

CHAPTER 1

INTRODUCTION

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

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

Article 19(2) provides that:

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

A combined reading of both the provisions creates the result that all the citizens of the nation are entitled to freedom of speech and expression but only to the extent that it does not violate the restrictions which have been laid down on the said freedom. If any individual during the exercise of his freedom of speech and expression steps upon a right of the same/similar kind of any other person, such an exercise will be violation under Article 19(2). Thus, Constitution has taken care that nobody can overuse his freedom at the cost of over-stepping on the same rights of another citizen.

Article 14 of the Constitution provides for “equality of law” and “equal protection of law”. Every citizen is equal in the eyes of law and there is no scope for discrimination on any ground. Hence, the freedom as provided under Article 19(1)(a) shall also be equally available to every citizen. The said freedom is immensely important and the same can be figured out considering that media which has been considered the “Fourth Pillar of Democracy” has also been equipped with the

freedom of speech and expression meaning that even the major forms of media, namely the print media, electronic media as well as the recently evolving social media have been provided freedom of speech and expression while performing their functions. Though nowhere specifically provided for in the Constitution, media has been conferred with freedom of speech and expression by the judiciary under Article 19(1)(a) as it has been conferred to every citizen. It is of utmost relevance to media because media expresses itself to the world at large. Its news stories, news reports, articles, advertisements, editorials, etc. are read by one and all for updating themselves with the who's who of the world. If the said right were ever taken away from media, it may result in a chaotic situation where journalists and editors are unable to produce news stories as and when they happen. The news channels cannot conduct interviews, debates or opinion polls thus resulting in total unawareness for the general public regarding what's happening in the world and who is to be held accountable for the same. Decisions will be taken bureaucratically as nobody with an authority would be responsible to the public.

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

Due to continuous developments in science and technology, the media has developed modern manners of presenting its news stories. Gutenberg's invention of printing press in the 14th century has proved to be a boon to the world. The newspapers that can be printed in millions of copies everyday now would have been impossible otherwise. But today print media alone is not the sole pioneer of media landscape. Today, even though newspapers have created a firm space amidst the people, the news carried through electronic and social media is equally utilized by the public. The invention of internet and its easy accessibility through computers, smartphones, notebooks and other electronic devices has changed the way people get the news. E-papers, online news, expression of views, opinion polls, online surveys,

tweets and commenting have made news system not just a one-way communication from media houses to the public but an informal and prompt exchange of views and ideas in respect of current affairs or any political event. People have found a platform wherefrom they can express what they feel in respect of anything that is happening in the world.

Gone are the days when the major sources of communication, news and entertainment were just selective national and local newspapers, All India Radio and Doordarshan. While newspapers and magazines were a form of print media which was the earliest form of media communication, it was taken over by electronic media which mainly included television and radio. Today, media offers several other forms of communication which are faster, easier and more easily accessible than any of the earlier sources of communication like smartphones, laptops, tablets, etc. It would be impossible to imagine living sans the various forms of media that are available today.

But like everything that in excess becomes unhealthy and eventually harmful, even media can be held responsible for several flaws emerging out of the freedom of speech and expression that has been provided to it.

India under Article 19 has given the media, freedom of expression because governmental functions must be transparent and the perennial duty of a free press, even under grave risk, is to prevent the three instrumentalities of the State from deceiving people. Alas, the literacy indigency and amenability to clever misrepresentation of lies by the news media is a syndrome and the vast agrestics are victims.¹

Starting with freedom of expression, three well known justifications are often advanced. The first view is that freedom of expression is essential to a person's autonomy and self-fulfilment. The second is the marketplace of ideas, that minimal government regulation will allow robust debate between citizens that is most likely to lead to the truth. The third justification is that freedom of expression is a necessary

¹ Justice V.R. Krishna Iyer, "The Regional Media and the Democratic Process" Pg. 26 (2008) 1 Madras Law Journal

component of democratic government. There is an overlap between these justifications and all have been subject to extensive criticisms.²

Even judiciary has time and again recognized the freedom of press. Though neither the Constitution of India nor the legislators have anywhere specifically provided for the freedom of speech and expression as available to the press, the Indian judiciary has through its various landmark judgments specified that the freedom of speech and expression as available to the citizens of India is also available to the press and media houses. Likewise, just like the citizens' right is restricted by reasonable restrictions as mentioned under Article 19(2), the rights of press and media have also been curtailed by these reasonable restrictions.

1.1 Right of Press and Media in light of Article 19(1)(a) and 19(2)

Article 14 of the Constitution provides for “equality of law” and “equal protection of law”. Every citizen is equal in the eyes of law and there is no scope for discrimination on any ground. Hence, the freedom as provided under Article 19(1)(a) shall also be equally available to every citizen. The said freedom is immensely important and the same can be figured out considering that media which has been considered the “Fourth Pillar of Democracy” has also been equipped with the freedom of speech and expression meaning that even the major forms of media, namely the print media, electronic media as well as the recently evolving social media have been provided freedom of speech and expression while performing their duties. Though nowhere specifically provided for in the Constitution, media has been conferred with freedom of speech and expression by the judiciary under Article 19(1)(a) as it has been conferred to every citizen. It is of utmost relevance to media because media expresses itself to the world at large. Its news stories, articles, editorials are read by one and all for updating themselves with the who's who of the world. Removing this right for media may result in a chaotic situation where journalists and editors are unable to produce news stories or give news reports as and when they happen. In its absence, the news channels will not be able to conduct interviews in a healthy and conducive manner thus resulting in total unawareness for

² Jacob Rowbottom, Media Freedom and Political Debate in the Digital Era, Pg. 491 (2006) 69(4) Modern Law Review 489-513

the general public regarding what's happening in the world and who is to be held accountable for the same. Decisions will be taken bureaucratically as nobody with an authority would be responsible to the public.

1.2 How electronic and social media are misusing the freedom?

Gone are the days when the major sources of news communication, news and entertainment were just selected regional and national newspapers, All India Radio and Doordarshan. While newspapers and magazines were a form of print media which was the earliest form of media communication, it was taken over by electronic media which mainly included television and radio. Today, media offers several other forms of communication like smartphones, laptops, tablets, etc. which are faster, easier and more easily accessible than any of the earlier sources of communication. It would be impossible to imagine living sans the various forms of media that are available today. These forms of media are not only technologically advanced but also at the same time shape up the latest form of media namely the social media.

But like everything that is in excess becomes unhealthy and unadvisable, even media can be held responsible for several flaws emerging out of the freedom of speech and expression that has been provided to it.

Due to 24x7 news channels, people get prompt report of latest happenings from across the world but simultaneously there are also instances of paid news, sting operations, media trials, etc. News that is broadcasted on electronic and social media and printed in newspapers is occasionally found to be without any substance thus resulting in rumors or hoax which is known nowadays as “fake news”. The same spreads more rapidly with technological advancements like smartphones and through apps like WhatsApp. People have been found to have acted violently on base of such fake news reports and end up committing heinous crimes like murders, riots, etc. Likewise, there are entertainment and film channels, but the content of their programs also needs a check considering the vast audience of various age groups to which such programs are broadcast. In absence of such measures, the channels often take liberty to broadcast program content of any level without any restriction, thus sometimes offending the viewer groups like women and children. Even on social

media which is the biggest platform used by every individual, many respect the freedom of speech and express themselves accordingly while others use the same platform to abuse the rights of others, be it publicly or personally. Thus, it can as well be said that development of media has resulted in an increasing number of sources of media which again has proved both, a virtue and a vice.

Simultaneously, due to media convergence, there is a continuous process of churning out modern modes of presenting news which combine traditional ways of printing, broadcast, publishing news stories online, and so on. Considering these problems, the question arises if media needs to be regulated and to what extent should it be regulated?

Also it is important to determine if the regulation has to be from within the media houses itself or should there be an external regulator independent and separate from all media houses? Considering these problems, the question arises if media needs to be regulated and to what extent should it be regulated? Also it is important to determine if the regulation has to be from within the media houses itself or should there be an external regulator independent and separate from all media houses?

Hence, the title of this research is as follows:

A Study on Freedom of Speech and Expression with reference to Social and Electronic Media

1.3 Rationale of the study

Although right of freedom of speech and expression is not absolute and subject to certain constitutional restrictions, the freedom to form opinion with its privileges is considered a great instrument in the hands of the citizens which contributes significantly to the democratic functioning of the Government.

The media covers news of public interest such as political happenings, sports, local news, national and international news, business, entertainment, medical and literature news. The news reportings should satisfy people from all walks of life and should not be half-baked and exaggerated simply in the run of trying to report before all other news channels.

It would not be incorrect to say that media is the watchdog of political democracy. If it plays its role honestly, it will be a great force in building the nation, but since last few years, media has become a commercialized sector which stresses only on the news that is hot and sells. Instead of giving important information and educative programmes, all that one gets on television is sensational depiction of all news stories and loud debates, their only goal being to achieve highest TRPs. No news is complete and totally impartial and every news channel reports a news story after shaping it in its own manner. If the basis of such news report is unverifiable or without any authentication, the news report becomes a part of fake news, a rumor or a hoax.

The rationale of the study is thus to understand the pitfalls and loopholes in freedom of press namely media trials, fake news, sting operations and paid news, despite it being such a vital organ of the nation.

1.4 Object of the study

The main purpose of this research was to know whether the existing laws, enactments and regulations dealing with media and internet which has become the new media is effective and well developed to face the challenges of paid news, media trials, sting operations and free speech on internet. While finding out this the researcher conducted the study with the following objectives:

- To find if existing laws related to media in India are sufficient to deal with media trial
- To study the existing laws governing the media in the light of advent of science & technology
- To study the powers of regulatory bodies

1.5 Scope and Delimitation of the study

The research deals with development of media, laws and bodies regulating media laws in USA, UK and India as well as judicial pronouncements in respect of media

in India. The study has been conducted by comparing the media related laws in USA, UK and India because the laws of our nation heavily borrow from USA and UK.

As freedom of speech and expression covers several areas, present research is restricted only to its implications for media law and mainly new media like the social media and electronic media which almost competes social media in respect of free speech. Likewise, media has several other modes wherein freedom of speech and expression maybe questioned namely entertainment channels, films, serials and advertisements, all of which have often come up with cases of being restricted due to one reason or the other. The present study is limited only to freedom of speech and expression with reference to social and electronic media and mainly on news channels dealing with paid news, fake news, media trials, sting operations and freedom of speech on internet.

1.6 Significance and Utility of the Study

Media laws come up from several forms of Acts and bodies which are meant to regulate the media. There are international legislations, treaties and bodies which regulate the media internationally and similar natured Acts and bodies have been developed in India to look after the working of media in India. Though media does not specifically have freedom of speech and expression anywhere in the Constitution of India, several judicial pronouncements from time to time have guaranteed the said freedom to media. However, with competitive scenario, media takes a step ahead of the said freedom and indulges in cases of paid news, fake news, sting operations and media trials. Likewise, even the new media wherein social media on the internet rules currently, cases like Shreya Singhal come up wherein legislations are wrongly used to curb the right of free speech on internet. The present study is important to find out if the currently prevailing laws and regulatory bodies are sufficient for the ever-changing media facet and if not, what more is necessary to regulate them. Again, whether the checks should be internal or external also needs to be decided because an internal check would leave scope for mischiefs.

1.7 Statement of Problem

The research has dealt with how freedom of speech and expression and the reasonable restrictions thereto have been used/misused by social and electronic media. Constitution of India does not specify freedom of media anywhere but the judicial decisions by Hon'ble Supreme Court have laid down freedom of speech and expression for media. However, the same is often stepped over and misused by indulging in paid media, media trials, sting operations, etc. Likewise, even on social media, freedom of speech is sometimes used/abused. The present research deals with the problem of freedom of press resulting in instances of fake news, paid news, media trials and sting operations.

1.8 Hypothesis/Research Questions

The research was conducted on the basis of the following hypothesis:

- Are the existing laws adequate to tackle the impact of science and technology on freedom of speech and expression?
- Are the regulatory bodies of India like Press Council of India and News Broadcasting Standards Authority adequate to control the telecast through internet?
- Have the provisions of I.T. Act been misused by State machinery to curb, control and silence the political criticism?
- Does the media carry impression that their rights are superior to rights of citizens of freedom of speech and expression?

1.9 Research Methodology

The methodology adopted in this study was both doctrinal and non-doctrinal. The research concerned dealt with the legislations at national as well as international level.

The method of the research adopted for hypothesis 1, 2 and 3 was descriptive and analytical method. The sources of data was bare acts for referring provisions of national and international laws governing media, secondary sources such as secondary data, books, case laws, expert articles and journals written by eminent

authors, editorials of newspapers, websites of regulatory bodies to know their functions, etc.

Lastly, the research methodology which the researcher adopted for hypothesis no.4 was non-doctrinal method and the research tool used was interviews of judges, professionals and experts from legal field. The scheme of the interview was both structured and non-structured. The researcher has used Maximum variation sampling which is a purposive sampling technique where subjects are selected to study varied perspectives in order to determine the exposure of media laws. Thus, questionnaires have been collected from various segments of society such as judges, advocates, law students and teachers as well as students from journalism field and company secretaries. The basic principle behind maximum variation sampling is to gain greater insights into a phenomenon by looking at it from all angles. In present research, media being a field of vast nature and being used by people from all segments, purposive sampling and specifically maximum variation sampling has been used to collect views from several segments of society.

1.10 Chapter Outline

Chapter One deals with the introductory aspects of the research work. A brief introduction has been given about the various aspects of Article 19(1)(a) of the Constitution of India alongwith the scenario of media world mainly the print, social and electronic media. The hypothesis, the object and scope of study as well as limitations and delimitations, conceptualization of terms have been discussed.

Chapter Two deals with Development of Media. When the print media made its entry in seventeenth century, its potentiality as a mass communicator was soon realized and it was used both as an informer as well as a propagator. What was born essentially to disseminate factual and objective information came also to be used to misinform and disinform, to control and manipulate the news and to shape and mould the views. The print media thus emerged as a powerful weapon to manipulate the public opinion and to rule the people through manipulation. When it was reinforced by the electronic media, first by the radio and followed by television, the

media by itself became an all powerful institution of the society. In some aspects it became more important than the all embracing power of the State because of its audio-visual and quicker reach to all nooks and corners of the State. The events prove that this pervasive mighty power of the media was successfully used by interested to serve their purpose, benevolent or malevolent.

In this Chapter, the evolution of media has been discussed at length. Starting from the earliest form of media, namely the print media and how it evolved with invention of Gutenberg's printing press and then eventual growth of newspapers, magazines, periodicals, etc. across the world followed by invention of television, radio and other electronic devices which shifted the media sources from print media to electronic media have been discussed alongwith how growth of technology also brought related laws into existence. For e.g., first US copyright law was enacted in 1790 as several articles, books, fiction, etc. had started to come in existence due to technologic advancement in print media.

Finally, invention of computers followed by worldwide spread of internet and its widespread use have been discussed alongwith how social media is transforming the media platform today as well as how all three forms of media – namely, print, social and electronic media are working simultaneously to provide a continuous supply of news and information to the entire world has been discussed. Social media has given rise to new forms of communication like Facebook, Whatsapp, Twitter, etc. They help in sharing photos, videos, personal profiles, headlines and reports and every other kind of information. Today, they are a major form of communication hence the same have been discussed.

Also, various terminology of media like communication, mass communication, media, mass media, social media, new media and media convergence have been discussed to elaborately deal with the research work. As the print media is the earliest form of communication and also the base of major forms of communications available today, its evolution has also been included. A detailed timeline of how each form of media had developed in the world as well as in India have been given so that a year-wise development can be studied.

Chapter Three deals with the national and international legislations in respect of social and electronic media. The researcher has studied the legislations pertaining to print media, social media and electronic media which are available in USA, United Kingdom and India. The Chapter covers enactments as well as recommendatory bodies, regulatory framework, conventions and charters which have been held and implemented internationally and in India.

With an increasing number of sources of media, it was realized that media is often misusing its powers under the garb of freedom of speech and expression. Often, media indulged in paid news by telecasting stories that positively highlighted a single political party in lieu of financial gains. Likewise, it was also discovered that media trials were becoming more and more rampant and at times, judiciary itself was getting pressurized to give judgments as per the media trials because otherwise there would be chaos in the nation. Hence, the need was realized for having legislations and even independent and autonomous bodies that shall:

- prevent the media from stepping over the fundamental freedom that has been guaranteed to it;
- Safeguard the rights of media houses while covering any media story;
- Maintain standards of media houses during telecast of any news story so that the various classes of society are not offended by any coverage
- Maintain program code and keep a check on the quality of news so that the nation at large has access to healthy and quality news programs.

Following international Instruments, Conventions and Treaties have been discussed:

- 1 International Convention concerning Use of Broadcasting in the Cause of Peace, 1936
- 2 U.N. Charter 1945
- 3 American Declaration of the Rights and Duties of Man 1948
- 4 Universal Declaration of Human Rights 1948
- 5 European Convention for Protection of Human Rights and Fundamental Freedoms 1953
- 6 International Convention of Civil and Political Rights, 1966

7 UNESCO Mass Media Declaration 1978

8 Charter for a Free Press (1987)

The researcher has studied relevant statutory provisions relating to media in U.K. namely:

1 Malicious Communications Act 1988

2 Broadcasting Act 1990

3 Human Rights Act 1998

4 Communications Act 2003

5 Digital Economy Act 2010

6 Independent Television Commission Program Code

7 Ofcom Broadcasting Code

Existing regulatory framework related to print media, social media and electronic media has been studied.

1 Print Media

- Press Standards Board of Finance
- Press Complaints Commission
- Leveson Regulation Reforms
- Royal Charter 2013
- International Press Standards Organisation (IPSO)
- Editors' Code of Practice
- Press Recognition Panel
- Independent Monitor for the Press (IMPRESS)

2 Electronic Media

- Office of Communications (Ofcom)
- British Broadcasting Corporation (BBC)
- Broadcasting Standards Commission

3 Social Media

- Body of European Regulators for Electronic Communication

As all three forms of media are starkly different from each other, each of them requires a different mode of regulation. Again, as Indian laws are in the nature

of those found in USA and UK hence researcher has studied the laws and regulatory bodies in USA and UK.

Relevant provisions of following Acts and Regulatory bodies of USA have been studied:

1. Statutory Provisions

- Espionage Act 1917
- Sedition Act 1918
- Smith Act 1940
- Communications Decency Act 1996
- Telecommunications Act 1996
- Digital Millenium Copyright Act 1996
- Broadcast Decency Enforcement Act 2005
- Free Flow of Information Act 2013

2. Regulatory Framework

- Federal Communications Commission (FCC)
- Media Bureau
- International Bureau
- Fairness and Accuracy in Reporting (FAIR)
- Newseum Institute
- American Society of News Editors
- National Association of Broadcasters (NAB)
- Internet Free Expression Alliance

The major Acts in India which provide for regulation or penalty in relation to media have been studied. These Acts are as under:

- Press and Registration of Books Act
- Indian Telegraph Act 1885
- Newspaper (Incitement to Offences) Act, 1908
- Indian Penal Code
- The Cinematograph Act 1952
- The Drugs and Magic Remedies (Objectionable Advertisements) Act 1954
- The Young Persons (Harmful Publications) Act 1956

- The Copyright Act 1957
- Defence of India Act 1962
- The Parliamentary Proceedings (Protection of Publication) Act 1977
- The National Security Act 1980
- Indecent Representation of Women (Prohibition) Act 1986
- The Cable Television Networks (Regulation) Act and Rules 1995
- Information Technology Act 2000

Like USA and UK, India also has regulatory bodies to look over the functioning of all forms of media. These regulatory bodies are as under and the same have been studied in the research:

- The Press Council of India
- Indian Broadcasting Foundation
- Broadcasting Content Complaints Council (BCCC)
- Broadcast Audience Research Council (BARC)
- News Broadcasters Association (NBA)
- News Broadcasting Standards Authority (NBSA)
- Ministry of Communications and Information Technology
- Telecom Regulatory Authority of India (TRAI)
- Prasar Bharati

In addition to these bodies, several legislative attempts were made for enactment of new Bills and guidelines for a more indepth check over the media functioning. However, the said attempts were not successfully passed as Acts and implemented. The same are listed below:

- Communications Convergence Bill 2000
- Broadcasting Services Regulation Bill 2007
- Self-Regulation Guidelines for Broadcasting Sector 2008
- The Cable Television Networks (Regulation) Second Amendment Bill 2011
- The Press and Registration of Books and Publications Bill 2011
- Print and Electronic Media Standards Bill 2012
- Cinematograph Bill 2013

Chapter Four discusses the judicial approach of Hon'ble Supreme Court in respect of media. As the Constitution of India nowhere specifically provides for the media's right to freedom of speech and expression, the same has been provided through landmark judgments decided by Supreme Court of India wherein it has laid down the right of media to freedom of speech and expression. While the Court has laid down and reiterated this right through some cases and gone to the extent of striking off laws which hinder an individual's right to freedom of speech and expression, it has also laid down guidelines wherever the media has crossed this freedom beyond limit. Media has often been the subject matter of judicial decisions in the past decade. In its various decisions over a period of time, Supreme Court has at some places, detested the media wherever it has taken excessive liberty and laid down guidelines to be followed in future while at other places, supported media by going to the extent of striking down laws which seemed to be a restriction on the freedom of speech and expression. Some of the major case laws that have defined the freedom of speech and expression to media are discussed below:

- **Shreya Singhal vs. Union of India: AIR 2015 SC 1523**
- **Aveek Sarkar and another v. State of W.B. and others. (AIR 2014 SC 1495)**
- **Ratan N Tata vs. Union of India (AIR 2014(Supp) 827)**
- **Rajat Prasad vs. CBI (AIR 2014 SC (Supp) 1236)**
- **Mohammad Ajmal Mohammad Amir Kasab vs. State of Maharashtra (AIR 2012 SC 3565)**
- **S. Narayan, Editor-in-Chief, Hindustan vs. Hon'ble High Court of Allahabad through Registrar General: (2011 AIR SCW 5761)**
- **S. Khushboo v. Kanniammal (AIR 2010 SC 3196)**
- **Ajay Goswami vs. Union of India: (AIR 2007 SC 493)**
- **R. Rajagopal v. State of T.N. and others (AIR 1995 SC 264)**
- **Samaresh Bose vs. Amal Mitra (AIR 1986 SC 967)**
- **Sakal Papers P. Ltd. Vs. Union of India: (AIR 1962 SC 305)**
- **Indian Express Newspapers Bombay P. Ltd. Vs. Union of India (AIR 1986 SC 515)**

Also, several cases of media trials and paid news that came to limelight in recent past have been discussed.

Chapter Five includes the study and analysis of questionnaire in order to extract information pertaining to usage and awareness of media laws in various groups of society. The study being a non-doctrinal research, questionnaire method has been used and the same was passed to lawyers, judges, law students, company secretaries and general public. Responses from them were collected and the data has been analysed in this Chapter.

The value of media freedom comes from the way it serves the interests of public and audience.³Hence, the researcher has surveyed through questionnaire from different groups of profession in society.

Chapter Six deals with suggestions and conclusions based on the research work. The same have been made after a thorough and extensive research carried through doctrinal and non-doctrinal studies. It has been concluded that since social media came into existence and its usage started being spread till a common man, the electronic media has somewhere lost its grip of monopoly. With electronic media, most of the information communication was a one-way path with only news channels broadcasting the news reports and events. But with social media, information communication is both sided and can be responded to through tweets, videos, images, etc. Anyone who is not a professional journalist also can report a news event by sharing photos and videos around him on the platform of social media. For the reason of continuing to have the upper hand in journalism and news reporting, media has resorted to indulging in activities of media trials and sting operations. At the same time, running media house requires huge budgets which if media undertakes only the objective of social service, cannot be fulfilled. Hence, media has to balance between earning respectable amounts without making profit only as its sole motive on one hand and on the other hand it has to give service to the society as its powers of presenting picture of the world before the society are enormous. For this reason, media uses its powers to present party-specific positive reports in lieu of monetary favors which results in paid news. Thus, the media's right

³ Jacob Rowbottom, Media Freedom and Political Debate in the Digital Era Pg. 492 (2006) 69(4) MLR 489-513

to freedom of press has been misused in recent years. Likewise, news channels now are a 24x7 business unlike the one hour slot as was broadcasted on Doordarshan decades ago. Increasing number of satellites, media corporates finding India a lucrative ground, readily available internet access, easy to carry smart devices have made news penetration easier in every level of society. News channels now need to keep themselves running by reporting news stories throughout day and night continuously. Sometimes, the same is done by compromising with quality of news by giving a gargantuan shape to a minor bit of information. For e.g. few years ago, the news story of a young boy “Prince” slipping and falling into an abandoned but open borewell was in limelight for as many as 48 hours. The news story was continuously repeated alongwith the entire rescue operation being aired throughout. The news story did not have any national or international, political or other implications except portraying the necessity of safety measures in regard to open borewells in rural areas. Broadcasting a single news story and stretching the broadcast for almost 2 to 3 days also simultaneously means that other news events in a continuously evolving nation and world have been neglected. At instances like these, it appears that media needs to rethink about how to give time slots to each news report considering the sensitivity, urgency and requirement of it being brought to the notice of viewers across the nation. Likewise, in 2008 the terrorist attack on Bombay was broadcasted live so rigorously that not only citizens of India, who needed to be informed of the same came to know of it but also those who had planned the attack were watching the live telecast and being updated in order to make their next move. Such a step on part of media simply to gain TRPs and public attention need to be discouraged. Media has a social responsibility of informing the citizens but it cannot be at the cost of attempting an attack on the national security specially when it was already under threat during the attack.

The regulation of media is inevitable with an extensive rise in users of social media, switching of news platforms to social media and simultaneous existence of print as also electronic media. Newspaper sales might have declined due to rise of social and electronic media but all the same it stands firmly in today’s scenario with tough competition from the other two. Millions of people still find it convenient to

go through news in traditional form of newspapers rather than switching to electronic or social media. News articles, editors columns, advertisements, government notifications and circulars – all of them are a regular feature of newspaper thus bringing the fact to the light that freedom of speech and expression is being availed through print media even today.

Likewise, electronic media has been on the rise in past two decades with several 24x7 news, entertainment, sports and music channels getting the platform of television. News channels like Aaj Tak, Times Now, Republic, India TV, etc. need to report news coverages from India as also from other parts of the world for running the news channel all day long. These news reports need to be complete in all aspects before being broadcasted as they are the source of information as also will generate a picture of society or a nation to the viewers at large. Free news reporting is one part of the picture which needs to be balanced with respecting the restrictions imposed on the news channels. Media trials prove helpful in limited cases where the case seems to have reached a dead end without justice delivered to the parties but they need not be hyped, exaggerated and broadcasted to an extent where judges actually deciding the cases themselves feel sagging under the weight thereof. Likewise, practices of paid news must be discouraged because it has a potential to put power in wrong hands by showing party highlighting films concentrating on political parties in the garb of a news story. Sting operations

If either of them is given a free reign, the implications will equally be visible on the other two as well and if regulated internally, the mischiefs will hardly come to light. Considering both the aspects, it has been concluded that media regulation needs to be done internally and externally by different and exclusive bodies.

Needless to say, free media can exist only in a free democracy and true democracy is possible only with the free media. Both are complimentary to each other. The media helps to preserve and promote democracy by safeguarding the independence of its institutions including of itself and ensuring their accountability. No democratic society can exist or can be conceived of without a free media which is its lifeline and at the same time the democratic values alone can nurture a free media. Since 1990s India has witnessed an explosion in electronic media and online news

services. Media has acquired such great control on the mind of masses that now it controls and shapes the likings, dislikings and interest in different segments of news items to a considerable extent. If compared to print media, electronic and social media have grown and multiplied much faster due to easy availability, instant access, prompt reporting and visual backup.

1.10 Literature Review

The researcher has reviewed the works of several researchers which have been done from various nationwide universities. The research works reviewed are from the period of 1993-2017. The said works have been obtained from “Shodhganga” website by using search terms such as “freedom of speech and expression”, “freedom of press”, “electronic media”, “social media”, and “Article 19”. From the search results found, the researcher has reviewed only those works which were found relevant or closely connected to his current research.

Singh G. (2017) in her research titled “**Role of Freedom of Electronic Media in Indian Democracy**” has worked on the research question whether the mischief of censorship has been correctly addressed by the existing laws and legislations?

Iyer Venkatesh B. (2017) in his research titled “**Study of impact of internet and other media before print media**” has conducted the research with following objectives, i.e. 1.To understand the present scenario of print media in India specifically with respect to the state of Gujarat. 2.To understand the evolution of print media in India and analyse its current challenges 3.To understand the adaptation of print media in the current competitive scenario 4.To study the readership behaviour of consumers in Gujarat. 5.To study the consumer’s and industry’s perceptions of newspapers in relation to other media.

Mittal AK (2016) in his research “**Trial by media and its impact upon judicial trial a critical study**” has undertaken research with following objectives i.e. to analyse the role of investigative Journalism in social downfall or enlistment, to judgethe effects of judicial activism by media on the society and Government machinery, to determine the

subsequently effects of media trial on the society, to access the pressure groups affecting the media activities, to evaluate the legislative & constitutional provisions relating to electronics media activities, to develop new legal concepts to tackle and control media activities, to discover control mechanism to restrict media in fleshing wrong news, to disclose the mystery of scams through electronic media & effecting judicial approach

Following were the research questions of the said research: What is the role of investigative Journalism in social downfall or enlistment?, What are the effects of judicial activism by media on the society and Government machinery?, How determine the subsequently effects of media trial on the society?, How access the pressure groups affecting the media activities?, How to evaluate the legislative & constitutional provisions relating to electronics media activities?, How to develop new legal concepts to tackle and control media activities?, How to discover control mechanism to restrict media in fleshing wrong news?, How to disclose the mystery of scams through electronic media & effecting judicial approach?

The research titled **“Right to freedom of speech and expression with special reference to decency and morality”** by Sen, Shameek (2016) has been made based on the hypothesis that freedom of Speech and Expression is a sacrosanct Human Right that needs protection in all its facets. Pre-censorship of any form leads to a serious compromise of such right. Although there have been differences between human rights systems on the necessity, extent and basis of imposition of prior restrictions on speech owing to the cultural specificities, there has been an overall consensus on the need to minimise the imposition of any prior restraint. Apart from very specific situations where it is absolutely necessary, mandatory pre-censorship of any form across all types of media especially on grounds of obscenity should be largely done away with and replaced by other forms of post facto imposition of liability. The pre-censorship mechanism should be replaced by a normative system of regulation based on scientifically determinable parameters, and such regulation should be predominantly carried out by stakeholders of the concerned sector of the media, rather than by the state. The role of the state should be restricted to giving a statutory recognition to such self-regulatory model, such that any kind of

subterranean censorship and the possibility of a consequent chilling effect on this fundamental freedom does not arise

Indraneel, Saleel S (2016) in his study titled **“The role and accountability of the media in the Indian democracy”** has carried out the research with the objectives of identifying the rights of the media, assessing the limitations imposed upon the rights of the media, finding out the methods of transgression of these limitations by the media, critically analysing the concept of media trial, assessing the impact of media trial upon the public as well as the legal system, finding out whether the media is accountable; and if yes, to what extent, making an endeavour to strike a balance between the two conflicting rights, that is the right to privacy of an individual versus the right of free press to report, suggesting a few steps to curb the dictatorial aspirations of the media

Kumar Ashok (2015) has researched on **“A Legal Study of media in India with reference to electronic technology vis a vis media trial”**. His research has been conducted on the hypothesis that The basic idea of freedom of speech and expression is as old as the Human civilization. II.The Government has consistently rejected demands by news papers for permission to import newsprint directly. III.The establishment of a Broadcasting council/Media Council to examine complaint against the corporation and unfairness or bias in media, may be a good solution. IV.Through speech and expression one can learn about their human and political economical, Developmental rights and process of development. V.Right to speech and expression is oxygen’s for democracy and development for country. VI.Sting operations affect various rights of human being. VII.The Media publishes the version of either the police or the defense selectively, while the trial is in progress.

Kumar N. (2015) has researched on **“Role of Indian Media: Covering General Elections”**. Researcher has covered topics like relation between mass media, democracy and elections, exit polls and opinion polls and the accuracy of their

surveys, paid news syndrome and elections in the light of increasing number of news channels. The study has been conducted with following objects:

- (i) To understand role of media during elections in Indian context;
- (ii) To understand special features of electronic media especially television news channels during their involvement in election;
- (iii) To know the effectiveness of forecasting of media in pre and post election results;
- (iv) To identify factors influencing media's role during elections.
- (v) To understand the utility and significance of media strengthening democratic institutions in India with special reference to election;
- (vi) To understand the perception of media professionals regarding role of media.

The researcher has assumed the hypothesis that:

- (i) Mass media play an active role during elections
- (ii) Mass media, especially television news channels has usurped the political parties traditional role of reaching out to electorate.
- (iii) Exit polls fail to give right predictions in elections.
- (iv) Pre-post poll and exit poll surveys need major changes in their techniques to prove themselves right in Indian context;
- (v) Paid news is a big threat to the fair, free and level playing elections.

It has been suggested at the end of study that media must pick up people's issues and focus on them during elections as there is a growing disconnect between political masters and people and media should effectively bring it out in open.

Arora M. (2015) has conducted a research on **“Role of law as a regulator for electronic media: a socio-legal study”**. She has done a in-depth study on Article 19(1)(a) with special reference to electronic media and how far reasonable restrictions affect the functioning of electronic media. The laws and proposed bills directly or indirectly regulating electronic media have also been discussed. Finally, freedom of electronic media in relation to responsible journalism has been analysed. Main focus of study is to:

- (i) Analyse the various provisions of laws regarding electronic media;
- (ii) Coverage and extent of electronic media;

- (iii) Accountability of electronic media;
- (iv) Freedom of electronic media and interests of society.

Object of the study is to find the regulatory laws in respect of electronic media and how far the freedom of media is serving interests of public.

Following suggestions have been made at the end of study:

- (i) Existing laws and rules regulating electronic media are more than sufficient to streamline the working. A seamless web of laws and authorities makes media regulation a complex task. The need is the proper implementation of these laws which can provide media an honourable position.
- (ii) Electronic media namely private TV channels should be brought under the purview of RTI Act so that some accountability comes into media operation and management.
- (iii) Programs showing crime, obscenity, etc. which create a negative impact on viewer's minds should be banned and programs in nature of progress, stability and unity must be broadcasted so that harmony spreads amongst the people through the medium of electronic media.
- (iv) Electronic media should telecast programs giving knowledge to illiterate, rural and poverty ridden people relating to employment opportunities.
- (v) In case of terrorist or bomb blast attacks, electronic media should not give live coverage of hostage crisis. It should block information that may help terrorists. It should not disclose information on rescue operations.
- (vi) Media should avoid unnecessary repetition of archival footage which may agitate the mind of viewers.
- (vii) Broadcasting Services Regulation Bill 2006 should be passed so that private broadcasting service is regulated in objective and competitive manner.

Maurya A.(2015) has researched on the topic “**Regulation of social media in cyber space: A critical study of regulatory mechanism with special reference to India**”. The researcher has discussed problems posed by social media like hate speech, identity theft, copyright infringement, etc. and the laws and authorities governing social media. The researcher has also analysed issues of extra territorial jurisdiction in light of social media offences as well as laws regulating social media

in countries of USA, U.K. and India. Finally, international bodies governing the internet have been explained alongwith critical issues and proposed models. The study has been conducted with the object of making critical analysis of effectiveness of governing laws and media regulatory bodies and to study the extra territorial jurisdiction of legal system in case of social media offences committed outside a state's territory. The researcher has worked on the hypothesis that social media regulatory mechanism in India is more subversive and ineffective and has failed to address the challenging issues of new communications mediums as witnessed in various incidences of social media mischief. The researcher has made several suggestions namely:

- (i) Restructuring and reorganizing the social media by devising newer authorities and organizations that shall ensure freedom and liberty on the internet.
- (ii) Planning of international agreement for cases where international bodies are involved in governance of internet.
- (iii) In respect of India, necessity has been found that India should sign Mutual Legal Assistance Treaties with other countries until the provisions of Criminal Procedure Code are incapable of investigation of crime in foreign countries.
- (iv) There is a need for international agreement that when international bodies involved in governance of internet arrive at certain conclusion after due consultation, it should be made compulsory for the participating nations to follow the conclusion.
- (v) Principle of 'right to be forgotten' should be implemented worldwide in order to protect privacy of the users.
- (vi) Authorities and other mechanisms should be devised and developed both at national and international level so that the watchdogs may be effective and vigilant for ensuring better global commitment for protecting common freedoms and liberties of mankind.
- (vii) A common global commitment which may be incorporated in form of treaty/protocol or convention.
- (viii) Till the time scholars may reach at some mutually accepted terms, they may formulate principles like Common Concerns of Freedom and Liberty Principle so

that a common agreement on protection of basic freedoms and liberties may be argued for coming times.

- (ix) A legal, moral and ethical code should be devised for social media application developers and there should be a body for granting approval to properly devised social media applications.
- (x) There is a need to enact a law covering the rights, duties and responsibilities of social media agencies/users/ISPs. This law should be drafted keeping in view the international scenario of the related laws. The law should be in consonance with existing laws which are presently governing various issues of social media in India.

Trivedi B. (2015) has made a study on “**Political Communication A Comparative study of mass media**”. The researcher has studied the perceptions of adult citizens and communicators in political communication through mass media as well as flaws visible in political communication and manners of removing them. The study has been conducted with the object of understanding scope, limitations, reach and dimensions of political communication through mass media in India.

Study has been conducted on the hypothesis that present channels of mass media of political communication do not effectively transmit political content that should make the viewers politically informed and aware a function of a mature democracy. It has been concluded and suggested that:

- (i) Discrepancy of free flow of information in Government owned media as well as in print medium is a drawback in mass political communication system. Flow of information should be consistent with the event and not based on either interpretative reporting or self-conceived notions or pressurized projection from other sources.
- (ii) Communicators have to make full use of resources at their disposal to bring public awareness in vast class of people. However, it is a matter of deep concern that audio visual media attempts least to avail the benefits of this strength it has. On the contrary, it is presenting stereo typed projections which have only monotonous effect. Even assessment of public response is not carried out as it ought to be. With the limitations of communicators, they can deliver much better projections than they

currently present. Their concepts have to be changed and they have to work for public interest and provide stimulated analytical perspective to them.

- (iii) A team of independent expert communicators should be set up with the full authority to provide money to the needy newspaper agencies if they behave in projecting public interest.

The subject of research by **Gifty (2014)** is “**Right to Privacy and Freedom of Press – Conflicts and Challenges**”. The researcher has studied history of right to privacy and freedom of press and has also provided a comparative analysis of right to privacy and freedom of press in U.K., USA and India. The concept of Investigative Journalism and protection of privacy has also been explained in great detail. The researcher has also studied how contempt proceedings can be balanced between media freedom and privacy in subjudice matters. Finally role of Press Council of India has been explained in light of the above. The researcher has concluded that there are no specific laws protecting privacy in India and some of the Acts like Indecent Representation of Women (Prohibition) Act, 1986, Cable Television Networks (Regulation) Act 1995, provisions relating to defamation under the Indian Penal Code do not expressly refer to privacy but are referring only to some of its attributes like defamation, morality, obscenity, etc. Researcher has suggested:

- (i) To give more punitive powers to Press Council of India who currently is in the position of a toothless tiger due to its limited powers of censure, warning and admonition.
- (ii) An exclusive legislation on privacy also has been suggested in addition to necessary constitutional amendments.

Article 21 and 19(2) should be amended suitably to incorporate right to privacy. Making this amendment would uplift the morale of an ordinary citizen of a country instead of living in fear of anytime being pulled out of their secured homes to be scandalized in the open public by the media.

Anand N. (2014) has researched on “**Role of the press in political mobilization: A comparative analysis of colonial and independent India**”. The research covers

areas like political communication and political mobilization, press and political mobilization in India alongwith case study on Gandhi and comparative analysis on the role of press in colonial and independent India. How mass media affects general public has been also discussed in great detail. Object of the study is to find various functions performed by mass media of communication, role of press in political mobilization and finding role of political communication in political socialisation and opinion formation. It has been concluded that:

- (i) Under some circumstances, mass communication facilitates the creation of organizations by focusing attention on an issue and altering individuals who share common attitudes about the issue to the desirability of forming some kind of association.
- (ii) Media serves as intentional or unintentional recruiters for small groups that wish to expand their membership.
- (iii) In some cases, mass communication facilitates creation of organizations by focusing attention on an issue and altering individuals who share common attitudes about the issue to desirability of forming some kind of association.

In a broader sense the political process as a whole is influenced by access to the means of communications and that the mass media are highly diverse in content and in forms of organizations and include a very wide range of activities which could have effects on society.

Kumar S.(2013) researched on the subject “**Gandhi’s practice of media ethics and its relevance in India**”. M.K. Gandhi developed a model for journalists to practice development journalism with a purpose to improve the society. He believed that the role of newspapers was only public service. The researcher has conducted the study with following objects:

- to explore the value and ethics of journalism practiced by Gandhi,
- to find out the relevance of Gandhian concept of journalism,
- to find out the opportunities and challenges to the Gandhian model of journalism.
- To find out the possible way of Gandhian model of journalism together with commercialization of media.

It has been stated that Gandhi was actively associated with print media through newspapers and weeklies. He had good communication skills to spread awareness in the nation and he focused on welfare of society. Mahatma Gandhi's sole purpose of journalism was to serve the society at a large scale and it was his mass oriented approach and ethics based journalism that inspires and guides journalists even today. Further, the researcher has also discussed gray areas like conflict of media's objectives of social service and profit and whether facts should have a upper hand over the opinions or vice versa. The researcher has concluded that in present scenario, most of the media organizations are becoming 'social entertainers' and there is no place for mass-oriented content on most of the TV channels today. Even newspapers lack in-depth study or research on subjects relating to the nation and events have become more important than issues. It has been suggested that Gandhian trait of positive journalism is highly relevant for development today. Gandhi developed a model for journalists to practice development journalism with a purpose to improve the society. He believed that the role of newspapers was only public service hence he wrote a series of stories on various issues such as health, birth control, women empowerment, etc. He consistently wrote on the importance of educating rural masses and this approach is still relevant in India with a major population of illiterate section.

Iqbal A. (2013) has researched on the topic “**Legal Control over Electronic Media in India**”. The research amidst others, covers areas like state control over electronic media, license and content regulations, constitutional aspects and present control over electronic media. His work attempts to examine existing legal framework of electronic media. The research has been done with the object of finding the regulatory problems faced by electronic media in India and whether existing laws are sufficient to tackle the problems or not. The research has been carried out on the hypothesis that existing laws for media regulation in India are scattered and a sui juris law is required to control the electronic media. It has been suggested that a Code on Electronic Media Authority in India should be implemented as TRAI Act and Cable networks Regulation Act are incapable of covering all the issues in present

day media. The powers under the Code shall be specific. The penalty in the Code must be enforceable, effective and realistic. Parties committing offence may be classified under (i) Persons including broadcast listening and watching persons, (ii) Broadcasters and (iii) the State. Fine for all three groups shall be different.

Mehta K. (2013) in her study titled “**Freedom of Speech and Expression**” has highlighted on concept, meaning and scope of freedom of speech and expression. She has made her study in context of Right to Information Act in its national and international perspective. She has further focused upon the role of judiciary for the protection of Right to Information in India and its impact on people in society, namely the voters, consumers, prisoners, etc. The study has been made with main objective of analyzing the working of Right to Information Act, 2005, its applicability to various branches of society and the objects achieved by implementation of the said Act. The hypothesis tested is that:

- (i) Rejecting information demanded under RTI Act is a violation of Article 19(1)(a).
- (ii) Right to receive or acquire information is actually not being properly enjoyed by common masses of country as they are unaware that some rights have been provided to them by the Constitution and other statutory laws of the land.

It is a doctrinal study. The researcher has concluded that:

- (i) Even though Parliament has passed the RTI Act with the objective to bring transparency, openness and accountability in the working of public authorities, but general public is still facing several problems, i.e. administrative and public, in accessing information.
- (ii) The problems are lack of training to Public Information Officers, poorly maintained official record, culture of secrecy prevalent in Govt. offices, rude attitude of officers, poor quality of information provided, etc.
- (iii) The researcher has also revealed in her study that right to information is a fundamental right and in case non-supply of the information demanded, delay in providing the information, wrong supply of information, rejection of application without assigning any reasons by the Public Information Officer at the first stage should be treated as violation of the fundamental right to information under Article

19(1)(a) of the Constitution and remedies under Articles 32 and 226 of the Constitution should also be granted.

It has been suggested by researcher that:

- (i) There is a need to include private bodies in the meaning of public authorities;
- (ii) In the RTI Act, 2005, it is necessary that the word “person” should be substituted in place of “citizen” so as to expand the sphere of RTI Act.
- (iii) There should be *suomotu* or pro-active disclosure of information.
- (iv) Government should make some provisions in the Act for periodical review to know the functioning of every Govt. department and for penalizing those officials who do not follow the provisions laid down u/s. 4 of the Act.
- (v) Government should design training programs for the public information officers so that they are made fully aware of the mechanism of their department. Thus they will be able to give correct information called for under RTI Act 2005 at the first instance to the applicant and the need for applicant approaching the appellate authority shall not arise.
- (vi) The long list of exemptions from disclosure of information laid down u/s. 8, 9, 24 should be reduced to the level of reasonable restrictions provided under Article 19(2) of the Constitution of India. Govt. should take effective steps for making suitable amendments under the provisions of the RTI Act.
- (vii) NGOs should be given vast powers to access information from the Public Departments on behalf of educationally, economically and socially weaker sections of the country.

Walia J. (2012) in the study on “**Expanding horizons of freedom of speech and expression and the judicial response**” has studied conceptual dimensions like evolution and historical perspective of freedom of speech and expression in India and international legal regimes of the said freedom in nations like England, USA, Australia, etc. Study has been carried out on the hypothesis that the legal framework is not adequate to confront the emerging challenges before the freedom of speech and expression particularly the media which includes the press, electronic and broadcasting media as well as new media.

She has also made a detailed study on constitutional and legislative measures as well as international treaties, covenants, etc. that emphasize providing the said freedom to all people across the world. Finally, judicial response to the freedom of speech and expression in India has been studied and which rights are encompassed within this freedom have been studied. The study concludes by emphasizing upon the need to define “decency or morality”, protection of individual privacy and even lack of effective media policy. Following suggestions have been made at the end of study:

- (i) Nation needs national privacy policy to protect individual rights in the instant and automated information-communication age.
- (ii) There is no definite and clear definition of “obscenity” in law and it is required that the legislature must remove this anomaly by giving a proper definition to the term. Also, men or women have not been categorized as the perpetrators of such offences in any law and hence punishments have not been prescribed which needs to be done. The term “good faith” has not been defined in any statute even though the exceptions of law of indecent representation permit depiction on good faith.
- (iii) Media fraternity needs to take a serious look of this issue and do self-regulation and self-monitoring with extreme care and caution. The system of reward and punishment may be introduced by way of policies by The Press Council of India whereby reward may be given to those who are able to portray women in a decent manner and likewise, punitive action may be taken against those who defy the norm.
- (iv) Citizens have a right to know but the government often wishes to be secretive. Phrases like official secrets, sensitive information, etc. give considerable room to the government to be secretive under the garb of protecting national interest. What constitutes ‘public interest disclosures’ needs to be clearly defined. The legal protection should apply to specific disclosures only involving an illegality, criminality, breach of regulatory law, miscarriage of justice, danger to public health, safety and damage to environment, etc.
- (v) Judgments of Courts are public documents and can be commented upon, analyzed or criticized but it has to be in dignified manner without attributing motives. Before placing before public whether on print or electronic media, all concerned have to see

whether any such criticism has crossed the limits and if it has, then resist every temptation to make it public.

- (vi) Our country should take a lead as the developing country and find out a proper forum where objectionable matters are heard. There is a dire need to amend the Constitution abolishing the distinction of inner space jurisdiction and outer space jurisdiction.
- (vii) There should be some rigorous research-based method to guide the decision-making process as opposed to rejecting political cartoons on grounds of ‘political sensitivity’ and ‘ambiguity’. In current era of extra-legal censorship, strict policies and regulations are required so that censorship is governed by reason and not by popular sentiments.
- (viii) There is a need for codification of the privileges of members of Parliament and legislators and appropriate amendments to the Official Secrets Act to enable the press to function properly and effectively.
- (ix) There is a need for self-regulation in the media besides framing the code of ethics to be observed by it. Failure to observe the code should result in penal sanctions.
- (x) There is a need to ensure that the right of freedom of media is exercised responsibly. It is for media itself and other concerned to consider as to how to achieve it.
- (xi) In contemporary times, there is a need for an integrated National Media Council which has adequate control over every aspect of news dissemination whether by press, news broadcasters or news websites.

The title of research made by **Paul S. (2012)** is “**The Press Council – An experiment in guarding free speech**”. An in-depth study has been made on the history, constitution, procedures of Press Council of India. Simultaneously, problems and issues faced by the PCI have been studied and solutions also have been suggested. Researcher has tried to study whether the Council has succeeded or failed in performing its functions. The major **suggestions** made are as follows:

- (i) The statutory nature of Indian Press Council which is its foremost advantageous feature should not only be retained but also strengthened by making a provision for

compulsory placement of adjudications of the Council in Parliament or the State legislatures.

- (ii) Regional press councils should be established apart from the central council which should be converted into an appellate authority.
- (iii) Researcher has also suggested that delay in pronouncement of adjudications by the Council should be avoided and adverse adjudications must be published and follow-up actions in regard of the same should be kept under constant review.
- (iv) The Council should be made a permanent body like the upper House of Parliament with provision for triennial retirement of half of the membership in various categories. Care should be taken that all regions are represented equally once regional press councils are established.
- (v) For the effective functioning of Press Council, it should be given some teeth based on the principle of golden mean between moral and punitive sanctions.
- (vi) In order to make the Press Council an effective body, all those engaged in professional of journalism shall be brought under its disciplinary authority.
- (vii) All laws affecting the press should first be referred for opinion of the Council. Modifications shall be affected in existing laws relating to parliamentary privileges, contempt of court, defamation, official secrets etc. as suggested by the Press Council.
- (viii) The Council should also have the power to order immediate correction of glaring misstatements published in a newspaper. This is important as otherwise irreparable damage would be done to the reputation and prestige of an individual or an institution by the time an adjudication is pronounced by the Council.
- (ix) The Council should ensure publication of its adverse adjudications in a proper manner and follow-up actions shall be kept under constant review.
- (x) The Council shall be bold enough to pass severe indictments against the authorities which would enhance its dignity and moral authority.

Dhevarajan Pa (2008) has made a research titled “**Fourth Estate – Social Values**”. The study has been made under various heads such as A General Note on Mass Media, Politically Oriented News Media - A Critical Appraisal, Link Between

News Media and Society, News Media in Shaping Social Values and Eliciting Its Reactions, Electronic Gadgets Versus Newspaper, Future of the Fourth Estate

The title of research made by **Ahmad, B. (1997)** is “**Freedom of press and the supreme court: an appraisal**”. The present work is based upon Doctrinal Research Methodology, Being library based work the text books, reference books, journals, re-ports of various commissions appointed to look into the various aspects of the press have been used extensively. Beside above stated sources dissertations and doctoral thesis have also been used in the accomplish-ment of the present work.

The title of research made by **Reddy A Raghunaha. (1993)** is “**Freedom of the press under Indian Constitution: A Juridical Study**”. The said study is conducted with objectives:

1. To evaluate the role of judiciary in relation to freedom of the press in American and Indian Constitutions;
2. To analyse the various facets of the right to information under the Indian Constitution.
3. To study the various laws that are designed to undermine the freedom of press in India.
4. To study the role of the Press Commission and Press Council concerned for the protection of freedom of the press
5. To evaluate the role of the press for strengthening the roots of democracy.

The studies that are presently available mostly focus upon the following and how the present research differs from each of the study is discussed below:

- (i) The study has been conducted with sole question Whether the mischief of censorship has been correctly addressed by the existing laws and legislations? [**Singh G. “Role of Freedom of Electronic Media in Indian Democracy”(2017)**]

The present research does not deal with issues of censorship. It focuses on freedom of speech and expression and the extent of its use/misuse by various ways in social and electronic media.

- (ii) The study has been conducted with object of understanding the present scenario of print media in India specifically with respect to the state of Gujarat and the evolution of print media in India, adaptation of print media in the current competitive scenario and to study the readership behaviour of consumers in Gujarat as also the consumer's and industry's perceptions of newspapers in relation to other media. [*Iyer Venkatesh B. - Study of impact of internet and other media before print media (2017)*]

The present research does not deal with state-wise scenario but gives a overall picture of evolution of media across the world and in India.

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

The present research considers not only media trials but also the menace of fake and paid news which have taken a rise as social and electronic media have given new platforms of reaching out to public.

- (iv) The research titled **"Right to freedom of speech and expression with special reference to decency and morality"** by Sen, Shameek (2016) revolves around the issues of censorship and pre-censorship.

The present research does not deal with censorship but studies media trials, paid news, fake news, sting operations in light of advancing social and electronic media technology.

- (v) **Indraneel, Saleel S (2016)** in his study titled **"The role and accountability of the media in the Indian democracy"** has carried out the research with the objectives of identifying the rights of the media, assessing the limitations imposed upon the rights

of the media, finding out the methods of transgression of these limitations by the media, critically analysing the concept of media trial, assessing the impact of media trial upon the public as well as the legal system, finding out whether the media is accountable; and if yes, to what extent, making an endeavour to strike a balance between the two conflicting rights, that is the right to privacy of an individual versus the right of free press to report, suggesting a few steps to curb the dictatorial aspirations of the media.

The present research studies not only media trials but also fake news, paid news, sting operations and the legislations safeguarding the rights of citizens and the media as also the judicial decisions in India on the subject.

- (vi) Freedom of speech and expression in respect of Right to Information Act, role of judiciary for the protection of Right to Information in India and its impact on people in society, namely the voters, consumers, prisoners, etc., RTI Act in its national and international perspective. [*Mehta K. -“Freedom of Speech and Expression”(2013)*]

The present research does not involve study of the RTI Act. It focuses on how freedom of speech and expression affects the modern day forms of evolving media, (i.e. print, social and electronic media). It discusses the national and international legislations as well as regulatory bodies which keep the check on media so that freedom of press is available to them but simultaneously the reasonable restrictions under which they have to exercise the said freedom are also taken care of.

- (vii) Evolution and historical perspective of freedom of speech and expression in India and international legal regimes of the said freedom in nations like England, USA, Australia, constitutional and legislative measures as well as international treaties, covenants, etc. that emphasize providing the said freedom to all people across the world. Judicial response to the freedom of speech and expression in India and rights encompassed within this freedom. [*Walia J., “Expanding horizons of freedom of speech and expression and the judicial response” (2012)*]

The present research has been carried on in respect of laws relating to regulation of print, social and electronic media in USA, UK and India as well as to find out the awareness about paid media and media trials.

- (viii) Relation between mass media, democracy and elections, exit polls and opinion polls and the accuracy of their surveys, paid news syndrome and elections in the light of increasing number of news channels.**[Kumar N., “Role of Indian Media: Covering General Elections”(2015)]**

The abovementioned research deals with how media covers general elections, exit polls, opinion polls, etc. The present study however has been carried out in context of print, social and electronic media and how modern technologies have resulted in newer challenges and need to regulate media. Focus is also on paid media, sting operations and media trials.

- (ix) Article 19(1)(a) with special reference to electronic media and how far reasonable restrictions affect the functioning of electronic media. The laws and proposed bills directly or indirectly regulating electronic media have also been discussed. Finally, freedom of electronic media in relation to responsible journalism has been analysed.**[Arora M., “Role of law as a regulator for electronic media: A socio-legal study”(2015)]**

The abovementioned research focuses only on electronic media and its regulations. The present research deals with all three forms of media, viz. print, electronic and social media because today, we see media convergence, or a combination of all three forms of media in use together.

- (x) Problems posed by social media like hate speech, identity theft, copyright infringement, etc. and the laws and authorities governing social media, issues of extra territorial jurisdiction in light of social media offences as well as laws regulating social media in countries of USA, U.K. and India. Finally, international bodies governing the internet have been explained alongwith critical issues and proposed models.**[Maurya A., “Regulation of social media in cyber space: A critical study of regulatory mechanism with special reference to India”(2015)]**

In the above research, the researcher has worked on the hypothesis that social media regulatory mechanism in India is more subversive and ineffective and has

failed to address the challenging issues of new communications mediums as witnessed in various incidences of social media mischief. The present research has been carried out on hypothesis that the current laws are inadequate to control and regulate the media.

- (xi) Perceptions of adult citizens and communicators in political communication through mass media as well as flaws visible in political communication and manners of removing them. [Trivedi B., *“Political Communication: A Comparative study of mass media”*(2015)]

The researcher has studied the perceptions of adult citizens and communicators in political communication through mass media as well as flaws visible in political communication and manners of removing them. Present research however focuses on freedom of speech and expression, reasonable restrictions thereupon in USA, UK and India and how far public is aware of media syndromes like paid news, media trials, etc.

- (xii) **Kumar Ashok (2015)** has researched on **“A Legal Study of media in India with reference to electronic technology vis a vis media trial”**. His research has been conducted on the hypothesis that The basic idea of freedom of speech and expression is as old as the Human civilization. II.The Government has consistently rejected demands by news papers for permission to import newsprint directly. III.The establishment of a Broadcasting council/Media Council to examine complaint against the corporation and unfairness or bias in media, may be a good solution. IV.Through speech and expression one can learn about their human and political economical, Developmental rights and process of development. V.Right to speech and expression is oxygen’s for democracy and development for country. VI.Sting operations affect various rights of human being. VII.The Media publishes the version of either the police or the defense selectively, while the trial is in progress.

The present research studies not only media trials but also fake news, paid news, sting operations and the legislations safeguarding the rights of citizens and the media as also the judicial decisions in India on the subject.

- (xiii) Areas like state control over electronic media, license and content regulations, constitutional aspects and present control over electronic media as well as existing legal framework of electronic media.**[Iqbal A., “Legal Control over Electronic Media in India”(2013)]**

The present research differs because the landmark judgment of Shreya Singhal vs. Union of India was delivered in the year 2015. The said judgment and its implications on use of media have been analysed in the present study.

- (xiv) History of right to privacy and freedom of press, comparative analysis of right to privacy and freedom of press in U.K., USA and India, concept of Investigative Journalism and protection of privacy, balancing of contempt proceedings between media freedom and privacy in subjudice matters and role of Press Council of India in light of the above.**[Gifty, “Right to Privacy and Freedom of Press – Conflicts and Challenges”(2014)]**

The above research deals in-depth with media and individual’s right to privacy. It has not covered areas like media trials and paid media.

- (xv) Areas like political communication and political mobilization, press and political mobilization in India alongwith case study on Gandhi and comparative analysis on the role of press in colonial and independent India and how mass media affects general public.**[Anand N., “Role of the press in political mobilization: A comparative analysis of colonial and independent India”(2014)]**

The present research is a study of legislations pertaining to freedom of speech and expression in USA, UK and India and how far they successfully or otherwise have been able to regulate the print, social and electronic media.

- (xvi) Gandhian concept of journalism, opportunities and challenges to Gandhian model of journalism.**[Kumar S., “Gandhi’s practice of media ethics and its relevance in India”(2013)]**

The present research has not covered Gandhian concept of journalism. It deals with print, social and electronic media and laws regulating them in USA, UK and India.

- (xvii) History, constitution, procedures of Press Council of India and problems and issues faced by the PCI alongwith suggestions. Researcher has tried to study whether the

Council has succeeded or failed in performing its functions.[*Paul S. “The Press Council – An experiment in guarding free speech”(2012)*]

The said research has covered only print media. Present research studies all three forms of media prevailing today viz. print, social and electronic media and its regulatory bodies in USA, UK and India.

The title of research made by **Reddy A Raghunaha. (1993)** is “**Freedom of the press under Indian Constitution: A Juridical Study**”. The said study is conducted with objectives to evaluate the role of judiciary in relation to freedom of the press in American and Indian Constitutions to analyse the various facets of the right to information under the Indian Constitution, to study the various laws that are designed to undermine the freedom of press in India, to study the role of the Press Commission and Press Council concerned for the protection of freedom of the press and to evaluate the role of the press for strengthening the roots of democracy.

The present research deals with the origin and development of media and the national and international legislations related to media. Also judicial decisions in regard to print media, electronic and social media have been discussed at length.

Apart from above research works, some of the books and research papers have been reviewed as under:

Divan Madhavi G. in her book “**Facets of Media Law**”⁴ has dealt with constitutional issues and other subjects like contempt of court, privileges of legislatures and the right to information which have significant contemporary relevance. The views expressed by author on diverse subjects are marked by originality and an incisive study of the ramifications of those subjects. The book thoroughly discusses subjects like decency, morality and privacy in media age.

A book titled “**Law and the Technologies of the Twenty-First Century**”⁵ by Rogers Brownsword and Morag Goodwin provides a contextual account on the way in which law functions in a broader regulatory environment across different

⁴ Eastern Book Company, 2nd Edition (2013)

⁵ Cambridge University Press (2012)

jurisdictions. It identifies and clearly structures the four key challenges that technology poses to regulatory efforts, distinguishing between technology as a regulatory target and as a tool, and guiding the reader through an emerging field that is subject to rapid change. By extensive use of examples and extracts from the texts and materials that form and shape the scholarly and public debates over technology regulation, it presents complex material in a stimulating and engaging manner.

Narendra Arya in his book on **Social Media** has dealt with several issues regarding social media. In Chapter 2 of the book, author has made a detailed analysis to suggest that social media is not replacing the traditional mode of journalism. It suggests that traditional journalism and social media both can run together. However, author accepts this fact that old ways to journalism is changing and those journalists who refuse to accept the change will soon find no place left in this field. The book highlights on social media but theme of the writing is centric to kinds of media. Neither the legal perspective of social media nor abusive use of social media has been discussed.

In **Internet Law**⁶ by **Chris Reed**, the author takes a global view of fundamental legal issues raised by the advent of internet as an international communications mechanism. The book highlights the approaches and analytical methods that a lawyer requires when dealing with internet-related issues and explains the problems that every country's law will need to resolve. The book integrates legal and other materials to support the discussion of how technological, economic and political facts are shaping the law governing the internet. Global trends in the development of these legal issues are addressed and the effectiveness of potential mechanisms for legal change that are applicable to internet law are also examined.

In relation to freedom of speech and expression over the social media, a book titled **"Free Speech in the New Media"**⁷ edited by **Thomas Gibbons** is a major title. The book is collection of some quantitative research works done on the theme of free

⁶ Cambridge University Press, 2nd Edition

⁷ Routledge (2009)

speech in social media. Part 1 of the book is related to research works on free speech and converged media. Part 2 relates to public service broadcasting and Part 3 includes collection of articles on content standards. Several essays on beliefs, indecency, advertising and content regulation in European Community have been discussed.

A book titled **“Governance, Regulations and Powers on the Internet”**⁸ edited by **Eric Brousseau** et al. is another important literary work on the research subject. Chapter 6 i.e. **“Co-regulation and the rule of law”** by **BenoltFrydman** et al is a major chapter in the book. It discusses about co-regulation of internet. Co-regulation has been defined in this chapter as a legal device designed to put pressure on the points of control to achieve some regulatory result. The chapter analyses United States self-regulatory measures of internet with co-regulatory measures. It also analyses the prospects of co-regulation of internet in the European Union and sums up with the study of evolving pattern of internet regulation in China.

Chapter 10 of **Introduction to Internet Law and Policy** by **Rodney Ryder** is on the topic Defamation and Internet: Analysing Risks and Liabilities under Indian Law. It discusses the concept of defamation under Indian law and then figures out the modes in which defamation can be caused.

A book titled **“Regulating the Changing Media: A Comparative Study”** edited by **Eric Brosseau** et al. assesses the effects of changing technologies on the capacities of law to regulate the media and in particular to examine the extent to which it remains possible for governments and other public authorities to shape the changing media in such a way as to ensure that important social values are not neglected. In this book the capacity of radically different legal and administrative systems to cope with fast moving and radical change is compared with the aim of understanding more about law, regulation and the media.

⁸ Cambridge University Press

In the wake of rising of social media, changing patterns in news dissemination have occurred. Journalists now often rely on social media platforms like Twitter, etc. crowd sourcing is now available through social media, facts and stories are now a part of “Google” search results and almost all traditional newspapers now have their websites with latest news as and when it happens alongwith “E-paper” archives of several years. Reporter blogs and open newsrooms invite community participation in the editorial process itself. In this light, an article **“Social Media and Press”** written by **Prof. Lili Levi, University of Miami, School of Law** explores some particular challenges for the democratic press by new reality of social media.

Alexandra Paslawsky in her article **“The Growth of Social Media Norms and Governments attempts at Regulations”** discusses the growth of internet and development of norms as a means of internet governance. Development and expansion of the internet in United States, U.K. and Egypt has been discussed followed by discussion of emergence of internet norms and standards established by technological and engineering groups. The article also discusses Role of social media in London blasts, Govt. policies of U.K., US and Egypt in dealing with social media.

S.Sivakumar in his book **“Press Law and Journalists – Watchdog to Guidegod”**⁹ critically examines the role of the Press in contemporary society, presents a theoretical justification for the protection of free speech and discusses the interpretation of free speech doctrine in the internet age along with the analyses of authorities existing in India and abroad. The book also deals with the interface between press and executive, legislature and judiciary; balancing the rights viz., information, privacy, libel and the doctrinal labels; press ombudsman role and attitude towards the redressal of disputes by the Press Council.

⁹ Universal Law Publishers/LexisNexis, 1st Edition 2015

In **Press and Media Law Manual**¹⁰, Vidisha Barua extensively discusses several legislations pertaining to press and media laws.

The present research i.e. *A Study on Freedom of Speech and Expression in respect of Social and Electronic Media* focuses on:

- (i) Development of media since the invention of printing press till the present day technological advancements. How printing press initially was the only major form of communication and sending information and how today, several other forms of social and electronic media have taken over print media in terms of communicating in a faster and more convenient manner. In any manner, all three forms of media have their own pros and cons and despite the advantages of social and electronic media, print media is still in vogue today due to its traditional and well-established features.
- (ii) National and international legislations, conventions and treaties worldwide which protect an individual's freedom of speech and expression in USA, UK and India. Furthermore, how the legislations have been drafted so as to include freedom of press and to what extent the reasonable restrictions as applicable to an individual are applicable to the press have been discussed. Bills pertaining to media regulation in India that were proposed to be enacted but have been withheld due to one reason or the other have been also analysed. Likewise, regulatory bodies in USA, UK and India that govern and regulate the content of programs and news presented by media houses have also been discussed.
- (iii) Judicial response or authorities that have defined the freedom of speech and expression as available to print, social and electronic media today. Time and again, Supreme Court has focused upon freedom of speech to be inclusive of freedom of press even though it has not been specifically mentioned in Constitution of India. Just like freedom of speech and expression given to an individual is subject to restrictions, the same is applicable to freedom of press. Considering how giving

¹⁰ Universal Law Publishers 2004

absolute freedom might result in transgress of functions and end up in cases like paid media, media trials, showing explicit content or live coverages of terrorist attacks simply to increase TRPs, etc. reasonable restrictions have been rightly made applicable even to media houses.

- (iv) Non-doctrinal study to find out awareness about legislations pertaining to freedom of speech and expression as well as awareness about media trials and paid media. It has been concluded that media regulation cannot be a one-sided affair but needs to be done at dual level – viz. internally by media companies as also externally by government or non-media authority established for this purpose. Right to free press is a sensitive right and the extent of it needs to be determined each and every time a news story is covered to respect the rights of those involved in the news story as also the rights of audience and readers to know the event. Again, freedom of press has been highlighted more even recently as social media has come into picture. Social media opens the path to making anything a two-way conversation rather than merely keeping it a one-way communication. The same was not possible with print and electronic media wherein news channels merely reported the events without knowing the public approach to the same. However, with social media, each and every single reader can voice his opinions on the websites, blogs, news sites, etc. Hence, the freedom of press to inform needs to be balanced against freedom of readers to know and reciprocate. Instances of fake news, media trials will increase if freedom of press is misused and media channels make a rush towards broadcasting news stories without verifying the authenticity of the sources.