

## **CHAPTER 6**

### **CONCLUSIONS AND SUGGESTIONS**

#### **6.1 Conclusion**

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

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

The study has been systematically carried out by first studying the development of media. The development of media has been dealt in Chapter **Two**. In this Chapter the researcher has traced the evolution of various platforms namely the print, electronic and social media. Major platforms of social media and features of social media have been discussed as social media has been an ever-evolving and an ever-developing area. At the initiation when there was no specific term as social media, people still used to socialize online though in limited numbers through chatrooms and e-mails and sites like Orkut and Yahoo Groups. However, after Facebook, Twitter, Instagram, etc. were launched, social media has been an ever-developing field as each app keeps updating itself by bringing new and innovative features to its page.

Fundamental right of free speech as provided under Article 19(1)(a) hence keeps getting new ways of utilization as also interpretation. In a world without social media, people still utilized the right to free speech though in different manners and limited numbers. However, since the advent of social media, everybody who posts online is exercising his right to free speech as internet is at the crux of all the social

media. The consistent population rise across the world merged with technological advancements and easy availability of internet have resulted in social media spreading easily everywhere. Also, social media delivers results faster, is convenient to use and gives multiple platforms to an individual in order to share his opinion with others. Thus, a person can share photos by Instagram, write a blog on a blogger, capture video and share it on YouTube or simply give an opinion on Twitter or have a post on FaceBook – the choices of expression are endless. The same also applies to electronic media which was the pioneer of communication before social media took over. The rapid growth and convenience of social media have forced even the print as also electronic media to mark their presence on a different platform entirely.

Today, several news channels, entertainment and sports channels for which initially electronic media was the only medium of broadcast now have used the medium of social media to spread themselves. News channels have their webpages on Facebook and Instagram which can be followed to get regular updates of whatever they post on it and live video page on YouTube which can be subscribed to view the latest newstories. That apart, with the help of social media, news channel also conducts opinion polls, surveys and researches which prove helpful in making the voice of a common man heard before others and spreading to corners of the nation where access to electronic media is limited.

Thus, the researcher has studied development of media starting from print media because it is the earliest form of communication which is still going strong today despite tough competition from electronic and social media. Also, the new technologies like internet, smartphones, laptops, etc. which have shaped up social media also have been studied in the chapter. It can be concluded that development of media has been a boon to a great extent. Newspapers, news channels, social networking sites, etc. have greatly helped mankind in communicating with each other not only one-sidedly as was the case with print and electronic media but even a two-way communication is possible due to social media. It was only when some

groups started misusing media for their limited motives that media has started getting cases of vices like media trials, fake news, paid news and sting operations.

Likewise, even newspapers, magazines, journals, books, etc. which could be initially accessed only through paper form have now started becoming paperless and available on social media in form of e-papers, e-magazines, etc. It proves beneficial in saving paper even though a huge number of population still prefers reading newspaper compared to its digital copy. But the penetration of social media in public in such a manner where even print and electronic media need to take its support in a timespan of merely one decade or so is one of the biggest achievements of social media. The development of social and electronic media has also given rise to certain legal issues affecting the freedom of speech and right to privacy which needs to be addressed.

In Chapter **Three**, namely Legislations: National and International the researcher has dealt with the said objects as the current legislations in USA, UK and India as well as international conventions and treaties which provide for free speech have been studied in the said chapter. The Chapter studies following international instruments, conventions and treaties like Universal Declaration of Human Rights 1948, International Convention on Civil and Political Rights, 1966, American Declaration of the Rights and Duties of Man, European Convention for Protection of Human Rights and Fundamental Freedoms, UNESCO Mass Media Declaration 1978, Charter for a Free Press 1987 and The Madrid Principles on the Relationship between Media and Judicial Independence (1994)

Constitutional provisions of USA have been studied namely the First Amendment of the American Constitution which specifically provides that 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 people peaceably to assemble, and to petition the Government for a redress of grievances. That said, media has specific right of free press without any reasonable

restrictions and hence can exercise all its activities without any separate precedent or judicial pronouncement. That apart, Sedition Act, 1918, Privacy Act 1974, Communications Decency Act 1996 and regulative bodies like CTIA – The Wireless Association, Federal Communications Commission and Fairness and Accuracy in Reporting (FAIR), Newseum Institute and American Society of News Editors, National Association of Broadcasters have been studied to study how free speech is being regulated at different levels. Likewise, in UK, the European Convention was incorporated and the guarantee of freedom of expression it provided under Article 10 was implemented into its domestic law under the Human Rights Act subject to almost the same restrictions as in India. Legislations like Obscene Publications Act 1959, Telecommunications Act 1984, Malicious Communications Act 1988, Independent Television Commission Program Code and Broadcasting Act 1990 govern the print and electronic media so that each program or communication is in decent and good taste without giving rise to objections from any part of society. Bodies like Ofcom (Office of Communication), IPSO (International Press Standards Organisation), IMPRESS (Independent Monitor for the Press), PRESSBOF, Press Complaints Commission (PCC), Leveson Regulation Reforms work together to regulate media in its different sectors.

Likewise, in India, the functions and powers of following regulatory bodies have been studied:

- Indian Broadcasting Foundation (IBF)
- Broadcasting Content Complaints Council
- Broadcast Audience Research Council (BARC)
- News Broadcasting Standards Authority (NBSA)
- News Broadcasters Association
- Ministry of Communication and Information Technology
- Telecom Regulatory Authority of India

Apart from the said bodies, the Chapter also discusses various legislations to which various forms of print, electronic and social media have been subjected. It has been

concluded that despite the prevailing bodies and legislations, a need is felt for a separate legislation that deals with cases of media trials, paid news and sting operations.

The Researcher has studied the effect of Media trial on the various segments of the society namely, the media itself, the viewers, the Judiciary and the accused.

**- On the media:**

The media is creating an impression with each news story it covers. A journalist is duty bound to present true story, without any bias and based on complete facts because the story presented will be how the event will be perceived by the world at large. A heinous and condemnable crime calls for harshest punishment to its perpetrators and media has a duty to present stories like these before its audience and even appeal for harshest punishment possible. However, when media works solely on profit-making and TRP gain, it often lets go of facts and presents stories which may be half-baked, inconsistent, incomplete and often giving rise to more questions than answering some. The real picture when finally comes out badly tampers the image of media.

**On the viewers:**

Viewers are at the receiving end of media stories. Whatever mold, good or bad the media houses give to its stories, the same reaches till the viewers and that is the light in which they comprehend the event or the person. Likewise, the same perception is carried ahead in their minds and connected with other news stories thus forming a larger image based on facts presented by media.

**On the accused:**

As a helpless person waiting for justice from the judiciary, a wrongly condemned accused is the most pitiable victim of the media trial. The 24x7 media channels require that news stories keep getting covered throughout day and night and when a sensitive crime takes place, the same is instantly converted to a news story and those involved, connected or suspected of being a part of it immediately become a part of

media's breaking news for several hours. The positive or negative exposure which the media gives to such persons has a potential of seriously and permanently damaging their reputation. Until media is performing its duty of presenting facts before the public, no harm is done but once media begins its assumptions and presumptions and works out its stories based on them, it can seriously endanger the actuality of facts as well as those involved even remotely.

**- On the Judiciary:**

Judiciary functions for giving justice to the needy. Courts at every level, be it High Court or Supreme Court are responsible for providing justice to those who approach it in cases of any nature. When media indulges in acts like media trials, they are influencing the minds of its viewers and directing them in a particular direction as to the trial, i.e. like holding parents of Aarushi Talwar guilty as her murderer and harping on the same story by questioning the experts and relatives and showing the same on TV channels makes the audience feel that the murder was actually committed by parents of Aarushi Talwar though the Court had not delivered its verdict. On completion of CBI investigation, it was later discovered that her parents were in no way involved in her murder. Media had made all possible attempts to show this murder in light of illicit relationships, adultery and even honor killing simply to keep its TRPs against highly popular daily soaps. However, when the minds of viewers have been deeply influenced by such a media trial, not only the viewers but even the judiciary and those who are responsible for deciding the case at the apex level are pressurized to a great extent to let go of the facts available before it and consider the facts which are being shown on the news channels and which have been almost accepted by the viewers as the final facts.

The researcher has also analysed several unsanctioned bills related to media, some of which are as under:

- Communications Convergence Bill 2000
- Broadcasting Services Regulation Bill 2007
- Self-Regulation Guidelines for Broadcasting Sector 2008

- Print & Electronic Media Standards & Regulation Bill 2012
- Guidelines regarding Fake News 2018

The Communications Convergence Bill 2000 provided for suspension of media organisation's operations for upto 11 months as well as cancellation of its license as well as establishment of a media regulatory authority which has the power to ban or suspend the coverage of an event or incident that may pose a threat to national security from foreign or internal sources. Thus, the researcher finds that the said Bill had draconian provisions and they attempted to curb the media's freedom very heavily but nowhere any provision as to media trials or paid news was found.

Likewise, the Broadcasting Services Regulation Bill 2007 included obtaining compulsory license for broadcasting services, registration of channels and compliance with the Content Code and special powers of Central Government in a situation of external threat or war involving India. One of its main objectives was to provide for establishment of an independent authority to be known as Broadcast Regulatory Authority of India for the purpose of regulating and facilitating development of broadcasting services in India. After going through the bill, the researcher found that the provisions were mainly government regulated and media on its own had no independency to regulate and had to strictly comply with government rules in this regard.

Likewise, the Communications Convergence Bill 2001 and the recent Guidelines on Fake News 2018 also nowhere saw light of the day due to their straitjacketed provisions. While the Guidelines on Fake News nowhere in itself defined the term "fake news" itself it provided for temporary and eventual permanent suspension of the journalist on report of being indulged in fake news. Similarly, the Communications Convergence Bill aimed at establishing modern and effective communication infrastructure taking into account the convergence of information technology, media, telecom and consumer electronics and also creating a single body to monitor both the carriage and content of communication namely the

Communications Commission of India. It also had several other ambitious objectives for which the sole Bill was not sufficient. Hence, a new Bill was required to be passed due to which this Bill did not move further. Thus, as can be seen from above analysis, neither of the Bills nor prevailing legislations provide for media trials, fake news, sting operations or paid news. Hence, the researcher could identify a need for a separate legislation to deal with the newer issues arising out of the scientific and technological development of media. Hence, a separate suggestive legislation that deals with cases of media trials, paid news and sting operations has been given at the end of this chapter.

Freedom of press has been time and again reiterated by the Supreme Court in various landmark cases as discussed in Chapter **Four**. Chapter **Four** discusses the judicial position of some landmark as also some recent cases which have defined the position of media in India today. Being the fourth pillar of democracy and yet not finding a firm right to free speech in the Constitution of India, judiciary of India through its years of judgments and landmark cases by several Benches has specifically laid down media's right to free speech in same class as Article 19(1)(a). As the precedent was repeated eventually, the same had an unpleasant effect on media channels and journalists when cases of media trials, paid news, fake news and sting operations being operated by them under the garb of freedom of press came to surface. News channels started leaving behind the motives of social welfare and progress of society and started working for profit motives. Cutthroat competition with peers, fast-paced information pouring in from everywhere around the world led to deterioration of news quality and sometimes relying on frequently repeated news stories.

Chapter **Five** is non-doctrinal study conducted to find views and opinions of people from various parts of society on the freedom of speech and expression as available to them and to media



**Accordingly, all the objects for which the research was carried out have been achieved through studying the various existing legislations and the powers of the regulatory bodies.**

## **6.2 Observations / Inference of the Researcher on the study conducted**

### **Legislative Position**

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

In Nov 2006, former Chief Justice of India Y K Sabharwal expressed concern over the recent trend of media conducting ‘trial’ of cases before courts pronounce judgments and said that “if this continues, there can’t be any conviction. Judges are confused because the media has already given a verdict.”<sup>390</sup> Citing pressure on the judiciary during the Nirbhaya rape case, Supreme Court Judge Kurian Joseph said media trials in pending cases should be avoided and thereby judges be saved of the enormous strain created by it. He further said that a judge is expected to speak only through his judgment. While performing work as a judge, if he makes a comment in the bench, media should not ever build upon that. By doing such things the media will do a great service to the nation and democracy.<sup>391</sup> Such is the force of media trial that the judges who are yet to decide the case themselves feel the force of media

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<sup>390</sup> Available on <https://m.timesofindia.com/edit-page/Media-on-trial/articleshow/1460248.cms> (Visited on 15.9.2018)

<sup>391</sup> Available at <https://m.timesofindia.com/india/media-trials-strain-us-says-SC-judge/> (Visited on 6.9.2018)

backed by millions of viewers urging him to decide the case in footsteps of the media itself.

After studying and analyzing the existing laws, the Researcher has found that the existing laws are insufficient to deal with Media Trial. The major reason is that there is no specific definition of media trial in any of the existing laws because of which the issue of media trial can't be dealt with.

### **Judicial Position**

After studying and analyzing the various judicial decisions, the Researcher has the following observations:

- Press is not immune from laws of general application or ordinary forms of taxation or laws of industrial relations.
- Liberty of circulation as also liberty of publication of views and ideas were equally important and absence of either of them would fail the purpose of the entire structure itself.
- Right to freedom of speech cannot be taken away with the object of restricting business activities.
- Where the power of taxation encroached upon freedom of expression under Article 19(1)(a), the restriction on freedom must be within reasonable restrictions.
- The fundamental principle behind the freedom of press is people's right to know. The primary function of press is to provide comprehensive and objective information of all aspects of country's political, social, economic and cultural life. It has an educative and mobilizing role to play. It plays an important role in moulding public opinion.
- A blanket ban on publication of obscene materials or article in order to shield juvenile innocence cannot be imposed as it will lead to situation of newspapers publishing only that content which is in requirement of children despite being a source of information for all ages.
- It is perilous to obstruct free speech, expression, creativity and imagination for it leads to state of intellectual repression of literary freedom.

- Broadcasting is a means of communication and therefore a medium of speech and expression. Hence in a democratic policy, neither any private individual, institution or organization nor any government or government organization can claim exclusive right over it.
- If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who had indeed committed the crime, it amounts to undue interference with the “administration of justice” calling for proceedings for contempt of court against the media.
- The order to postpone publicity of judicial proceedings can be passed only when other alternative measures for warding off ill effect of media publicity such as change of venue or postponement of trial are not available. In passing such orders of postponement, Courts have to keep in mind the principle of proportionality and the test of necessity.
- There are three concepts which are fundamental in understanding the reach of freedom of speech and expression. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in.

### **Effect of Media Trial**

The Researcher concludes that the Media trial has an effect on various segments of the society. And there is an urgent need to address the issue of Media Trial . The various instances of media Trial that have been dealt with by the Researcher in the relevant Chapters, substantiate the fact that the Media is transgressing its borders and entering into the judicial arena which, according to the Researcher is unconstitutional.

### **News Coverage**

The researcher has concluded from the data that people still feel that the print media carries a more authentic version of the news rather than news channels on the electronic media. The researcher infers from the study conducted that having the

traditional advantage of being used since ages as a source of news, the newspapers are found a preferable source as against news channels.

The researcher also infers that media should desist from repetition of news stories frequently and more so when the news stories do not have much political, social or any other impact. Also, a continuous follow-up of news stories reveals new facts thus proving that the media is promptly working on the coverage of its news reports before presenting it to the audience.

### **On social media**

While social media has spread drastically in almost all people in everyday life, there is still a limited class of society which prefers using traditional forms of communication. While the greater number of people are active users of social media, only a limited class has not made it a daily affair. The use of social media is done for almost all purposes apart from regular e-mailing and internet browsing, like finding information, keeping up with current affairs and social connectivity. However, despite news channels also switching to social media to use it as an interactive platform, the same gets a lukewarm response because a very limited number of people participate in online polls, opinion polls, tweeting and hashtagging the news reports. Thus, freedom of press is being exercised though in a limited manner.

### **- Paid news, media trials and sting operations**

The researcher concludes that the nuisance of vices of Paid news, media trials and sting operations is so widespread that maximum number of citizens are now aware of the excessive use of freedom of press as exercised by media. Media trials, paid news, fake news and sting operations are mischievous news reports mostly to earn improved media rating, TRP numbers and put better competition against peers and hence calls for Media regulation.

### **- Media regulation**

The researcher has concluded from data analysis that media should be regulated by an internal as well as an external regulator so that any mischiefs on part

of media can be detected at the earliest from either side. Internal media regulation exclusively will leave scope of mischiefs and internal (mis)management by media houses while external media regulation can suffocate the media by choking its very freedom of press. External regulation will limit the powers of media in order to report freely. Hence, a regulation at dual level, internal as well as external needs to be implemented. However, a very limited class of respondents opined that media should not be regulated at all.

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Researcher, further concludes that freedom of press should not be made available only through judicial decisions but should also be specifically provided in the Constitution of India. As has been noticed, once freedom of press was provided, it has been misused time and again resulting in several vices. A probable measure wherein the freedom of press is provided in the Constitution itself along with strictures and specific restrictions against which it can be exercised by media may prove helpful in curbing cases of media trials, fake news, paid news and sting operations.

### **Conclusions drawn on the Hypothesis**

On the basis of above discussions and inferences, researcher has drawn conclusions on the Hypothesis of this research work as under:

- Hypothesis no. 1: Are the existing laws adequate to tackle the impact of science and technology on freedom of speech and expression?

**The said Hypothesis has been negated by the inference drawn in this research study.**

- Hypothesis no. 2: Are the regulatory bodies of India like Press Council of India and News Broadcasting Standards Authority adequate to control the telecast through internet?

**The said Hypothesis has been negated by the inference drawn in this research study.**

- Hypothesis no. 3: Have the provisions of I.T. Act been misused by State machinery to curb, control and silence the political criticism?

**The said Hypothesis has been negated by the inferences drawn in this research study.**

- Hypothesis no. 4: Does the media carry impression that their rights are superior to rights of citizens of freedom of speech and expression?

**The said Hypothesis has been affirmed by the inferences drawn in this research study.**

## **6.2 Suggestions**

On the basis of the Study conducted, the Researcher has to submit the following suggestions.

- **Unbiased and Fair Media**

Freedom of speech and expression is fundamental to an individual as to media. However, media should respect the said right and should not excessively indulge in utilizing the same. In all circumstances each form of media should give a clear and unbiased picture of society and world because its duties in long run are shaping the nation and the society.

- **Responsible Reporting**

Quality of news reporting should be improved from the core level. Education levels for those studying in journalism and mass communication should include indepth study of aspects of constitutional law, human rights, protection of life and liberty, law relating to defamation, contempt of court and media ethics and practices. After entering the field, such practices can be desisted only if they have been made to understand the repercussions of such practices in long run.

- Having competition from platforms like electronic and social media should not be a reason for print media to report news stories with flashier and saucier words in order to increase its readership. News reports should be checked and verified with authentic sources at dual levels so that wrong reports can be avoided to the maximum extent.

- Once a wrong party gets the political seat, it can take several decisions which may be against the nation and social welfare – all this only after media decided to bring forth a news story which was favoring a single party. Stories which are in nature of reporting the achievements of a single political party should be broadcasted separately and not as a news report and with the words “**For public information only**”
- While reporting events involving crisis situations, media must first study the crisis in depth, detect the root cause of problem and suggest constructive measures to deal with it.

#### **- Media Trial**

- A news story has the potential of making or destructing the life of any person and therefore media should curb on media trials until any case has been finally decided by the judiciary. The commencement of trial should be from the filing of FIR and from that moment, role of media should also be brought under direct control and supervision of Court to avoid media leaking loose ends before public.

#### **Ombudsman**

- A full time news ombudsman with vast powers to curb media violations must be planned and appointed.

#### **Social Media and Fake News**

- Free speech being a right of every individual as also of media, becomes almost a double-edged sword. If media needs to be able to healthily report all the events of political, national, social or of any other nature, it needs to have right of free speech in absence of which it will not be able to function to the best of its capabilities. On the other hand, it also needs to be responsible and extremely cautious with information it collects during the course of broadcasting news stories. Authenticity of all details must be verified before making a news story public because any harm, whether intentional or otherwise cannot be easily undone once a news story goes in public domain.

- Media has to only report the events and news stories from nation and world over. It should not attempt at creation of news where there is none and feeding it to public because only the major news stories are to be reported and not the cooked up/ fake or created ones.
- Likewise, the recent increase in case of fake news on social media also must be reduced because it is like taking action against void. Fake news multiplies on social media platforms but now users should verify the authenticity of any post and should not blindly forward the same or act violent on basis of it. Free speech is intended to spread a healthy, harmonious and cordial relation amongst the citizens and any other source of free speech should act in the same direction rather than the opposite one.
- Search engines should be so designed that pages of news stories with dubious character are filtered so that the same do not reach the public and can be spread further. For this purpose, only pages and websites with proper certification and reliable administrators should be presented as an end result.
- Social media is mainly accessed through apps like Facebook, Twitter, WhatsApp, Instagram, etc. Even newspapers and news channels have their own apps for mobile users. Such apps mainly give options of tweeting, posting, hashtagging, tagging, etc. If security levels of these are so enhanced that the tweets and hashtags with sensitive words get a dual-level check to verify their authenticity before they get spread, it can greatly curb spread of false information. Likewise, even users must consider it their responsibility to avoid spreading wrong information through use of search words.

### **Paid News**

- Instances of paid news should be nullified because it is just one small step in direction of electing a wrong party to the power. “Paid news” should be declared as an electoral malpractice and same should be added by an amendment to The Representation of the People Act.



### **Sting Operations**

- Sting operations must be carried on respecting the privacy rights and the information on basis of which a sting is carried out must be verified as also the dubious acts of the person on whom sting is to be performed. Sting operations must be carried out with utmost care and only as a last resort as they invade the privacy right of an individual. Where a sting operation is found to be false and fabricated the media company ought to be given stringent punitive punishment commensurate with the damage caused to the individual against whom the sting was planned.

### **Role of Media**

- Electronic and news media should play positive role in presenting to general public as to what actually transpires during the course of the hearing and it should not be published in such a manner so as to get unnecessary publicity for its own paper or news channel.
- Media must play the role of a facilitator rather than tilting the scales in favor of either party to the case. So the power of media needs to be handled sensitively, sensibly and most importantly responsibly and demarcation line though thin and subtle needs to be clearly drawn especially in context of Contempt of Court Act and media trial.

### **Media Regulation**

- Media regulation should not be exclusively either in external hands or from internally. Putting all power in external hands will merely gag the media's right to free press due to which it may fail in performance of its duties to the mark. On the other hand, a total internal regulation will lead to misuse of powers and an excessive use of freedom of speech. A dual level regulation which is partly in hands of an external authority and partly to be regulated at internal level will help in achieving the object of media regulation without gagging its freedom totally.

### **Net Neutrality**

- Net neutrality should be encouraged and sustained throughout because putting a price tag to it will yet again be nothing but a deadlock on the right of free speech of citizens. Any platform being used by citizens for a healthy exchange of ideas and opinions, sharing views must be involuntarily neutral to any ideas of making a profit in lieu of providing an app to make oneself heard. To summarise, internet is a place for gaining knowledge and information, keeping oneself abreast of changing world, meeting people across the world, exchanging views and opinions on latest developments. It should remain available to everyone without making it a privilege of only those who can afford.
- Apart from existing legislations and news regulatory bodies, a separate legislation needs to be enacted which shall deal with cases pertaining to media trials, fake news, paid news and sting operations. Freedom of press must be respected but an over-indulgence of the same should also not go unchecked. The new legislation should have regulatory mechanism and powers in such a manner that cases not complying with reasonable restrictions and freely using/misusing media rights are punished. The new legislation cannot be a draconian law which punishes each and every case connected to media. Article 19(2) gives reasonable restrictions subject to which freedom under Article 19(1) must be exercised. The new legislation shall merely attempt to maintain the said practice and punish any malpractice.

After analyzing the gaps in present media laws, the researcher suggests a draft legislation on following lines:

### **The Media Regulatory Act**

*Preamble: Whereas it is expedient to curb and control media's over-indulgence in free speech resulting in media trials, sting operations, fake news and paid news by defining the said terms and stating scope and extent of the same and punishing the same.*

#### **1. Short Title, Extent and Applicability:**

- (1) This Act may be called The Media Regulatory Act
- (2) It shall extend to the whole of India.
- (3) It shall extend to all matters related to media trials, sting operations, paid news and fake news.

## **2. Definitions:**

In this Act, unless the context otherwise requires:

- (a) “Electronic media” means all sorts of electronic gadgets like televisions, smartphones, computers, laptops, mobile phones and tablets which maybe used for communicating;
- (b) “Fake news” means any piece of news information printed in print media or broadcasted on social or electronic media which does not have any verifiable and authenticate origin but has been spreading in public domain and knowledge merely due to being shared or forwarded by one to another;
- (c) “media trial” means broadcast of any news information on television or newsprint in a newspaper which gives or attempts to give a complete newsreport about pending litigation before any court in India in print media or broadcasted on social or electronic media which focuses on the probable future outcomes of any litigation pending before Court of any level in India merely on basis of parts of information and circumstantial evidence available to the media and without considering all aspects of the case in the entirety. Adjudication by media of any pending case shall be considered as “media trial”
- (d) “paid news” means any piece of news information printed in print media or broadcasted on social or electronic media which is in nature of giving an unbiased picture and listing major activities of any single entity including a political party, a politician, MLA or any other respectable person of society mainly for purpose of creating positive image of the said entity before the public at large;
- (e) “sting operation” means any undercover operational activity carried out by stealth by an authorized person against any person whose activities have been found dubious on earlier instances, in order to capture him carrying out the actual act of crime.
- (f) “social media” means all forms of online sources of communication accessed through electronic devices likes smartphones, computers, tablets and laptops which

are used for exchange of ideas, expressing views and opinions, sharing, posting and forwarding photos, videos, posts or tweets from an individual account to other individuals or to the world at large.

### **3. Constitution and Functions**

A Media Regulatory Authority namely “National Media Commission” be constituted. The Commission shall consist of seven members which shall be as under:

- (i) A Chairman who is a retired Supreme Court Judge;
- (ii) Two members from information technology sector with expertise in latest technological aspects, electronic communicating devices and their operability, application building and updating.
- (iii) Two members from media sector with expertise in media ethics, news reporting, journalism, constitution of India, human rights.
- (iv) Two forensic experts.

### **4. Complaint mechanism:**

The National Media Commission may act suomotu or on the complaint by any person or body against any media authority, channel or journalist, newspaper or news reporter if such media authority, channel, journalist, newspaper or news reporter is alleged to be reporting media trial, sting operation or fake news or indulging in paid news.

On receipt of such complaint, the Commission shall issue a Show Cause notice to the alleged media authority, channel, journalist, newspaper or news reporter seeking response as to why action should not be taken against them.

The said notice has to be responded within one month of receipt of the same;

On receipt of the notice, the alleged accused authority or person may through an authorized person remain present for hearing and responding to the complaint before the Commission;

The Commission shall hear both the sides and pronounce the order accordingly. If the complaint is proved to be without any substance and the person charged proves that his act was covered under reasonable restrictions as provided under Article 19(2), he shall be acquitted accordingly and cleared of all charges.

If the complaint is found genuine, the accused shall be punished with an imprisonment of six months and with a fine of Rs. 50000/-.

The order shall be appealable before the Supreme Court.

## **5. Functions of Committee**

The Committee shall carry out the following functions:

- (i) Proactively or reactively inquire into violations of media laws and rules as applicable under present legislation or under any other legislation;
- (ii) By leave of the court, to intervene in court proceeding relating to media laws;
- (iii) Make recommendations about granting relief to the victims and their families;
- (iv) Review the safeguards provided under any legislation for protection and due implementation of media laws and recommending measures for their effective implementation;
- (v) To study treaties and other international instruments on media laws and make recommendations on basis of the same for their effective implementation;
- (vi) Undertake and promote research in the field of media laws;
- (vii) Such other function as it may consider necessary for protection of media laws

## **6. Power of Central Government to make rules. -**

The Central Government may, by notification, make rules to carry out the provisions of this act.

The media as also the judiciary are the oxygen systems of a healthy democracy. While the judiciary decides cases and lays down precedents in cases involving a common man, media helps in showing the picture of the society. The duty of media

hence becomes manifold to create news stories which can have a positive effect rather than spreading the same information in a negative manner. Media's interference in judicial system by conducting trials in sensitive cases is against the constitutional right of fair trial of the accused and even amounts to subverting the Constitution. The media should restrict itself from seeking, creating and presenting news stories in the nature of media trials and thus take over the job of law enforcement agencies and judiciary for ensuring due punishment of criminals. If media representatives evolve a self-regulation based model for keeping a check on the activities, the same would prove more beneficial for media because professional freedom is not a privilege but a responsibility and media should strive for handling the same with due care. Being assigned the role of watchdogs and conscience-keepers of the society, it is duty of media to ensure that the right kind of decibel is raised appropriately and in measured scales on every issue. Journalism at its best can even have a leading role in the agenda-building process but this should not be confused with agenda setting process and propaganda. So, the researcher argues in favour of proper regulation of the media within the Constitutional contours of Article 19 (2).

As has been rightly said "People are sheep. TV is the shepherd." Let the shepherd not misguide the sheep. Let the sheep not go astray when the shepherd gets mischievous.

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