding of the concepts.

### **1. 4 CHAPTER SCHEME**

Chapter 1 – Introduction: The first chapter includes a brief introduction about the topic and a brief history, Research Methodology, Chapterization, Objectives, Research Questions, Hypothesis, Literature Review, Scope, Signification of the Study, etc.

Chapter 2 – Conceptual Framework: This second chapter would explain in detail that what is media , media trial , mass media ,what is freedom of speech and expression, freedom of press , subconscious effect on judges, defamation, paid news, ethics of media and more concepts which are necessary to understand any topic .

Chapter 3 – Comparative Study: This third chapter will deal with the international prospective and comparative study and in this chapter countries will be India, USA and UK.

Chapter 4 – Recent Trends: This fourth chapter will deal with the recent issues and challenges.

Chapter 5 – Judicial Approach: This fifth chapter would deal with the judicial decisions on press and study of the influence of the media trial on some the famous cases.

Chapter 6 – Conclusion & Suggestions: In this sixth chapter the researcher will conclude with some of the suggestions on the study undertaken.

## **CHAPTER 2 - CONCEPTUAL FRAMEWORK**

## 2.1 MEDIA

The word media is came from Latin word Medium.<sup>12</sup> Media in a simple way we can say that it is a platform of passing of information and throw that communication of peoples. There are many types of media like (a) print media it is one of the first or we can say that oldest form of media which is in hard copy like books, newspaper, magazine etc ,(b) audio media , (c) visual media this is one of the most effective form of media because people remember more easily visual things it includes things like photographs, graphics, picture maps., etc and (d) audio visual media it is a kind of media which includes sound and visual both things, (e)social media this is one of the most fastest form of media which called online media or we can say internet media which allows the people to communicate, share information and also resources easily by sitting in any part of the world.<sup>13</sup>

## 2.2 Media Trial

The word or phrase media trial is not much old it is only around later part of the 20<sup>th</sup> and early part of the 21<sup>st</sup> century this word came to know to the people. This phrase media trial is for describing impact of the newspapers and television on the people's reputation by creating an opinion and blame before any verdict of the court and by doing this media is trying to become public court and it is also called as janta adalat. Now a day's media is also called as peoples eye, so instead of

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<sup>12</sup>.Jeff Agenor, *what does ' Media' Really Mean?* ALL ABOUT MEDIA (Sept 1, 2017),<https://www.jeffagenor.com/blog/allaboutmedia#:~:text=Thus%2C%20the%20word%20'media',basically%20what%20the%20word%20means>.

<sup>13</sup>Namita Verma, *Social Media: A Revolutionary Toll*, 3 Jus. Dicere & Co.1365 (2019).



making people know about the truth of the things they manipulates things to increase their trp. Media trial is one of the most burning and highlighted issue of current time.<sup>14</sup>

In The case of State of Maharastra v/s Rajendra J Gandhi<sup>15</sup> court said that “Media trial means the pre trial and in trial reporting of case, whether civil or criminal, which is likely to prejudice the fair trial of every accused. A trial by press, electronic media or public agitation is the very antithesis of rule of law.”<sup>16</sup>

### **2.3 MASS MEDIA**

The word mass media was coined around the year 1920. The mass media denotes to the section of the media specifically designed to research on a vast publics. In the 20<sup>th</sup> century the role of the mass media is not only restricted to electronic duplications but also about the impacts of it has on the public at large. Mass media term is used for advocacy, education, journalism, etc. Some example of the mass media is magazine, television, internet, radio, etc. The mass media work has very much influence and effect on the society. Mass media plays two side of the same coin there are some benefit of the mass media and also not so positive effect of the media on the people.

### **2.4 FREEDOM OF SPEECH AND EXPRESSION**

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<sup>14</sup>.Anamika Ray & Ankuran Dutt, *Media Glare or Media Trial: Ethical Dilemma Between Two Estates of Indian Democracy*, 5 J. of Communication and Media Technologies 92 (2015).

<sup>15</sup> AIR 1997 S.C 3986.

<sup>16</sup> Ibid.

Article 19 of our Constitution of India gives to citizens many right to freedoms. In this freedom of speech and expression are regarded as the first condition of the liberty. A right given under Article 19 of the constitution of India is only enjoyed by the citizens of India and foreigner did not enjoy this rights. So Article 19 contains and guarantees to the citizens of India six fundamental freedoms, they are freedom of speech and expression , freedom of assembly, freedom of associations, freedom of moment, freedom to reside and to settle , freedom of profession, occupation, trade or business and one fundamental right was omitted in the year 1978. And restrictions on these freedoms are given in clause 2 to 6 of the Article 19 of the Constitution of India. And the freedom of speech and expression is first among this all freedoms.<sup>17</sup>

In a democracy country freedom of speech and expression is an indispensable part of it. In the case of *srinivas v/s State of Madras*<sup>18</sup> it was said that the freedom of speech and expression includes in it liberty to broadcast not only ones view but it also includes the right to publish the view of the other peoples otherwise this freedom would not include the freedom of the press.<sup>19</sup> In the case of *Maneka Gandhi v/s Union of India*<sup>20</sup> the Supreme Court of India has rejected the concept of that the fundamental rights can use on in territory. Court said that freedom of speech and expression is not concern with the geographical limitations.

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<sup>17</sup> MP JAIN, INDIAN CONSTITUTIONAL LAW(Universal, Lexis Nexis 8<sup>th</sup> ed2019).

<sup>18</sup> AIR 1931 Mad 70.

<sup>19</sup>. DR J.N. PANDEY, THE CONSTITUTIONAL LAW OF INDIA, (Central Law Agency,50<sup>th</sup> ed.2013).

<sup>20</sup> AIR 1978 SC 597.

## **2.5 FREEDOM OF PRESS**

“The right to free speech which includes freedom of the press is of great significance in democracy because democracy stands for government by free discussion and criticism”.<sup>21</sup> The freedom of press is not expressly mentioned in our constitution of the India .In Constituent Assembly Debates Dr. Ambedkar sir said in his speech that though the liberty of press in not expressly mention in the Article 19(1)(a) of the Indian Constitution but it has been held that the liberty of press is included in it . He also Saied that the editors of the press and managers are citizen and they exercising the right of the expression and therefore there is no need of special mentioning of freedom of press separately.<sup>22</sup>

In US Constitution they have specifically mentioned about freedom of press. The first Amendment of USA Constitution clearly protects free press.<sup>23</sup> In their constitution they have no resections on it like Article 19(2) of the constitution of India.

## **2.6 FREEDOM OF SPEECH AND EXPRESSION HAS SOME RESONABLE RESTRICTION ON IT**

As no right can be absolute, it is same with the freedom guaranteed under the Constitution of India Article 19(1). This right guaranteed under Article 19(1) is also liable to controlled and regulated at some extant by laws made by the parliament or by the state legislature. So under Article 19(2) to Article 19(6) of

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<sup>21</sup> B.K GOKHALE, POLITICAL SCIENCE, (Himalaya Publishing House, 19<sup>th</sup> ed. 2013).

<sup>22</sup> Supra note 19.

<sup>23</sup> Supra note 17.

the Constitution of India puts some reasonable restriction on the Article 19(1) (a) to (g). But legislature cannot limit this freedom ahead of some requirements of the Article 19(2) to Article 19(6).<sup>24</sup>

In this reasonable restriction there are few significant characteristics of clauses 19(2) to 19(6) is to be noted – first one is restrictions under them can be imposed only by the authority of a the law. The executive action only cannot imposed any restriction without any law which is backing it up, then the second is any restriction which are imposed they must be reasonable and then third point is restriction must be linked to the things which are given in Article 19(2) to 19(6). So for adjudge the validity of restriction there is a double test of it. They are whether it is a reasonable and second are whether it is for the objective given under the Article itself which the restriction is being imposed on it. Whenever there is any type of the confusion or law is challenged as unconstitutional in both of this question they are handled or deal by the court.<sup>25</sup>

## **2.7 ROLE OF MEDIA IN DEMOCRACY**

India is a democracy country and it is depending on four pillars' they are Judiciary, Legislative, Executive and Media. In all this four pillars Media plays as a watch dog on other three organs for ensuring that the transparency is maintained in working of the three other organs of democracy. Media makes people aware and passes the information's about all the things going all around the world. Media is also known as people's eye. In a country like India the media plays a

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<sup>24</sup> Supra note 19.

<sup>25</sup> Supra note 17.

very crucial role. A large number of populations of India believe all the things show on news channels or information given in to newspapers, so it is very crucial for media and also for the people who are connected to it. And even the politicians keep distance from the media because you never know how media will portrait their image in positive way or in not favor of them as India is a democracy country. So the influence of media is very much in our democracy country.<sup>26</sup>

## **2.8 ETHICS OF MEDIA**

“The Indian media must make use of the right to freedom of speech and expression that it derives from the Constitution ethically and with a sense of responsibility, contends” Justice P B Sawant.<sup>27</sup> Ethics is a very important thing not only for media but for all type of organizations are running in this society. Ethics is a part of philosophical branch that gives us what is wrong and what is right thing to or not to do. As in today’s society or time we can see that the influence of media has increased day by the day on the people. So it is now a need to bring a proper code of ethics for media. Because it is seen that now media has started interfering in court matters and so because of that people also started calling him as a janta adalat. Media make statement and passes their opinions of a case which is still going in courts which many a times affects not only the accused or the victim but also gives pressure on the court. The media ethics has to deal with a many types of things like manipulation of content by the governments,

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<sup>26</sup>.Ashwin Venu & Rose Joy, *The Fourth Estate in India Polity: Status and Challenges*, 2 Jus. Dicere & Co. 645-646(2018).

<sup>27</sup> Supra note 6.

by the journalists themselves or their organizations, or by the cooperates, distinction between public interest and privacy of individuals or the confidentiality of the person for guarding the rights of individuals or securing national interests and also conflict with the law of the land regarding protection of news sources.<sup>28</sup>

## **2.9 RIGHT TO FAIR TRIAL**

In territorial limits of India right to fair trial is a absolute right for every individual. Article 14, 20, 21 and 22 of the Constitution of India provides that. Right to fair trial is very important thing as it is absolute right which flows from the Article 21 of the Constitution of India and it is read with the Article 14 of the Constitution. It is always given priority to the dignity of one's life in comprising to the right to freedom of speech and expression. Media should always remember this thing. It is said that right to fair trial is the heart of criminal justice system of India.<sup>29</sup> It also add other rights in that the right to be presumed innocent until proven guilty, right of legal representation, right of speedy trial, etc. In one of the famous case of *Zahira Habibullah Sheikh v/s State of Gujarat*<sup>30</sup>, the Supreme Court of India has explained fair trial. In this case court said that the fair trial obviously would mean a trial be for an unbiased Judge, fair prosecutor and an atmosphere of the judicial clam. A fair trial means trial which is not bias or not prejudice for any of the party or for any person or any of the other reasons.

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<sup>28</sup>Supra note 14.

<sup>29</sup> Devesh Tripathi, *Trial by Media Prejudicing the Sub- Judge*, RMLNLU 1 (2008).

<sup>30</sup> *Zahira Habibullah Sheikh v/s State of Gujarat*, (2004) 4 SCC 158.

## 2.10 PAID NEWS

In today's time media is playing a very active role in society. It is also considered as the mirror of the society and also as watchdog of political activities in this democracy society. In a democracy society information is said as currency in this modern world. Paid news is one of the biggest difficulties in current time. The Press Council of India (PCI) defines paid news "as any news or analysis appearing in print or electronic media for consideration in cash or kind". By the help of class dominant theory the concept of paid news can be understood very easily.<sup>31</sup>

## 2.11 DEFAMATION

"Defamation is injury to the reputation of a person".<sup>32</sup> If anybody injures to the other person reputation then he did that thing at his risk it is same like if any one interference with others property. In the case of Dixon v/s Holden<sup>33</sup>, in the year 1869 it was said in this case that "a man's reputation is his property and if possible more valuable than any other property". Defamation is divided into two types one is libel and second one is slander. Libel type of defamation can be of writing, picture, printing and many other type and slander is of publication of a statement which is defamatory this kind of defamation is in oral words or may be gesture.

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<sup>31</sup>. Parth Sharma & Dr. Shampa I Dev, *The Menace of Paid News*, Bha. Law Rev. 29 (2016).

<sup>32</sup>20 R.K. BANGIA LAW OF TORTS(Allahabad Law Agency 20<sup>th</sup> ed. 2018).

<sup>33</sup> Ibid.

## 2.12 CONTEMPT OF COURT

The Contempt of Court Act, 1971 need to bring changes in it and also need to amendment it as per current time and situation. In the case of Hira Lal Dixit v/s State of U.P that “actual interference with the course of administration of justice is not necessary it I enough if the offending publication is likely on of it tends in any way to interfere with the proper administration of law”<sup>34</sup>. But media has a right of knowing what is actually happening in the courts and also to disseminate the information to general public which enhances the society assurance and belief on the court transparent proceedings. But if there is factual error in reporting of proceedings going in the court then that will be considered as contempt. This all things changes and depends on the situation of the case, facts of a case for knowing that what amount to the interference in the administration of justice.<sup>35</sup>

## 2.13 HATE SPEECH

As per the human right law it considered “freedom of speech and expression” at internationally and also duty of the state to protect from heat speech.<sup>36</sup> “Hate speech consists of verbal or non-verbal communication that involves hostility directed towards particular social groups, most often on the grounds of race and ethnicity (racism, xenophobia, anti-Semitism, etc), gender (sexism, misogyny), sexual orientation (homophobia, transphobia), age (ageism), disability (ableism),

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<sup>34</sup>AIR 1954 SC 743.

<sup>35</sup> LAW COMMISSION REPORT, 200<sup>th</sup>, Law Commission of India, (2006

<sup>36</sup>Chinmayi Arun et.al., *Hate speech Laws In India*, NATIONAL LAW UNIVERSITY DELHI (Apr, 2018), <https://www.latestlaws.com/wp-content/uploads/2018/05/NLUD-Report-on-Hate-Speech-Laws-in-India.pdf>.



etc. see discrimination; racial discrimination; gender discrimination; LGBTI rights; age discrimination.”<sup>37</sup>

## **2.14 RIGHT TO PRIVACY**

The “Right to Privacy” is added in the constitution under article 21, which can be considered as the “right to life” and “liberty”. The term privacy is very ambiguous, and a clear explanation of it was required. There are many scopes and ways to explore article 21 under the Indian constitution, criminal law, and property laws. The privacy is considered as most essential part of a citizen and which needed to be protected. Before the milestone case of K .S. Puttaswamy v/s Union of India<sup>38</sup>, in the year 2017 in which forced to add privacy to the fundamental rights. At present, the Indian judiciary has clearly carved the boundaries for the privacy of citizens, and that is the reason why the right to privacy came into existence. There were a huge amount of cases which were directly related to privacy, but none of them was in favor that the privacy should be included in the fundamental rights, only after the landmark case of K .S. Puttaswamy v/s Union of India<sup>39</sup>, in 2017 the privacy was given importance and space in the fundamental right. The importance of the right to privacy is not national, but now it has even reached at the international level. There are many

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<sup>37</sup>Uladzislau Belavusau, *Oxford Constitutional Law: Hate Speech*, OXFORD UNIVERSITY PRESS (Jul, 2017), <https://oxcon.oup.com/view/10.1093/law-mpeccol/law-mpeccol-e130>.

<sup>38</sup> (2017) 10 SCC 1.

<sup>39</sup> Ibid.

aspects in the right of privacy as it is a dynamic concept and is incorporated under provisions of various legislation.<sup>40</sup>

After the passing of the judgment in the recent case of 2017, right to privacy has obtained impetus throughout India, and it is also known as the Fundamental Right to privacy. Many countries like USA, India, UK and international organizations like UDHR, ICCP and EXHR having given valid and convincing recognition to the right to privacy.

After all this national and international laws and Acts for protection of the privacy of the peoples still it is not safe from the media. It is seen in many case and matters in which media has cross its limit and enter into the privacy of the people. Though the court has worn media to stay them into their jurisdiction then also media for getting more and more TRP for their channels they crosses there limits and interfere into the privacy of the people.

## **2.15 SUBCONSCIOUS EFFECTS ON JUDGES**

Subconscious is one of the most powerful parts of the human mind and also of our body. If we talked about the media effect on the judges then we can say that in last judges are also human so they also get affected by the media comments, publication and interfere in all things. Judges might not have effect of media consciously but it may have subconscious effect on them. “Supreme Court and House of Lords accept that prejudicial publications may affect Judges

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<sup>40</sup>Shubham Mongia, *Legal Analysis of Right to Privacy in India*, LEGAL. SER. IND. (2014), <http://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html>.

subconsciously”.<sup>41</sup> In chapter III of the Law Commission Report Supreme Court and House Of Lord has make point that any type of prejudicial publication by the media related to the accused or related to plaintiff it may affect to the Judges subconsciously.

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<sup>41</sup> Law Commission Report

**Chapter 3 – COMPARATIVE ANALYSIS**

### 3.1 USA

If we talk about freedom of speech and expression protection, then America is at the first level as a leader in that. The USA gives an extensive scope and interpretation for freedom of speech and expression for its citizens. The First Amendment of them is for the freedom of speech for the press, for assembly and association, this all is protected by it and this all is referred to as freedom of expression.<sup>42</sup> But in the American constitution in starting, there was no specially mentioned for the protection of freedom of speech. But sooner with the time, they realized the importance of freedom of speech. So they made an Amendment in there constitution and make provision for the fortification of speech and expression. The first amendment of the US constitution states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”<sup>43</sup> This above-mentioned Amendment of the American Constitution is a part of the US Bill of Rights. The United States Congress noted aloud means were prohibited for making laws, violate freedom of speech, and violate freedom of the press and limit the right to peaceable assemble. The First Amendment of the American Constitution provides protection to freedom of speech by its sum total of components of the law. The Supreme Court of America has very nicely

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<sup>42</sup>*Freedom of Expression: Speech and Press*, LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/constitution-conan/amendment-1/freedom-of-expression-speech-and-press>.

<sup>43</sup> Dheerendra Patanjali, *Freedom of Speech and Expression India vs America- A Study*, CHANAKYA NATIONAL LAW UNIVERSITY (2007), [https://www.indialawjournal.org/archives/volume3/issue\\_4/article\\_by\\_dheerajendra.html](https://www.indialawjournal.org/archives/volume3/issue_4/article_by_dheerajendra.html).

interpreted the First Amendment of the Constitution of America and said that the amendment guarantee of freedom of speech very broadly and also said that the protection given to freedom of speech is the strongest in comparison to any other individual rights given. By this, we can see that in America, freedom of speech is receiving a very high degree of protection by the constitution. So it is clearer that the value of the freedom of speech generally prevails over the other democratic values for example, privacy, equality and human dignity. For making the scope of the freedom of speech broader, the American judiciary has played a very vital role in that.

By the first amendment, only the free press is specifically protected. The Supreme Court of the US developed a view that freedom of the press is including more than just serving as a “neutral conduit of information between the people and their elected leaders or as a neutral form of debate.”<sup>44</sup> The main purpose of the free press is for making a fourth institution other than the other three official branches which are executive, legislative and judiciary, and to make a check on them. The primary or we can say basic function of the press is to provide compressive and objective information regarding all aspects of the political, social and economic life of the country.

In the case of *Terminiello v/s, Chicago*<sup>45</sup>, Justice Douglas of the USA Supreme Court has observed that “acceptance by Government of a dissident press is a measure of the maturity of the nation”. And in one another case of *Beauharnais*

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<sup>44</sup>Supra note 42.

<sup>45</sup> 337 U.S. 1, 11 (1949).

v/s Illinois<sup>46</sup>, the Supreme Court of the US emphasized that it has the power to nullify “action which encroaches on freedom of utterance under the guise of punishing libel.”

In a famous case Whitney v/s California<sup>47</sup>, Justice Louis Brandeis , made a definitive account of freedom of speech in the context of the US Constitution “those who won our independence believed that the final end of the state was to make men free to develop their faculties. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that the freedom to think as you will and to speak as you think is indispensable to the discovery and spread of political truth that without free speech and assembly and discussion would be futile that public discussion is a political duty and for example should be a fundamental principle of the American Government”.

The US SC while observing the first amendment which ensures freedom of speech and expression, has observed that “it is the purpose of the first amendment to preserve an uninhibited market place of ideas in which truth which ultimately prevails rather than to tolerate monopolization of that market whether it be by the government itself or a personal licensee.”<sup>48</sup>

The US, in 2014, was graded the 30<sup>th</sup> position out of 197 nations in next of kin to the media freedom by an association named Freedom House. In the name of the national security this report commended the protections given by USA

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<sup>46</sup> 343 U.S. 250, 267 (1952).

<sup>47</sup> 247 U.S. 357 (1927).

<sup>48</sup> Associate Press v/s US, 326 U.S. 1 (1945).

Constitution to the journalists and predestined the authorities for putting excessive limits on the investigative reporting.

### **3.2 UK**

In the year 1215, one of the finest books called Magna Carta came into the knowledge of the people, and it was written by King John of England. This book basically talks about the rights of the people by this document, certain rights were guaranteed to a nobleman and as well as to ordinary man.<sup>49</sup> As per the document, all should obey the law and even the king is included in that, and no one is above it. Even though this document was nice but it did not talk, or it did not mention the “right of freedom of speech”, but because of this document, a stage was created for upcoming documents in the future. The actual progress was started in the 17<sup>th</sup> century. In the year 1628, an important document came, and it is called a petition of right. This document says that no person can be detained only because of the reason that he or she is disagreeing with the Government. For the ordinary man this document has provides many of the rights and also the liberties were set.

Sir Edwar Coke, in the year 1606, declares that if any words insult individual and the government officials, then if the court thinks it will be punishable even if those words become true.<sup>50</sup> Dyrig the mid 17<sup>th</sup> century the civil war was at its ultimate, and at that time, “Areopagitica” work of John Milton’s get published, and it is known as one of the finest works done in relation to the “freedom of

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<sup>49</sup> Supra note 7.

<sup>50</sup> 1-3 SIR EDWARD COKE, THE SELECTED WRITINGS OF SIR EDWARD COKE (Online Liberty Fund, Steve Shepherd 1-3 ed. 2003).



speech”. And he even also held that there should be no restriction on “freedom of speech”, and he also said that if any offense happens, then only there should be the restriction.<sup>51</sup> In the year 1689 Bill of Rights passed, and at that time, the monarchy was also restored. And in that Bill of Rights, they also guaranteed free speech to the members of Parliament. But still, because of the law on libel, the ordinary people’s right for free speech was a big and complicated issue.

The licensing publication came to an end in the year 1694, and in the year 1695, a new Act made by John Locke. He was in favor, and in a belief that freedom of expression is natural right and censorship is an improper exercise by the Government on is not proper.

Through the last couple of decades of the 20<sup>th</sup> century, several English courts employed the principle of free speech in few suits pertaining common law, and they contemplated it to be their obligation to uphold free speech every place probable.

The UDHR was passed in the year 1948, it surefire under Article 18 and 19 that “everyone has the right to freedom of thought, conscience and religion” and “everyone has the right to freedom of opinion and expression” respectively.<sup>52</sup> Almost all the modern constitutions reflected those Articles of UDHR, but it was not the same case with the United Kingdom. After the passing of many years, it was in the year 1998 that the United Kingdom joined the “European Convention

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<sup>51</sup>. Roberta Klimt, *‘Reason is but choosing’: freedom of thought and John Milton*, BRITISH LIBRARY (Sep, 2018), <https://www.bl.uk/restoration-18th-century-literature/articles/reason-is-but-choosing-freedom-of-thought-and-john-milton>.

<sup>52</sup> *Universal Declaration of Human Rights*, UNITED NATIONS, art. 10 <https://www.un.org/en/universal-declaration-human-rights/>.

of Human Rights” (ECHR) and combined Article 10 of ECHR, which provides for the “freedom of expression” within its domestic law the Human Rights Act, 1998.<sup>53</sup> Article 10(1) of the Convention runs as follows “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”.<sup>54</sup>

But concurrently the Article 10 additionally offers that “this Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”<sup>55</sup> This “freedom of expression” is not an unrestrained or unobstructed right. There are many exceptions to this right, such as restrictions on court reporting, defamation, incitement to religious hatred, behavior intending to cause harm or threatening, abusive or insulting words and so on. Article 10 (2) of the “Convention” provides that “the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary for a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing

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<sup>53</sup> John Roberts, *The Development of Free Speech in Modern Britain*, SPEAKER’S CORNER TRUST (2011), <https://www.speakerscornertrust.org/5064/the-development-of-free-speech-in-modern-britain/>.

<sup>54</sup>*European Convention on Human Rights*, Council of Europe, Protocols No. 11& 14, [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>55</sup> *Ibid.*

the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.<sup>56</sup>

In the UK, defamation laws are one of the strictest laws where the defendant is imposed with a high burden of proof. In *Reynolds v/s Times Newspaper Ltd*<sup>57</sup>, it was provided that defamatory statements could be published in the public interest. Again in *Jameel v/s Wall Street Journal Europe*<sup>58</sup>, affirmed the Reynolds defense and was further used in several proceedings related to defamation. But eventually, this so-called Reynolds defense was abolished by the Defamation Act 2013, which reformed the law relating to defamation on the subject of “freedom of expression” and the protection of reputation. With the guarantee of free speech comes the guarantee of the free press, and this freedom is also not unrestricted. Article 6 of ECHR provides that “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”<sup>59</sup> Meanwhile the UK linked the

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<sup>56</sup> Ibid.

<sup>57</sup>2001 2 AC 127.

<sup>58</sup>2006 UKHL 44.

<sup>59</sup> Supra note 39.

ECHR, the supplies dealing with the reasonable trial also smear in UK, and the liberty of the press can be restricted if it troubles the interests of justice.

### **3.2 India**

In the year 1895, the constitution of India Bill was passed and which is first expressed a constitutional vision of India and which is comprised of the provision regarding freedom of speech and expression. Debates started in Constituent assembly before adding this freedom in the constitution. In that assembly, almost all members were in favor of adding this right, but some of them raised the question and said that there should be some reasonable restriction should be imposed. So in the year 1950, this right to freedom of speech and expression was added in the Constitution of India and along with it some restrictions.

As we all know that India is a democratic and socialist country and well known for its sovereignty values, and also, the secularism protection of human rights is a must in India. The Constitution of India gives its citizens a guaranty of many different types of fundamental rights. Amongst these different kinds of rights, the freedom of speech and expression is first in the hierarchy. So this right freedom of speech and expression is given under Article 19(1) (a), but as all things cannot be absolute same is with this right, there is some restriction to it, and it is given under Article 19(2) of the Constitution of India. The freedom of the press is not specifically written in the Constitution of India, but it is said by the Supreme Court of India in many cases that free press is part of freedom of speech and expression only so no need to wrights it separately. Justice Patanjali Sikri

observed in the case of Romesh Thappar v/s State of Madras<sup>60</sup>, that freedom of speech and the freedom of press lay the foundation of all the democratic country and there is no public education without the free political discussion, so it is essential for a smooth function of the process of the famous Government is possible.

In Indian Express Newspapers v/s Union of India<sup>61</sup>, the expression freedom of the press, has not been expressly said under article 19 but is comprehended within article 19(1) (a) of the Constitution of India. The expression means freedom from an authority which would have interference with the content and of circulation of the newspapers and it cannot be any interference with that freedom in the name of public interest.

Media is considered as the fourth pillar after the other three organs of the Government they are legislative, executive and judiciary. So the media has to play a very important role in society. Media is considered as a mediator between the people and the Government. The media has to follow proper ethics because whatever they say, people believe it, so media has a very crucial role in society. Media is the voice of the people for their rights. In a democratic country, free media is very important.

As media is in the center, they are the eyes and ears of the people, so the media has the power to make the opinion of the people as per their wish and in which direction they want to take the flow of the society. But in today's time, it is seen

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<sup>60</sup> AIR 124, 1950 SCR 594.

<sup>61</sup> AIR 1995 SC 965.

that instated of helping the people and making the smooth flow of the society they for increasing their TRP plays with the fact and truth, and nowadays they also become people's court they pass the verdict before the court.

In one of the recent cases of the Shiv Kumar Yadav v/s The State of Nct of Delhi<sup>62</sup>, famously known as Uber cab rape case, the accused requested the court hold a private hearing because the media was showing him as a bad person, and that's why people's opinions where going agents him. So the media was misusing his power and was entering into the right to privacy of the accused. If we see that even internationally, the right of freedom of expression, which includes in it the right to anonymous speech, we can take the example that the right to express oneself without identifying oneself as the source of such expression.

In the case of Maneka Gandhi v/s UOI<sup>63</sup>, justice Bhagwati has emphasized on the significance of the freedom of speech and expression in these words that the democracy is basically based on the free debate and also open discussion only for the government action taken corrective set up of the democracy. If Government of people means the democracy, then it is but obvious that each and every citizen must be allowed for participating in the process of democratic. And for that it has to be enabling him to exercise smartly, so his right to make selection, general and also free discussion on the public matters happens.

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<sup>62</sup> CRL. A. 471/2016.

<sup>63</sup> AIR 1978 SC 597: 1 SCC 248(1978).

In *Romesh Thappar v State of Madras*<sup>64</sup>, the SC of India apprehended that the freedom of speech and appearance comprise self-determination to spread thoughts, which is safeguarded by freedom of movement of a publication, as that it is of petite cost without movement. In one of the case Justice Patanjali Sastri, rightly observed that “Freedom of Speech and of Press lat at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of Government, is possible.” Freedom of expression cannot be likened or muddled with a certificate to make groundless and reckless claims counter to the courts and judges.<sup>65</sup>

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<sup>64</sup> AIR 124, 1950 SCR 594.

<sup>65</sup> *Radha Mohan Lal v Rajasthan High Court*, AIR 2003 SC 1467.

**CHAPTER 4– RECENT TRENDS**



## **4.1 EFFECT OF MEDIA VERDICT ON JUDGES**

“Supreme Court and House of Lords accept that prejudicial publications may affect Judges subconsciously: The Supreme Court and the House of Lords have, as pointed out in Chapter III of our Report, observed that publications which are prejudicial to a suspect or accused may affect Judges also subconsciously. This can be at the stage of granting or refusing bail or at the trial.”<sup>66</sup>

Media was started as a voice of the people and to bring truth and justice for all but what we see today is not the same situation. In current time the media because of the competition between their rivals or the competitors has started interfering in to the other three branches of the government and in that also specially to the judiciary. Today media is also called as janta adalat because of its unwanted interference in to the role and function of the court. In current time it is seen that if any controversial or famous personality case is going on in the court the media passes the verdict before the court pronouncement. This thing is one of the most important issues of the media in current time. We can take example of the shows going on the media channels in which they call people to discuss on the ongoing cases and even the case in which court has passed the judgment and then they pass their comments on that the court should take this dissection or this way court should think before the passing the judgment and on and on this type of things.

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<sup>66</sup>Supra note 35.

And because of this type of the media comments its has subconscious effects on the judges because in the end they are also human beings and in this 21<sup>st</sup> century no one is left from the information all are surrounded by information of different types of sources for example print media , news channels and most important the internet sources.

In the year 2019 Justice A. K. Sikri while in a interview talks about the freedom of press in the digital area. In this interview he said that in this digital age any material can be useful and also misused and also said that social platform like instgram, face book, whats app and many more like this affects the freedom of the people, people's privacy at that time it becomes dangerous instrument. He also comment on the fast changing media because of the paid and fake news and also said that because of this judging is in under very stress because of this digital era.<sup>67</sup>

“The tension between courts and media revolves around two general concerns- the first is that there should be no ‘trial by media’ and second is that it is not for the press and anyone else to prejudge a case. Justice demands that people should be tried by courts of law and not be pilloried by the press”.<sup>68</sup>

We can take example of cases in which court said media not to cross the limit. So in the year 1997 in case of state of Maharashtra v/s Rajendra Jawanmal Gandhi

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<sup>67</sup>Judging is under stress in digital era says Justice A K Sikri, Feb 10, 2019, 19:22 IST, <https://timesofindia.indiatimes.com/india/judging-is-under-stress-in-digital-era-says-justice-a-k-sikri/articleshow/67928639.cms>.

<sup>68</sup>Devika Singh & Shashank Singh, *Media trial; freedom of speech vs. Fair Trial*, 20 IOSR J. of Humanities and Social Science (2015).

the apex court “did hold that a trial by press, electronic media or publication agitation was the very antithesis of rule of law”.<sup>69</sup>

In one another case of Sidharth Vashisht v/s State (NCT of Delhi) in this case court said that “reiterating their earlier observation cautioned that Article 19(1) (a) did not permit the media interfering in the administration of justice in matters sub judice”.<sup>70</sup> In this case lordships also said that in todays time it a grave danger of the prejudice of the press. The media unobstructed exercises the freedom in holding the accused as a guilty and not only that even before the court has passes the order or going to passes the order. And court also said that because of the trial by media it not only harm to the fair and proper investigation but it also misrepresentation of justice.

## **4.2 200<sup>TH</sup> REPORT OF LAW COMMISSION**

Discuss about the 200<sup>th</sup> report of Law Commission is very important for this topic. Because this report of the law commission deals specific topics like “trial by media”, “free speech” and “fair trial” under the “Criminal Procedure Code”. This law commission report is divided in ten chapters and in last there is a conclusion recommendation part. The main purpose of this 200<sup>th</sup> law commission report was to see and also analyses media coverage and its prejudicial impact on criminal cases. This report mainly covers the area of criminal administration of justice and also to point out peoples right given under the Article 19(1) (a) and also the balance of this article with the sensible restraint given under the Article

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<sup>69</sup> AIR 1997 SC 3986.

<sup>70</sup> AIR 2010 SC 2352.

19(2) of the Constitution. In this report many provisions of the CRPC 1908 is there in relation with trial under the media surveillance and it also includes publication of media which tend to interfere or interfere in the management process of justice which amount to the criminal contempt as per the contempt of court act in that section 2 and 3 and if such interference happened then as per this Act reasonable restriction can be put on freedom of speech and that should be valid restriction. This report also recommends establishing a proper code of ethics. This report also talks about the amendment of contempt of court Act. This report also talks about the rights of accused and also of right of the society.<sup>71</sup>

### **4.3 PAID NEWS**

In today's time paid news is one of the most important and crucial thing. Paid news means "any news or analysis appearing in any form of mass media for a price in cash or kind as consideration".<sup>72</sup>

For understanding paid news we can take the help of class-dominant theory. The concept of Paid News can be understood by the "class dominant theory". The theory says that what the media projects and also what it reflects is the view of minority leaders which controls all things. These elites are people who own and control the corporations and political leaders. The issue of sponsorship adds to this problem. Advertising is the major source of fund for the most of media. Thus, news organizations are not only indolent about negative stories about corporations

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<sup>71</sup> Supra note 35.

<sup>72</sup>Supra note 11.

and political parties or leaders that finance large advertising campaigns in their newspaper or on their stations. News casts are not intended to entertain and tell but somewhat to keep our interests long enough to deliver a well paid advertisement.

In May 6 2013 the “Parlimenantary Standing Committee” department of “information technology” presents forty seven information in lok sabha on issue of “paid news” the committee was headed by “Mr Inderjit Singh Rao”. As per the “Press Council of India” “Paid news” means “any news or analysis appearing in any form of mass media for a price in cash or kind as consideration”.The committee also asked the “Ministry of Information and Broadcasting” for making a proper and legal definition for the “paid news.” In this report committee said the reason for increasing of paid news is that desegregation of ownership, decline in the autonomy in journalists and editors because of the contract systems and very less wages to the journalists is one of the main reasons for rising of the paid news incidences. “Ministry of Information and Broadcasting” was advised by the Committee for time to tie review the situation of the journalist and editor’s remuneration and the autonomy situations. Committee also said that the financial accounts of media house should check time to time means examination and specifically the source of revenue for any type of suspected paid news. Committee also found the current regulatory set ups for dealing with the paid news issue are not proper. Committee recommended for making a single regulatory body for the

both the electronic media and print media. Committee also recommended for punishment for paid news.<sup>73</sup>

#### **4.4 MEDIA TRIAL IMPACT IN FAIR TRIAL**

It is seen that many a time's media trial is creating many problem in fair trial. In a democratic country the "fair trial" is at the center and "heart" of the criminal jurisprudence and in democratic polity it is run by rule of law. This problem is created because media has become as janata adalat and by this people is also interfering into the court proceeding.

There is no provision for investigation by media but they do it separately by them and also make peoples opinion on that against the accused. Media do this before any steps taken by the court and before court passes any order even they also passes that the accused is liable for the offence happened. By this kind of activity of media they are interfering into the administration of the justice.

It is seen many a times that before court is in process of trial the media passes their verdict and they also includes in it the opinion of the public and this kind of interference is seen in mainly in famous personality cases or in the criminal cases in which they can do addition and subtraction of the reality and the facts for increasing their TRP.

Sahara India Real Estate Copration Ltd Ors v/s securities and Exchange Board of India and Anr<sup>74</sup>.So this case was pending before the constitutional bench and

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<sup>73</sup> Supra note 31.

<sup>74</sup> AIR 2012 SC 3829.

when interim order was passed by the court many of the news paper published the judgment proceeding. So the apex court gave some of the guidelines for the publication of things in media of cases which are pending before the court. First one is - prior restraint: whenever the court is satisfied, it can pass order prohibiting publishing of any content by media but only for a temporary period. The above order can only be passed during the pendency of the trial. The passing of such order is backed by the inherent power of the court and therefore are not volatile of article 19 of the constitution. Second one is - Contempt of Court Act, 1971, there is no doubt that it is right and function of media to report on ongoing cases and judgments passed in court. Such reporting helps in dispersing information to public at large. This also helps in increasing confidence of the public in the judiciary and its transparency. However, whenever such reporting contains inaccurate representation or manipulation of facts of case or judgments, the court can initiate proceeding of contempt as such can interfere with the administration of justice. Then the third one is order of postponement of publication/ Right to approach High Court, Supreme Court that any accused or aggrieved person can approach the appropriate High Court or the Supreme Court and ask for relief in form of postponement of publication or temporary restraint. The person can only ask for above relief only if there is an apprehension that such publication may interfere with court proceedings. The Court will grant the above relief while keeping in mind the balance between the “right to privacy” and between the “freedom of press right”.

#### 4.5 MEDIA & VICTIMS OF SEXUAL ASSUALLT IN INDIA

The media is a watchdog of the society and it also plays a role like a gatekeeper so he knows all things going in society whether it is good thing or the bad thing. Media plays many activities like he stands for the rights and justice and many other things but in this 21<sup>st</sup> it is see that media only stand when it seems to it that the issue or the topic is eye catchy or it will make sensation in the field. And this type of there activeness is seen in the case of victims of sexual offences. We can take example of recent things like the case of khurshad anwar in which the media without knowing the fact blame him of rape and due to pressure of media he did suicide and the latest seen of the year 2020 the boys locker room in that without knowing the truth and the facts whole media turned on that topic and due to pressure of it one boy did suicide and in last it was known that the boy was innocent.<sup>75</sup>

The offence of sexual assault is grievous crime. So in this type of cases the victims are in are not ready to tell their names in public because of their fear or shame or any other reasons but then also media knowingly or unknowingly reveals many things and facts related to the victims. Media should understand that they have power to change the attitude and mentality of the society. Media show the name of the victims, the place of the incidents, the things of the victims which the victim don't want to remember but due to media it surrounds the victims by it.

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<sup>75</sup>Prashanti Upadhyaya, *Media and Victims of Sexual Assault in India*, Legal Service India, <http://www.legalservicesindia.com/article/2039/Sexual-Harassment-of-Men.html>.



Media should understand that if they has freedom of speech and expressions then the victims also has and victims also has right to privacy in which media has no right to interfere.

#### **4.6 CONTEMPT OF COURT**

Contempt of court means to disobedient towards the court or even disrespectful and which challenges the dignity of the court or the judge. The contempt is defined in section 2 of the contempt of court Act 1971. There are two types of contempt one is civil and second is criminal. So willful not to obey the any order or the judgment or decree or etc is called civil contempt. And if any publication whether it is done by words written or oral or any other type which scandalized or prejudices in the administration of justice function in any manner then it is called criminal contempt.

In case of C.k. Daphtry v/s O. P. Gupta court said that “the right to freedom of speech and expression does not entitle a person to commit contempt of court”.<sup>76</sup>

In the one of the well known case of Sahara India Real Estate Corpn. Ltd. v/s Securities and Exchange Board of India<sup>77</sup>. In this case there was Constitution Bench of the Supreme Court. So the court explains the power of the High court and Supreme Court in matter of contempt of court. Court said that the Supreme Court has power under Article 129 of the constitution and High court has power under Article 215 and also add Article 19(2) to read with which related to the law with relation to contempt of court. This power is vested in them to ensure that the

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<sup>76</sup> AIR 1971 SC 1132.

<sup>77</sup> AIR 2012 SC 3829.

administration of the justice is not prejudiced, obstructed, prevented or interfered with it. So because of this reason court has this power to prohibit temporarily the statement which is made by the media. Court also said that this contempt law is not only for the punishment but it also includes the court power for prevention of such activities which are interfering with the administration of the justice.

In recent time only in the year 2016 Justice Kurian Joseph of the Supreme Court of India has also believed that the trial by media on the pendency of the cases is same as the equivalent to the contempt of the court and he even said that media instead of doing all this they should work for the betterment and upliftment of legal system for betterment of the society.<sup>78</sup>

#### **4.7 MEDIA TRIAL AND PRIVACY**

The “Right to privacy” is very well defined by the Black law Dictionary it says that there are different meanings for the right to privacy one of them is that the person should be left alone and should be free from unwanted interference.

After the passing of the judgment in the recent case of 2017, right to privacy has obtained impetus throughout India and it is also known as the Fundamental Right to privacy. Many countries like USA, India, UK and international organizations like UDHR, ICCP and ECHR having given valid and convincing recognition to the “right to privacy”.

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<sup>78</sup> *Trial by media in contempt of court*, Special correspondent Aug 2, 2015, THE HINDU, updated Mar 29, 2016 12:36 IST.

The “Right to Privacy” is added in the constitution under article 21 which can be considered as the right to life and liberty. The term privacy is very ambiguous and a clear explanation of it was required. There are many scopes and ways to explore article 21 under the Indian constitution, criminal law, and property laws. The privacy is considered as most essential part of a citizen and which needed to be protected in the landmark case of K.S. Puttaswamy v/s Union of India in the year 2017 it was said. In one of the case of Mohd. Ajmal Mohd. Amir Kasab v/s State of Maharashtra it is said by the court that “ an action tending to violate another person right to life guaranteed under Article 21 or putting the National security in jeopardy can never be justified by taking the plea of freedom of speech and expression”.<sup>79</sup>

The importance of the right to privacy is not national, but now it has reached the international level. There are many aspects in the right of privacy as it is a dynamic concept and is incorporated under provisions of various legislation.

There is a different interpretation done by US Justice Louis Brandies, which say that the right to privacy is one's personal information which should be protected from public scrutiny and should be left alone.<sup>80</sup>

India has signed Article 17 of ICCPR 1996, according to which the right to privacy is for protecting one's family, home, correspondence, honor and reputation against arbitrary interference.

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<sup>79</sup> AIR 2012 SC 3565.

<sup>80</sup> Tim Sharp, *Right to Privacy: Constitutional Rights & Privacy Laws*, LIVESCIENCE, Jun 12, 2013.

In one of the famous case of Hindustan Times v/s High Court of Allahabad, (2011) 13 SCC 155 “ It is the duty of media to respect individuals fundamental right to privacy and to maintain dignity of courts so that people’s faith in administration of justice is not diminished”.<sup>81</sup>

So everyone has its right to privacy so whether it is a common person or accused or victim. The way media for making their name bigger uses private information’s and due to that it is seen that it is difficulty in giving justice.

#### **4.8 MEDIA EFFECT ON THE ACCUSED**

It is seen that when a case civil or criminal trial is going on and if it is under the media surveillance then there two things happened in that one of them is it increases awareness of peoples and also of system on which the disputed issue is and the second one is that it increases the opinions which is to be created for parties in the matter and then this opinions are published. It is under stable that if anyone is publishing his view or the opinion has right of publishing it but that person also should understand that the party in dispute has their right to privacy.

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<sup>81</sup> 12 GOPAL SANKARANARAYANAN, THE CONSTITUTION OF INDIA (EBC12<sup>th</sup> ed. 2019).

**CHAPTER -5 JUDICIAL APPROACH**

## **5.1 Indian Express Newspapers**

In the case of Indian Express Newspapers v/s Union of India<sup>82</sup>, court has said about the need of the “press freedom”. In our Indian constitution the “freedom of the press” is not expressly written in the Article 19 however it is seen that it is indirectly included in it. The court said that expression related to press means freedom from interference in any type of circulation of newspaper and of content. In the name of public interest there should be no interference in it. The basic purpose and interest of press for people is to make them aware to the facts and opinion by publishing things. The freedom of press is said to be heart of the social and also political inter course. “It is primary duty of the courts to uphold the freedom of press and invalidate all the laws or administrative actions which interfere with it contrary to the constitutional mandate.”

## **5.2 Jessica Lal Murder Case**

Manu Sharma v/s State (NCLT Delhi)<sup>83</sup>, famously known as jessica lal murder case. This is one of the most famous case in the history of India and very controversial also. Because in this case the media has played both the role one is good and other bad role. So first of all if we talk about the good role played by media. That the media whip up the peoples opinion and opposes the accused and also when trial court has acquitted accused media made him guilty. In this case opinion poll where made by the media and they took the responsibility as a administration of justice so they make sure that the guilty of crime is punished

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<sup>82</sup> AIR 1986 SC 515.

<sup>83</sup> (2010) 6 SCC 1.

even they organized candle light protest. Then they brings out the past history and back ground of accused and photos of the accused where also published at many places after he means accused got acquitted .So his photos also where taken by the media after he was acquitted and how he was enjoying and celebrating of not being guilty. So now the bad part played by the media is explained by the court. So the highest court of the land has observed and said that “freedom of speech” has to use it with very awareness for avoiding that it does not interfere in administration of the justice. If because of this kind of behavior of the media any type of obstruction happened in to fair investigation and if it prejudices defense right of accused then it would be a sham of justice so in last court said that the media should not behave like the court agencies. So basically media for benefit of them they published many private information of the accused. This is not allowed to them or any of the people to interfere into the privacy of the other. Because of this kind of behavior of the media the view of the society is changed and instead of the real fact and situations people see the cases only on the bases of emotional way which media do all time to increases there TRP. Because for giving justice the situation is seen then fact of the case is seen then evidence and many more things are related to case which changes with each and every cases.

### **5.3 Khurshid Anwar case.**

In recent time one of the famous NGO director Khurshid Anwar committed suicide only and only for the reason that again and again questions which were raised by the media “highlighted the victim’s allegations on TV without bothering

to cross-check facts or even get his version of the incident”.<sup>84</sup> Media gave him a labeled of rapist without knowing the truth only on the bases of the victim comments so because of this he committed suicide. In this case media forgot the principle that the accused is innocent till the time he is proven guilt. Very nice thing said by one of the senior journalist that “there is a tendency in journalism that it convicts a person on the day allegation is leveled against him, even before the court convicts him. He even said that how can media reach a conclusion so quickly and start showing one as an accused? At least, it should wait for lodging of an FIR, completion of investigation” Senior Journalist Naqvi said.<sup>85</sup> So only because of high pressure on khurshid Anwar of the media he committed. Because all the people who were asked by the investigation officer related to khurshid anwar all said that he was very nice and a gentlemen person and also very emotional person. So because of the grave comment on him of a rapist in news paper and also on the social media without knowing of the truth his reputation was cursed. And because of all this he cannot bear this humiliation he has taken this type of step.

#### **5.4 Mohd. Ajmal Mohd. Amir kasab v/s State of Maharashtra**

In the case of Mohd. Ajmal Mohd. Amir kasab v/s State of Maharashtra<sup>86</sup>, court said that by taking the plea of the “freedom of speech and expression” do not give any one right to violate right to life of any other person which is given under Article 21 of the Constitution of India. So in this case court also said that and held

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<sup>84</sup> *Activist Khurshid Anwar’s suicide: Was media trial responsible?* B.T, Dec 28, 2013.

<sup>85</sup> *Ibid.*

<sup>86</sup> AIR 2012 SC 3565.



that the “coverage of the Mumbai terror attack by the Mainstream Electronic Media had done much harm and to argument that any regulatory mechanism for the media must come from within”.<sup>87</sup> The Apex Court said this line because Many T.V channels of India where showing the ongoing mission from starting to the end nonstop the news channels where showing every seconds to seconds moment of activities. This news channels where also showing the moments and positions of our security forces which were engaged for taking out terrorists. Because of this all activity done by the media make task of the security force more difficult and even risky and dangerous. The defense taken by the media of freedom of speech and expression was totally wrong said by the court and this kind of activity and defense was not acceptable in such kind of situation. So the media need to be act responsible in this type of situations. Media should at least forget their internal competition and TRP in this type of situation.

### **5.5 Sidharth Vashisht v/s State (NCT of Delhi)**

In one another case of Sidharth Vashisht v/s State (NCT of Delhi)<sup>88</sup>, in this case court reiterating means to repeat an opinion or the statement of their says that the Article 19(1) (a) of the constitution has not given permeation to the media to interfering in the administration work of judges in giving justice in the matter sub judice.

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<sup>87</sup> Ibid.

<sup>88</sup> AIR 2010 SC 2352.

## 5.6 Salman khan Hit and run case

The news of December 10, 2015 was critically reviewed by all the English language newspapers including minutes and indirect details of the case like loopholes in the prosecution and the level went so high that the case was considered as failure of judicial system. One of the leading paper named DNA commented in its editorial that the nation missed an opportunity of landmark against the drunken driving and hit & run cases. As it was a high profile case of hit & run and drunk and driving case, it was turned out that Salman khan was not drunk as well as he was not driving Toyota Land Cruiser that ran over the pavement and killed a laborer and injured four other.<sup>89</sup>

So in this case there were many media persons who were against to this case and among them one was Anil Dharkar who appear in Indian Express and he also has pointed out the mistakes of prosecution which he said was made intentionally and he even finished that the judicial system of our country was the loser in that case. The investigation was not completed as the police officer who took the blood sample to lab for test was not found for many years and now that police person has retired. They even have not call Kamaal Khan as the witness and this shows that prosecution made a mistake knowingly. It was also rumored that if the prosecution has called Kamaal Khan as witness than it would have favored them and perhaps may lead to scenario making sure that khan only was driving his car.

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<sup>89</sup> Nirmalya Dutta, *Haunting questions we have about Salman khan hit and run verdict*, DNA India, Dec 12, 2015, 01:16 PM IST.

And due to this it was clearly interpreted that the in this case beneficiary was Salman Khan and the loser was our judicial system.<sup>90</sup>

The well-known news paper economic times also pointed this case in their editorial and wrote that the verdict makes a person more fearful of not having an insurance rather than being afraid of law. The free press journal also raise the same issue that an chance to teach a class to all who drink, and drive was missed. Salman Khan's case was considered as a test case which was to be used for holding a lesson for all citizens who drink and drive the car. But it was mistake of police as well as the prosecution as their approach and effort were totally missing. The editorial has also raised a question on the majesty of law and added that their reputation has also diminished on acquittal of Salman khan.<sup>91</sup>

All other editorials like the Mid-Day has also made it clear that the nation lost an opportunity to punish the high-profile case of drunken driver and make an landmark for others. Initially it was thought that the Salman Khan hit and run case will set an example for all other celebrities and layman regarding the drunk driving across the nation, instead the people learned new ways to bungle the process of investigation. The mid-day has also found many loopholes in the judgment and procedure by the Judge which helped Salman Khan to walk free.<sup>92</sup>

The Hindu carried out a special report by taking an interview of public prosecutor, Sandeep Shinde, who gave the judgment that whatever has happened, but the fact

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<sup>90</sup> Anil Dharkar, *And justice lost*, The India Express, Jul22, 2020, 4:05:03 pm.

<sup>91</sup> *Salman Khan hit-and-run case: Court gives time to police to trace documents*, E.T., Jul 25, 2014, 06.20 PM IST.

<sup>92</sup> Sailee Dhayalkar, *Hit-And-Run Case*, Mid- Day, Updated: Dec 11, 2015, 15:58 IST.

remains same that an innocent person was killed, and four others were badly injured. The question asked by him was who is responsible for it? Also, many allegations were made like what kind of message is being passed to society and any high-profile person can hijack the system? The Hindu continued the discussion on its editorial, the Day of the citation dated on 7 May,2015 exactly after the sessions court of Mumbai gave the judgment that the death were caused by the influence of the alcohol rather than just negligent driving. In the same article The Hindu also noted that the drunken driver cases should not get the benefit of negligent driving and rash driving.<sup>93</sup>

In one of the cases the Supreme Court upheld the three-year sentence, which was given by the Bombay High Court; it was considered too lenient and was not enough for murdering any person. The Supreme Court ordered to all trial courts that in such cases the benefit of doubt should not be given and rather they should be punished under 304 II ( 10 years of imprisonment) or some lesser offence of 304 A under which 2 year of imprisonment is applied. The principal witness was PSO-Patil who files the FIR within few hours of the incident. Initially it was counted under rash driving and negligent driving by the PSO and the metropolitan magistrate. The version of incident was neglected by the prosecution and due to this Mr. Khan was given only benefit of doubt rather than a clean acquittal. Why this kind of thing court said because the media was making a high pressure on the investigation team and also on the court.<sup>94</sup>

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<sup>93</sup> R.K. Raghavan & D. Sivanandhan, *The case against Salman Khan*, The Hindu, Dec 14 2015 00:22 IST Updated Sep 02, 2016 15: IST.

<sup>94</sup> Ibid.

But if we see the entire situation then we can completely see that how much there was pressure on the investigation team and mainly on the judges under whom this case was going on. Because all most all the media was focused on this case and also passing there on comments which were concisely and sub concisely effect on the judges because in last they are also human binges they are knowingly and unknowingly effected by this type of things going in society.

### **5.7 R.K. Anand vs. High Court (Delhi)<sup>95</sup>.**

This is one of the famous cases of the year 2009. In this case important questions related to the trial were examined by the Hon'ble Supreme Court. So in this case one of the media channel did a sting operation. So they can expose the unethical connection between the prosecutors and its witness and even the defense council. This case famously known as BMW hit and run case. Because of this BMW hit and run six persons death happened by a very reach and politically strong family member person. So the news channel exposed the senior advocate by sting operation who was trying to purchase public prosecutor. Bribe was given by the advocate so they can take defense in their favor. And all this things where recorded by sting operation by the TV channel with the help of a hidden camera. Witness where used as a mole means a secret agent. So in this suo moto contempt proceedings were initiated by the Delhi High Court. The court held Special Public Prosecutor (SPP) and the Defense Council were held guilty of contempt of Court and debarred from appearing in the Delhi High Court and in its sub-ordinate Courts for four months. It was recommended that they be stripped of their status

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<sup>95</sup> MANU/SC/1310/2009.

as Senior Advocates. In the appeal before Apex Court it was said that this is a trial by media because this type of sting operations can only be done after the permission of the High Court. Court also said that they reject this type of behavior of media and it is not acceptable because in this media has played function of a special agency of the court. “The trial by media was described as there is a big issue that a person's reputation is getting affected due to television and newspaper before they are actually given any verdict in court”. Because of this type of situation created by the media a atmosphere is created which is not good for the society. The media create critical situation for court to give the justice and also media injury the character of the person even when the trial of case is going on and make accused guilty in the eye of the society. And even the innocent person is found not guilty he or she cannot live his life properly and normally. Court also added that this is not the way media should work because in last all this kind of things can and also make task of giving justice tuff and also increases the time and by this is interruption in giving the justice on proper time.

### **5.8 Saibal Kumar v/s. B.K. Sen<sup>96</sup>.**

In this case the Supreme Court held that it would be ill-behaved attitude of the media to work systematically and perform an investigation for any person who has been arrested. And even publishing the outcome of the investigation by the media in different way and different manner. It was said by the court because when there is a trial going on by the court there is no need of trial by the media it should be restricted to media from doing so. For saying this thing the only view of

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<sup>96</sup> AIR 633, 1961 SCR (3) 460.

the court is that media interfere in the court work. The principal of open justice system is applied for both to the courts and even to the judicial and quasi-judicial tribunals. There is no doubt in that the fundamental right of the people to attend the proceedings of the court as per the Article 19(1) (d) of the constitution of India and there is also a right of publishing a authentic information of the proceedings witnessed in the court as also to quasi-judicial tribunals and judicial.

The system of open justice must be given away as soon as there is a consideration of the privacy and the victims of rape names or those who suffered those kind of situation. Because in this type of situations or case the victim is already scarred what happened to him so they and their family are in the favor that their personal details should not be given to the public. The victims of the rape identity should be protected and not to disclosed.

### **5.9 State of Maharashtra v/s Rajendra Jawanmal Gandhi<sup>97</sup>.**

In this case Supreme Court noticed that, there is a particular procedure which is to be followed for the trial of person accused for any type of offense. When a trial is carried out by the press, by the electronic media or by the community than it is exactly opposite to the rule of law. It sometimes leads to miscarriage of the justice to the innocent and may lead to a punishment which is actually not required and it also consume more time. The judge of the court has to always remain strict towards the rules and law rather than coming under any such pressure or impression. If any person is said to be found guilty by the media than also the

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<sup>97</sup> AIR 1997 SC 3986.

judge should sentence the person according to the provisions of law , fact of the case rather than coming under the pressure of other external factors. Such a situation is summed up and explained by the Justice H. R. Khanna Certain cases are present which shows and highlights some of such cases which give rise to public emotions and opinions. There is more or less effect to the prejudice in some or the other cases and it depends on the trial of the case. The question must be arising that the purity of the judicial process should not be affected because of any type of circumstance. With starting some kind of the judicial proceedings by media which may has lead to the soreness of contempt of court. A line to sense of the balance and to manage all these type of problem should be drawn. The power of contempt of court should be used for proper functioning free press in the democratic society and by this media will also not misuses power given by the constitution. This is very critical for maintaining and for ensuring the healthiness of a democracy in the country. And on the same time media should keep in mind the view of accountability and also to watch that nothing is done by them which may bring or which can bring the courts into a situation of disrepute and even make the society faith loses in these institutions.

### **5.10 Manu Sharma v/s State (NCT of Delhi)<sup>98</sup>**

In this case the height Court of the land has extensively observed about that the hazard of the trial by media. It has opined that there is a threat of great risk of prejudice if the media is exercising or is counting this unobstructed and unregulated freedom in which they publish the photographs of the accused before

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<sup>98</sup> (2010) 6 SCC 1.



the identification are constituted or if the media is publishing the things which are rightly hold by the accused directly guilty even before any such order has been passed by the court. Further it also observed that instead of the consequence of the print media in the current day but it can at least ensured that the media does not affect at any point of time in the investigation of the agency responsible and it is very important that the right to prejudice the right of defense should not be affected in any manner. In this kind of event oppose the very essential rule and would impose the safeguard which is approved to the accused under the Article 21 of the Indian Constitution. In a free democratic country it is an important thing to maintenance of the dignity of the court and it is even one of the fundamental principles or we can say basic principle of rule of law and that the denigration or even the reporting of the any particularly thing in sub judice matters must be a subjected to the check and due to this the administration of the justice is not affected.

### **5.11 M. P. Lohia v/s State of W.B<sup>99</sup>.**

In this case the Supreme Court while dealing the case said that we have no problem in saying that any types of topics which are published by press are interfering in the administrative work of the justice and also making the task of the court more difficult. The publisher and the journalist and also editor are deprecated from this practice that was answerable for what they have said in the article and indulging in such trial by the media when the issue is sub judice. Because when media has published the heading as Doomed by Dowry while the

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<sup>99</sup> 2005(2) SCC 686.

trial for a dowry death was sub judice. The basis of the article was the interview of the family members of the deceased person and they were given many versions of the heartbreak quoting to the family members of the deceased person as per their story which they heard of the case.

### **5.12 Arushi Talwar<sup>100</sup>.**

Dr Rajesh Talwar and another v/s Central Bureau of Investigation but famously known as Arushi Talwar case. In year 2008 there were many television reporters in and out of victim's house and trampled law and order and not only that even over the evidence. Victim was murdered and she was 14 years of age. The media was talking extensively about the alleged sexual relationship of the girl and the Talwar's servant and even talking about victim's father's affair. The excesses of media prompted the Supreme Court bench consisting of Justice Altamas Kabir and Justice Katju has a concern to media to remain careful in its coverage and refrain all of them from character elimination of the deceased and their family. It denounced the sensationalist media reports that were devoid of sensitivity, taste and decorum. In this case media was playing a big role in creating observation about the deceased and its family members and it damaged the case and reputation of the deceased family members. Even her family members said that the dignity of her 14-year-old child has been crushed. Her mother said that she each and every day makes an apology to her for what people have done to her. As a human being and being a mother she was not able to understand and every night she was sorry to her. Besides the law perspective, the society pays a lot for the

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<sup>100</sup> 2013 (82) ACC 303.

fake sting operation and media intrusion many times. The lost status of that woman cannot be recovered even after spending lot of money which is affected by the verdict of media. In year 2017 court acquitted from the charges which were laid down on the family members of the deceased because of lack of evidence.

## **CHAPTER 6 – CONCLUSIONS AND SUGGESTIONS**

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6.1 Conclusions

6.2 Analysis of Research questions

6.3 Testing of Hypothesis

6.4 Suggestions

## 6.1 Conclusions

The most important objective and principle of the media are to inform to all, and they attempt to entertain the largest possible audience. Media is a legal field that refers to the following things: - advertising, censorship, contempt, corporate law, defamation, internet, privacy, and last but not the least telecommunication. The Article 19 of constitution of India gives freedom of speech and expression but in India there are certainly some reasonable restrictions which are imposed on the freedom of speech and expression by the Constitution of India 1950 as amended Constitution of India. One of the judges of the Supreme Court Justice A .K. Sikri said that Judging is under stress in the digital era. In our country explicitly mentioning of the freedom of press is not there. However it is inherent in the “freedom of speech and expression”. The researcher has taken this research because nowadays it is seen that the influence of the media has increased and it is increasing day by day on society. It is also seen that the media is interfering into the other three branches of the government and mainly into the judiciary. There is a need for controlling or to put some restriction on media so they do not enter into judiciary work for increasing their T.R.P and because of that miscarriage of justice will also stop. So need a new legislation as per the current situation as soon as possible.

The word or phrase media trial is not much old it is only around later part of the 20<sup>th</sup> and early part of the 21<sup>st</sup> century this word came to know to the people. This phrase media trial is for describing the impact of the newspapers and television on the peoples status by creating an opinion and blame before any verdict of the

court and by doing this media is trying to become public court and it is also called as janta adalat. Article 19 of our Constitution of India gives to citizens many right to freedoms. In this freedom of speech and expression are regarded as the first in the hierarchy for the liberty. Rights given under Article 19 of the constitution of India are only enjoyed by the citizens of India and foreigner did not enjoy this rights. And restrictions on these freedoms are given in clause 2 to 6 of the said Article. In a democracy country freedom of speech and expression is an indispensable part of it. In Constituent Assembly Debates Dr. Ambedekar sir<sup>101</sup>, said in his speech that though the liberty of press is not expressly mention in the Article 19(1) (a) of the Indian Constitution however it has been held that the liberty of press is incorporated in it.

The mass media system of the world varies it means changes from each other according to their economic quality, cultures and regions of the different society to society. For studying a concept of free speech ones should start with the development of the free speech in the countries like UK, USA and India. It is very essential to know how the theory of this free speech has been developed in all this countries. While dealing with the freedom of speech and expression we also include freedom of press.

It is true that in a democratic country it is necessary that everyone has their freedom of right but with that it also important to make peace in the society and equality among the people so the justice is also maintained in society so the freedoms are with some reasonable restriction and it is same in the case of the

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<sup>101</sup> Supra note 19.

freedom of the press. It is no ware written in our country that the freedom of press means they have right of media trial the concept of media trial is very wrong because it not only interferes into the justice delivery system of the court but the person who is connected in that media trial his status in the society is also cursed by the media and many a times it is also found that media do this on basils issues which is not ethical and also morally wrong. It is always excepted that for the purpose media came into the existence it means to make people aware about the current situation going into the society and to show unbiased news and to show the real facts. In one of the well known case court said that many a time because of the media it is not possible to at any conclusion for the fair trial.

It is seen that in today's time paid news is one of the most important and crucial thing which is increased like a virus into media society. As per the PCI paid news means "any news or analysis appearing in any form of mass media for a price in cash or kind as consideration"<sup>102</sup>. Then one other thing of recent time is the Law Commission Report 200<sup>th</sup>.<sup>103</sup> The main purpose of this report was to see and also analysis media coverage and its prejudicial impact on criminal cases and also for bringing new things in the Contempt of Court Act. It is seen that many times media trial is creating many problem in fair trial. In a democratic country fair trial is at the center and also at called as the criminal jurisprudence heart and a democratic polity it is run by rule of law. In one of the famous case of Sidharth Vashisht v/s State (NCT of Delhi)<sup>104</sup>, in this case court reiterating means to repeat

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<sup>102</sup> Supra note 11.

<sup>103</sup> Supra note 35.

<sup>104</sup> AIR 2010 SC 2352.



an opinion or the statement of there on and said that the Article 19(1) (a) of the Constitution has not given permeation to the media to interfering in the administration work of judges in giving justice in the matter sub judice.

## **6.2 Analysis of Research Questions**

The researcher, at the beginning of the study, has formed five research questions that were subsequently answered in the relevant chapters in the study. A brief conclusion of the questions is as follows:

### **1) Is the obstructive media create a miscarriage of justice delivery system specially to criminal justice system ?**

To answer this question researcher has put forward some of the famous cases in which the court has observed that, the media, more often than not, is creating an obstruction to justice by blantly disregarding the privacy of the accused and interfering into functioning the court and by that in the justice delivery system . So the answer to the question is yes.

### **2) To study the concept of media trial and constitutional restriction.**

To study any concept, one has to have a clear knowledge of the concept's scope and its definition. The researcher has traced the usage of the word or the phrase "media trial".

It is not very old and it was only around the 20th and 21<sup>st</sup> century that this word became of everyday usage. Basically the phrase "media trial" can be described as media sensationalizing the issues and describing the facts of an ongoing high profile case in prejudiced manner. The facts are presented in such a way that even

before the court can pronounce a verdict, the media passes a verdict of its own and shapes the public's opinion which in today's world is quite dangerous. As the media puts the accused on trial in the public domain by presenting the facts in a particular manner suiting them and sensationalizing the issues, the term "media trial" came into being. There is already put some reasonable restriction on freedom of speech and expression under Article 19(2) of the constitution of India. But then also media is not much bothered about that and misuses the right given by the constitution.

### **3) Whether media need self-limitation?**

There is a very thin line between the fair usage of the freedom of press guaranteed under the constitution and its abuse. A free and unprejudiced press is one of the basic tenets of a successful democracy. However if the current trend of abusing the right to freedom of press for gaining viewership irrespective of truth goes on, sooner or later there will be limitations/ restrictions on this right as it is not an complete right. Once such limitation comes into force, the media would not be able to perform its function in democracy. Self limitation means the media itself regulates the content it disperses by studying the various aspects and consequences and limiting itself to a unbiased and fair reporting of facts. Self-limitation as it will help the media walk the line of Fair usage and abuse of Freedom of press while performing its function in democracy. Therefore the researcher believes that there is a need for self limitation by the media as it would benefit all the stakeholders.

### **4) Is there any need for media guidelines and training to journalists?**

Continuing the point made by the researcher in the previous question, the researcher believes that there is a need for broad guidelines because it will have several benefits. Broad guidelines developed by an expert committee having representation from media, executive and judiciary would be very beneficial as it will help the media in self limiting or self regulating the content it produces. Also, the guidelines would act as a base upon which the media houses may develop their own regulations regarding the content produced. The guidelines would also decrease the current friction going on between Media and individuals and create a harmonious atmosphere.

Now with regards to the training of Journalists, the researcher believes that it would also be beneficial as it will help them navigating the various scenarios arising in today's world. The training would also be beneficial as it will make a journalist aware of his/her rights and duties while delivering news.

Therefore there is a need for media guidelines and training of journalists.

**5) Whether the media plays an effective role in manipulating the news and information?**

After studying the various case studies presented in the dissertation the researcher is of the view that the media plays an effective role in manipulating the news and information. From the cases discussed the researcher has sufficiently proved that some of the media in order to gain viewership and thereby getting more revenue through sponsorship have resorted to manipulating the news and information to suit their view and create sensation where there is none.

### **6.3 Testing of Hypotheses**

#### **1) Media verdict is more powerful than actual court judgments.**

Yes this hypothesis is true because in a number of cases we have seen that before a case reaches court or the trial is going on, media make a television show on that case and involve people in that and pass their judgment. This prejudice has an extreme prejudicial effect on the conscience of the society. As the researcher has shown one of the recent cases of NGO 'Institute for Social Democracy' Director Khurshid Anwar who committed suicide only because of the questions which were raised by the media even without knowing the truth and facts they highlighted the victim's allegations on the TV. And the media also labeled him a rapist. Media labeled him only on the basis of the victim's comments without hearing his side of the argument. As the person was a very reputed person in society, he could not bear this kind of pressure on him made by the media and therefore he committed suicide. In this case, the media overreached its power as they forgot that the power to declare any accused guilty is solely of the judicial system.

#### **2) Media outreach is more than our justice system.**

Media came into being as a voice of the people and to bring truth and information to all, but the current form of media has somewhat forgotten its roots. In current times, the media instead of being an independent voice, has become a pawn in the rivalry of various ideologies and started interfering in the works of branches of the government and in that also specially to the judiciary.

Yes this hypothesis is also true because in 200<sup>th</sup> Law Commission Report even “Supreme Court and House of Lords accept that prejudicial publications may affect Judges subconsciously- The Supreme Court and the House of Lords have, as pointed out in Chapter III of our Report, observed that publications which are prejudicial to a suspect or accused may affect Judges also subconsciously. This can be at the stage of granting or refusing bail or at the trial.”<sup>105</sup> So by this statement we can easily understand that if because of the media even judges are subconsciously affected then it is clear that media effect on the society and we can say that the media outreach is more.

In the year 2019 Justice A . K. Sikri while in an interview talks about the freedom of press in the digital area. In this interview he said that in this digital age any material can be useful and also misused and also said that social platforms like instagram, facebook, whatsapp and many more like this affects the freedom of the people, people's privacy at that time it becomes a dangerous instrument. He also commented on the fast changing media because of the paid and fake news and also said that because of this judging is under very stress because of this digital era.

**3) Media does not know where to stop, and directs interference in the right to privacy as well as responsible for paid news.**

Yes this hypothesis is true because media does not know where to stop and by this they interference in privacy of people and one of the reason for interfering is paid

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<sup>105</sup> Supra note 35.

news. In the year 2017 a landmark case came for privacy after the passing of the judgment right to privacy has obtained impetus throughout India and it is also known as the Fundamental Right to privacy. Many countries like USA, India, UK and international organizations like UDHR, ICCP and ECHR having given valid and convincing recognition to the right to privacy. The “right to privacy” is added in the constitution under article 21 which can be considered as the right to life and liberty. The privacy is considered as most essential part of a citizen and which needed to be protected in the landmark case of K.S. Puttaswamy v/s Union of India<sup>106</sup>, in the year 2017 it was said. In the case of Mohd. Ajmal Mohd. Amir Kasab v/s State of Maharashtra<sup>107</sup>, it is said by the court that “an action tending to violate another person right to life guaranteed under Article 21 can never be justified by taking the plea of freedom of speech and expression”. There is a interpretation done by US Justice Louis Brandeis for “right to privacy” which say that the “right to privacy” is one's personal information and which should be protected from public scrutiny and even it should be left alone. India has signed Article 17 of ICCPR 1996, according to which the right to privacy is for protecting one's family, home, correspondence, honor and reputation against arbitrary interference. This thing everyone knows but then also by knowing this media interference into the privacy of the people for this we can take example of arushi talwar case in which media enters the house of the victims and ask many personal question to her family.

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<sup>106</sup> 2017 SCC 10 1.

<sup>107</sup> AIR 2012 SC 3565.

In one of the famous cases of Hindustan Times v/s High Court of Allahabad<sup>108</sup>, “ It is the duty of the media to respect individuals fundamental right to privacy and to maintain dignity of courts so that people's faith in administration of justice is not diminished”.

#### **4) Media is not following its ethics.**

Yes this hypothesis is true because even in the 200<sup>th</sup> Law Commission Report they said that there is a need for a Code of Ethics for the media. So it is clear by this statement that the media is not following ethics which they should follow. Even we can see in famous case of kuswar anwar suicide case in that one of the famous senior journalist Naqvi also said that in journalism or we can say in media they have a tendency that they convicts a person on the same day of allegation is leveled against that person and also before the court convicts that person . This is where the media is crossing their limits and not following their ethics because how the media can arrive at a conclusion so hurriedly and start showing directly a person as an guilty even though he is just accused. Even media starts their own investigation and interferes with police work and therefore creates an obstruction in the investigation of the case

#### **5) The Freedom of media in India is not absolute and complete like the USA.**

Yes this hypothesis is true according to the researcher. There are various aspects on which the researcher came to this conclusion. In the USA the freedom of press is protected by the First Amendment and in India it is a part of Constitution

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<sup>108</sup> (2011) 13 SCC 155.

Article 19 that is “Right to Freedom of Speech”. In the USA, a reporter can publicly criticize the government and cite first amendment for protection while in India; it can’t be done, as the individual will file a defamation suit immediately as done in the current case of Arnab. Also by seeing the rankings in the World Press Freedom Index, one can infer the above hypothesis as India is ranked 142th while USA is ranked 45<sup>th</sup>.

#### **6.4 Suggestions**

First - media is depending more on advertisement instead of content. So they should change their business model because people will pay for quality and unbiased news.

Second -there is need for awareness in the media community for walking on ethical path which they are not following. That’s why 200<sup>th</sup> law commission report talks about a code of ethics.

Third - there is a need of proper body which can control each and every unethical steps of press. Though we know there is PCI but it has very limited power because if we see Section 14 of this PCI there is very less power given to this body.

Fourth - there is a urgent need of amendment in Contempt of Court Act 1971because now media has no fear of contempt punishment. So by this media will stop making of prejudicial publication and also stop affecting administration of justice.



Fifth - there should be some specific criteria for entering into the media industry because it happens that people with more money also enter into this and by this they support their family and known people so they by showing good things about them and by this they influence people.

Sixth - the Press Council Act 1978 deals with only “print media” and it does not included electronic media which is today’s trend and which is much faster than print media. So this electronic media is many a time it is seen that it uses the freedom in wrong way. So it is a need of time to add this because without the fear of punishment media trial will not stop.

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