

MEDIA PROLIFERATION:

A LEGAL PROSPECTIVE

By Astha Satapathy²⁶⁰ & Subrata Satapathy²⁶¹

INTRODUCTION

*“The COUNTRY is controlled by LAWS
LAWS are controlled by POLITICIANS
POLITICIANS are controlled by VOTERS
VOTERS are controlled by PUBLIC OPINION
PUBLIC OPINION is controlled by the MEDIA & EDUCATION
so. Whoever controls MEDIA & EDUCATION controls the COUNTRY.”*

— William J. Federer

Media plays a vital role in the fortified development of the society by imparting knowledge and shaping opinions which eventually got incorporated in the society. The Press is rightly considered as the Fourth pillar of Democracy, a supplement to the powers of the Legislature, Executive and Judiciary. The liberty of the Press is the palladium of all the social, political, economic and religious rights.²⁶²

The historical advent of media was a means to rebel against the feudal oppression across the world in the medieval period, especially in Europe. Media significantly assisted the oppressed colonies to grow as independent nations by being one of the most powerful armour in the hands of the public to fight the abuse of power during American, British and French revolution. People could not seek help from the established units of state and hence resorted to such means to place their

²⁶⁰ 2nd Year, BBA.LL.B, Symbiosis Law School, Pune

²⁶¹ 2nd Year, BA.LL.B, Symbiosis Law School, Pune

²⁶² *Freedom of Press*, 4th Pillar, <https://www.sites.google.com/site/fourththpillar/Home/freedom-of-press>, last visited on 22-06-2015

voice. Media, due to its inalienable role came to be known as the Fourth estate.²⁶³ In the Indian subcontinent, Media stepped in with its first appearance in the form of the newspaper ‘the Bengal Gazette’ in 1780.

The Media plays an enormous role in the protection of human rights. In developing countries like India, Media acquires the additional role of a torch-bearer to initiate a change and fight the social, moral and economic vices that engulf the fabric of our society. It exposes the harsh and blatant violations that have spread its tentacles in the society and helps in eradicating such evils. It is the Media which has informed the people about the intense condition poverty in the country, the pitiful suicide of farmers in various States, the dishonourable ‘honour killings’ in many places by Khap Panchayats; and acted as an eye-opener by unleashing various shameful Scams and frauds.²⁶⁴

MEDIA FREEDOM v. CENSORSHIP

Freedom of expression is quintessential of all democratic rights. The United Nations General Assembly, in its very First session passed a *Resolution 59(I)* stating “*freedom of information is a fundamental human right and... the touchstone of all the freedoms to which the United Nations is consecrated.*” This right has been given international significance under the *UN’s Universal Declaration of Human Rights* which mentions it under *Article 19*. The *American Bill of Rights*, *Canadian Charter of Rights* and the *Indian Constitution* recognise this freedom to a significant extent. In India, Freedom of the Press has been treated as an integral deduction of the Freedom of Speech and Expression guaranteed by *Article 19(1)(a)* of the *Indian Constitution*, in *Brij Bhushan and Another v. The State of Delhi*²⁶⁵ and *Sakal Papers (P) Ltd v. Union of India*²⁶⁶, among others. The Freedom of the press is regarded as a “species of which freedom of expression is a genus.”²⁶⁷ However, as mentioned in *Article 19(2)*, reasonable restrictions can be placed on this right, in the interest of the sovereignty and integrity of India, the security of the state, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

²⁶³ Markandey Katju, *Freedom of the Press and Journalistic Ethics*, The Hindu, (June 2, 2011, 10:59pm), available at <http://www.thehindu.com/opinion/lead/freedom-of-the-press-and-journalistic-ethics/article2071551.ece>

²⁶⁴ Ibid.

²⁶⁵ *Brij Bhushan and Anr vs. The State of Delhi*, AIR 1950 SC 129

²⁶⁶ *Sakal Papers (P) Ltd vs. Union of India*, AIR 1962 SC 305

²⁶⁷ Ibid.

The term 'Censorship' originated from the duties of the Roman censor, who in 443 B.C conducted the official census. Initially, the term was attributed a neutral tone, but over the years this has been moulded by the society to incorporate the concept of suppression of flow of ideas and images in a society by someone clothed with authority. History evinces the examples of censorship practised in societies with the belief that the government was responsible for moulding the views of individuals. The Roman Catholic Church was infamous for prohibiting literature which was deemed contrary to the church's teachings.²⁶⁸

Censorship under the scanner of laws:

The sole purpose that is contemplated to be served by censorship is making a work of art or a news item inaccessible by the general public when the impugned subject or concept is found in conflict with the law of the land. Public Interest is acknowledged as one of the primordial grounds for justifying censorship. Since time immemorial, Government across the world have justified censorship under various heads aiming to uphold public peace and prevent 'Corruption of mind' of the inhabitants. The Constitution of India allows censorship in cases where the matter is found objectionable, harmful or necessary to maintain communal harmony. Further the *India Penal Code 1860* and the *Information Act 2000*, impair the freedom on various grounds. The freedom of expression, despite being a fundamental right is subject to restrictions and thus, is not absolute. Therefore, a proper balance of the conflicting rights needs to be struck out in order to avoid unjustifiable abuse of rights.²⁶⁹

The essence of media freedom lies in the fact that personal familiarity with newsworthy items is not possible in the vast world; hence Media establishes a virtual link between people and the happenings around the globe. This has established the concept of media freedom in democratic nations which was not recognised under monarchical or dictatorial regimes. New opportunities are emerging for greater freedom of expression with the internet and worldwide satellite broadcasting, while at the same time new threats are emerging too, for example with global media monopolies and pressures on independent media outlets.

Balance of conflicting rights

²⁶⁸ *Censorship*, Legal Dictionary, <http://legal-dictionary.thefreedictionary.com/censorship>, last visited on 20-06-2015

²⁶⁹ Arjun Kant, *Censorship in India, The truth*, <http://www.lawinfowire.com/articleinfo/censorship-india-truth>, last visited on 22-06-2015

Freedom is important and so is responsibility. While ensuring efficient functioning of media channels, it is equally important to regulate the dissemination of information through responsible journalism. As James Madison, who framed the US Constitution's protection of Freedom of Expression wrote, it is often prudent to permit some abuse of freedom of expression in order to ensure that legitimate use of the right is not discouraged:

*"Some degree of abuse is inseparable from the proper use of everything, and in no instance is this truer than in that of the press. It ... is better to leave a few of its noxious branches to their luxuriant growth than, by pruning them away, to injure the vigour of those yielding the proper fruits."*²⁷⁰

The question that still remains unanswered is what degree of censorship is acceptable across the nations which acknowledge and vow to uphold human rights? Prior censorship has been in debates off late. Though a prior restraint seems to be a gross violation of freedom and widens the scope of abuse, but a subsequent sanction, only after a news item is out in the public arena, many a times is ineffective because the damage caused by such publication is irreparable, thereby impairing the delivery of justice. The only option that seems viable is subjecting the news items to judicial scrutiny, but that being a cumbersome procedure does not serve the purpose well. Moreover, news being a perishable item loses its significance with delay which becomes inevitable in case of judicial intervention.

The *American Convention on Human Rights* prohibits prior censorship altogether, except in case of children under *Article 13(2)*. Some courts however, have been reluctant in ruling out prior restraints taking note of the threats possessed by sanctions. In a landmark case of *United States of America v. Progressive*²⁷¹. The Progressive, a magazine had attempted to publish an article on how to construct a hydrogen bomb, with a purpose of creating awareness about the threat of nuclear weapons by merely gathering information from publicly available documents. The learned district judge held:

"A mistake in ruling against the progressive will curtail defendant's right to freedom of expression in a drastic and substantial fashion. But a mistake in ruling against the United States could pave

²⁷⁰*Censorship, Violence & Press Freedom*, <http://www.article19.org/pages/en/censorship-violence-press-freedom-more.html>, last visited on 23-06-2015

²⁷¹*States of America v. Progressive*, 467 F. Supp. 990 (W.D. Wis 1979)

the way for thermonuclear annihilation for us all. In that event, our right to life is extinguished and the right to publish becomes moot.”

The case did not reach the US Supreme Court. In other disputes, however, the Supreme Court has repeatedly held against legalising prior restraints. The first notable judgement was *Near v. Minnesota*,²⁷² in which the apex court held prior restraints to be unconstitutional, except in extremely limited circumstances such as national security issues.

The American Influence, after World War II has led to the incorporation of a similar rule prohibiting prior censorship in *Japanese Constitution* under Article 21 as well as *German Constitution* under Article 5. Prior restraint is not defined in Indian law and has been held unconstitutional by the Supreme Court of India in cases like *Ramesh Thapar v. State of Madras*²⁷³, *Brij Bhushan v. State of Delhi*,²⁷⁴ etc.

The freedom of expression and the freedom to receive and impart information are corollary of one another. Both the freedoms will be rendered useless in the absence of the other. Moreover, it is incumbent on the media to publish the articles of public interest which the public has a right to know.²⁷⁵ In other words, the media act as a ‘public watch-dog’ whose functioning would be severely impaired when prior restraints are exercised to limit the freedom that the Constitution provides for. A number of legislations have been adopted to enhance the scope of this freedom of expression which has a vital role to play in Indian Democracy like the *Right to Information Act 2005*.

Instances of censorship in India

India’s worst experience with censorship was during the Emergency declared by the then Prime Minister Indira Gandhi in 1975. Censorship of press was imposed for the first time and thus became immune from constitutional challenge due to the suspension of the freedom of speech and expression. The censor’s scissors were applied arbitrarily in the name of national security. The ban

²⁷²*Near v. Minnesota*, 283 U.S. 697 (1931)

²⁷³*Ramesh Thapar v. State of Madras*, (1950) S.C.R. 594

²⁷⁴*Brij Bhushan and Anr vs. The State of Delhi*, AIR 1950 SC 129

²⁷⁵*Prior Restraint on Media*, (February 25, 2011), <http://www.legallyindia.com/easyblog/prior-restraint-on-media.html>

had nothing to do with the security of state and public peace; it reflected the unjustified and malicious abuse by the censoring authorities.²⁷⁶

The court has however agreed for the imposition of prior restraints on Motion Pictures because of the universally recognised notion of differential treatment of motion pictures than any other form of art and expression. In India, the *Central Board of Film Certification* or *Censor Board*, which comes under the purview of Ministry of Information and Broadcasting, censors anything it deems offensive. *Vishwaroopam*, a Tamil film was blocked by the Tamil Nadu government after a protest from the Muslim Community. The director was forced to delete some important scenes from the movie before releasing the same. The Vishwa Hindu Parishad protested against the women modelling dresses bearing images of Hindu Gods. India being a secular country, such religious-centric concepts has often been subjected to censorship to preserve the communal harmony. Nevertheless, at times such censorship has been unacceptable by the public and the public have voiced their concerns over the surmountable powers vested with such authorities. In another instance, Aseem Trivedi, Indian political cartoonist and activist had been encaged on the grounds of sedition for publishing a series of cartoons highlighting corruption in India. He was later freed due the vehement public upsurge. Sometimes the government uses censorship as a weapon in the hands of the State to force people to adhere to its handicapped notion of nationhood.²⁷⁷

THE INFLUENTIAL MEDIA TRIAL AND CONCOMITANT ISSUES

Media often makes sensitive revelations in criminal cases that are pending in the court of law. Such revelation, more often than not, result in public agitation and bias due to the excessive coverage of an issue. The British law rules out such Media trials when a case is *sub-judice*, whereas the US law allows such comments. The Indian law adopts the leeway by balance of rights. On one hand where the Constitution permits the media to tread and explore such facets on the other hand it also provides for safeguarding the life and liberty of the persons associated with the case, which at no cost should be jeopardised. Moreover, such trials are always under the scanner of *Contempt of Courts Act 1971*, which shields the delivery of justice from the attack of alien elements.²⁷⁸

²⁷⁶ Ibid.

²⁷⁷ Kant, supra note 8

²⁷⁸ *Express Newspapers Ltd v Union of India*, AIR (1958) SC 578

In India, Media always had an admirable eloquence in representing critical issues and the flamboyant depiction often creates an indelible impact. The audacity of the Media ofcourse is highly commendable. We have numerous instances of those. The active media disclosure in the barbaric and redemptive *Nirbhaya Gang-rape case*, 2012, brought about a revolution in the country by showcasing the pitiable scenario of the nation, representing the public agitation which finally egged up the authorities to legislate stringent measures on atrocities against women in the form of the *Criminal Law (Amendment) Act, 2013*.²⁷⁹ It was the first time when the Indian media made an undying effort to raise an issue which was, till then, spoken in hushed tones. This robust act was overwhelmingly welcomed by the public who joined hands to build insurmountable pressure on the authorities to initiate action. The media has unfolded this new dimension of 'Participative journalism' to meet the needs of the present enthusiastic and radical audience. The media's role in such cases is not simply that of a mediator, on one hand, it stimulates and moulds public opinion, and on the other hand, holds the authorities credible for their actions and words.²⁸⁰

One of the most prominent cases of media's welcomed move was the 'India against Corruption Campaign' which was launched by the stalwart Anna Hazare, whose non-violent protest and publication by media gave the country the *Lokpal Act 2013*. The geographical and social magnitude of the frenzied mass upsurge made it impossible for the media to ignore it. The zealous media's constant coverage brought in the much needed support for the movement.

The recent revelations against the Former Delhi Law minister Jitender Singh Tomar over his fake degree finally led to his arrest and resignation from ministry. Probe into the matter began subsequent to the shocking disclosures made by media houses which raised serious doubts over the Delhi's incumbent government.²⁸¹ The current Lalit Modi- Sushma Swaraj- Vasundhara Raje controversy which featured out of an Email conversation between UK law maker Keith Vaz and the head of country's immigration department, Sarah Rapson, where the MP cited Sushma Swaraj to facilitate travel documents for Lalit Modi that was reported by *The Sunday Times*, a British

²⁷⁹ Ashwathy, *One year since Nirbhaya: Laws are stricter now*, (December 16, 2013, 09:05am), <http://www.oneindia.com/india/one-year-since-nirbhaya-laws-are-stricter-now-1359878.html>

²⁸⁰ Rishikesh K. Gautam & Sonalee Nargunde, *The Delhi Gang Rape: The Role of Media in Justice*, Int'l J. Research, pg. 870, 872, (vol 1 issue 8, Sept 2014), available at <http://www.academia.edu/8365034/The-delhi-gang-rape-the-role-of-media-in-justice-by-rishikesh-kumar-gautam-sonalee-nargunde>

²⁸¹ *Fake degree row: AAP announces probe against Tomar, demands action against Tomar, demands action against Smriti Irani*, (June 12, 2015, 02:07pm), <http://www.ibnlive.com/news/politics/fake-degree-row-aap-announces-probe-against-tomar-demands-action-against-smriti-irani-1005263.html>

national daily. This disclosure intensified the discord between the political parties and alarmed the public over the objectionable conduct of ministers.²⁸²

But in the current technological epoch, Media has grappled a gigantic portion of the scenario and this method of Media trial is a clandestine approach to raise the TRP of the news channel by promoting half baked truth and self-manifested tales. The blatant depictions often results in violation of rights of individuals. For instance Media's intervention in *Arushi Talwar Murder Case* or *Jessica Lal Case*; it has on one hand without considering about the inherent or intended effect interfered with the rights of the people involved in the case and on the other hand tried to usurp the prerogative of the Courts to try the case.²⁸³

Media's recurrent broadcasting of sexually assaulted victims or Rape victims induces an exceedingly serious impact on the victims as well as their family. The tainted news aggravates the existing circumstances of the offence as such crimes besmirch the reputation of the victim more severely. Often the Media puts up questions to the victims or their near and dear ones which adds insult to the injury. Not just the victims of sexual harassment but also other victims face a very insensitive attitude of the Media. Media often intensifies the situation of the victims like Interviews at inappropriate times such as funerals; footage or photographs of crime scenes, interviewing child victims, naming the victim and providing access to them, discussing gruesome details, inappropriate questioning, printing information which affects victim's credibility, glorifying the act of the offender or blaming the victim.²⁸⁴

Excessive coverage and hype of sensitive issues sows the seed for antipathy and insensitivity. Such coverage, in the recent years led to the unimaginable destruction in Muzaffarnagar due to communal riots. In 2013, the fake video uploaded by BJP MLA Sangeet Som portraying a Muslim mob brutally killing a Hindu youth and delivering provocative speeches, deepened the riots which have been described the worst of its kind in the recent past.²⁸⁵

²⁸² All you should know about Lalit Modi, Sushma Swaraj, Raje controversy, Hindustan Times, (June 18, 2015, 07:34pm), available at <http://www.hindustantimes.com/india-news/here-s-what-has-happened-in-lalit-modi-sushma-swaraj-controversy-so-far/article1-1360222.aspx>

²⁸³ Rajyashri B., *Media and Victims of Sexual Assault*, (June 15, 2015), <http://www.legalservicesindia.com/article/article/media-and-victims-of-sexual-assault-1840-1.html>

²⁸⁴ Ibid.

²⁸⁵ Sreenivasan Jain (Deepshika Ghosh), *Muzaffarnagar clashes: BJP MLA booked for fake video with inflammatory comments, evading arrest*, (September 10, 2013, 12:36pm), <http://www.ndtv.com/india-news/muzaffarnagar-clashes-bjp-mla-booked-for-fake-video-with-inflammatory-comments-evading-arrest-534156>

Sometimes excessive emphasis is given to frivolous fragments of news and crucial issues become inconspicuous and thus evade being noticed. When the nature's wrath was at its peak; the flood having inundated half of Kashmir was creating havoc, the media made the so-called rescue operations by its army the centre of its coverage.²⁸⁶

But recently, caught in a spree to catch eye balls, the media houses tend catapult national stories ruthlessly, without a thought to the reputation of the persons involved. An innocent person is picturised as the devil and thus the public leap ahead of the judiciary to give their own verdicts, which creates a ruckus when the courts finally decide on a case. Even when an accused is held not guilty he cannot resurrect his image which has been marred by the brutal blows of the media. Such 'aggressive journalism' has given the viewers a surfeit of apprehension which has prevented the lawyers not to take up the case of the accused, thereby forcing the accused to face the trial without any defense. This is against the principle of Natural Justice embedded in the Constitution. When Ram Jethmalani decided to defend the prime accused Manu Sharma in a murder case, he was treated with disdain from the public.²⁸⁷

Thus, the Fourth Pillar of the Democracy has its own pros and cons. The Media technically tackles a catena of issues but at certain instances media is hurdled with major setbacks.

DEFAMATION LAWS AND MEDIA: A CRITICAL SCRUTINY

In the words of the lionized 3rd U.S. President, Thomas Jefferson," Press is the tocsin of the nation. When it is completely silenced, all means of general effort are taken away." Media is acknowledged as the Fourth Pillar of the Democracy. *Article 19(1)* of the *Indian Constitution* includes '*Freedom of Speech and Expression*' as a fundamental right of the citizens of India mentioned in *Part III*. This Fundamental Right involves a wide spectrum and incorporates the privilege of free propagation and free circulation with no past restriction on publication.

²⁸⁶ Basharat Ali, *Kashmir: Battling Floods and False-reporting by the Indian Media*, <http://blogs.tribune.com.pk/story/24026/kashmir-battling-floods-and-false-reporting-by-the-indian-media/>, last visited on 25-06-2015

²⁸⁷ Sanrupt Satapathy, *Trial by Media*, <http://www.lawinfowire.com/articleinfo/trial-by-media>, last visited on 25-06-2015

But with the cascade of every liberty comes a curtailment to ensure equilibrium. *Article 19(2)* of the Constitution imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India. With the footsteps of Media venturing with immense escalation into every aspect, a framework of laws is quintessential to curb the excessive powers of the Media. This is where the concept of Defamation laws and ‘Chilling Effect’ creeps in.

Defamation Laws in India:

Criminal Defamation is provided under *Section 499* of *Indian Penal Code* which deals with defamation i.e. *whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.*

Civil Defamation is the offence of lowering another's reputation, through a statement calculated to expose a person to hatred, contempt or ridicule or to injure the person in the person's trade, business or profession or to cause the person to be shunned or avoided in society. It is categorised as Libel and Slander. Libel implies written defamation and Slander implies oral defamation.

Media has its clutches over plethora of aspects and has a virtuoso approach in representing the issues. But with the upsurge of multitudinous affairs, the Media often stumbles and results in besmirching the reputation of the elites and creates an ambush for the nonpareil. The recent case where the Media mogul *Times Now* was slapped with a 100 Crore Defamation Order highlights that Media has virtually elongated its tentacles and hatched a complicated scenario. *Times Now* which is adjudged as the premier News Channel with sterling delineation committed a gross erratum by making an inclusion of a picture of Justice P.B. Sawant along with other offenders in the Ghaziabad Provident Fund Scam. Even after reminder of the corrigendum, *Times Now* took no steps for rectification and finally ran an apology thirteen days of committing mistake. The decision of the Bombay High Court was respectfully maintained by the Supreme Court.²⁸⁸

²⁸⁸ Umang Raj, *The Times Now Case: A Tussle Between the Media and the Judiciary*, (May 25, 2014), <http://www.legalservicesindia.com/article/article/the-times-now-case-a-tussle-between-the-media-and-the-judiciary-1662-1.html>

Such cases signify that the Media reaps the benefits of expansive powers that succour the Freedom of Speech and Expression. But there is a grave need of terminating the powers otherwise it results in unappreciable circumstances such the one mentioned above. Defamation law is commonly said to regulate the publication of material harmful to reputation through balancing two interests — the protection of reputation and the protection of free speech. Legal and media commentators frequently argue that defamation law ‘chills’ media speech.²⁸⁹

A Comparative Analysis of Laws in the United States and in India

The frantic cries of Shakespeare’s Cassio in Othello: “Reputation, reputation, reputation! O! I have lost my reputation. I have lost the immortal part of myself, and what remains is bestial. My reputation, Iago, my reputation!”²⁹⁰ Reputation of a person is a ‘*Jus in Rem*’ and is efficaciously balanced by the laws of defamation; the balance between Freedom of speech and expression and protection of one’s reputation from being blemished.

US Laws

The Freedom of speech and expression under the reign of Presidential form of Government is safeguarded by Constitutional Provisions. The scope of freedom of speech and expression is expansive and is probably the most fortified right of an individual. With regards to Media, they are at immense liberty of publication of matters of public concern and interest but the liberty is subjected to reasonable restrictions under Defamation Laws.

The US line of action for defamation with respect to Media is known as the ‘*Sullivan Rules*’. The rules were carved out after the case of *New York Times Co. v Sullivan*.²⁹¹ In this case, The New York Times had published an advertisement indicating that officials in Montgomery, Alabama had acted violently in suppressing the protests of African- Americans during the Civil Rights Movement. The Montgomery Police Commissioner, L.B. Sullivan, sued *The New York Times* for libel on the grounds that the advertisement damaged his reputation.²⁹²

²⁸⁹ Chris Dent & Andrew T. Kenyon, *Defamation Law’s Chilling Effect: A Comparative Content Analysis of Australian and US Newspapers*, 94 Melb. U. L. Rev., pg 02

²⁹⁰ Anish Dayal, *Inside Law: How Defamation Works in India*, (Nov 15, 2012, 04:11am), <http://blogs.wsj.com/indiarealtime/2012/11/15/inside-law-how-defamation-works-in-india/>

²⁹¹ *New York Times Co. v Sullivan*, 376 US 254, 277 (1964)

²⁹² Dheerajendra Patanjali, *India v America- A Study*, Freedom of Speech and Expression, Ind. L. J.(vol 3 issue 4), http://indialawjournal.com/volume3/issue_4/article_by_dheerajendra.html, last visited on 24-06-2015

The *Sullivan* rules highlight that US defamation law supports the country's 'profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open'.²⁹³ The plaintiffs who are public figure need to prove four elements: publication, identification, defamatory meaning and with actual malice. The public figure needs to prove the elements with 'convincing clarity'. The burden of proof on plaintiffs recognised as Public Figures is much higher than in cases of private figures. The burden of proof substantially reduces for private concerns as plaintiff and non-media people as defendants. Focussing on the defences accessible under these laws; truth and fair reports qualifies to be a complete defence. Qualified privileges are obtainable at the end of Media for cases under the umbrella of defamation.

Indian Laws

The Constitution of India safeguards the Freedom of Speech and Expression under *Article 19(1)(a)* and the Media enjoys expression of critiques and views subjected to reasonable restrictions mentioned in *Article 19(2)*. In the words of Lord Atkin in the case of *Sim v. Stretch*²⁹⁴, a statement would be considered defamatory if the words tend to lower the complaint in the estimation of the right thinking members of the society generally. Libel and slander are both actionable as criminal offences and civil wrongs in India but libel amounts to a more grave offence because of greater deliberation. There is a strong inclination of any person to believe in writing than on speech.

In cases of defamation, the plaintiff needs to prove that the words are either prima facie defamatory or has a latent implication to it (Innuendo); the words refer to the plaintiff; publication of the defamatory and false statement and special damage sustained by the plaintiff. In quite a number of occasions, the Media's attempt of contemplating its opinions on matters of public interest or with bulletins wrapped with the motive of increment in TRP or to create alluring headlines in the morning newspapers/ magazines; hefty loss is incurred by people of repute.

Instances of Print Media:

²⁹³ Ibid.

²⁹⁴ *Sim v. Stretch*, (1936) 52 TLR 669

In the case of *T.V., Ramasubba Iyer and Another v. A.M. Ahmed Mohideen*²⁹⁵, there was a news item published in the *Dinamalar* stating that a person called person of King of Aggarbattis had smuggled opium into Ceylone and was arrested by Madras Police. The respondent alleged that the publication constituted defamation against him and instituted damages in a sum of Rs. 5000. The subordinate judge found the newspaper guilty of defamation though it did not intend to defame him and published a correction stating that the news that appeared was not referred to the plaintiff.²⁹⁶

Instances of Electronic Media:

Back in 2007, News Channel namely *Live India* displayed a story on Uma Khurana, a mathematics teacher at Sarvodaya Kanya Vidyalaya in Central Delhi. She was accused of running a prostitution racket and with the airing of this news; the person was arrested and charged with immoral trafficking. She was scorned, harassed by mob and suspended from his government job. Past few days, the Sting operation was found out to be a hoax and the woman shown as a student and victim of the racket turned out to be an aspiring journalist. The Channel's reporter was arrested and the innocent was pardoned by a trial court. A defamation suit was then successfully filed against *Live India*.²⁹⁷

With the glance of the vivid instances from both the electronic and print media; it is quite evident that often talking the leg off the Lamb of God can create sporadic havoc for the Media. The tall tale of media often captivates the crowd but with the opening up of the factual incidents a huge trouble awaits the Press.

But such curtailment will amount to immense restrictions on the liberty to express and speak and thus, there are numerous defences available for the security of the Media. Defences such as truthfulness of the matter published, justification by the defendant, fair and bona fide comments and privileges (absolute or qualified).

CONCLUSION

²⁹⁵*Ramasubba Iyer and Another v. A.M. Ahmed Mohideen*, AIR (1972) Mad 398

²⁹⁶*Media and Tort Law*, Chapter II, pg. 64, available at <http://www.nalsarpro.org/ML/Modules/Module%202/Chapter%202.pdf>, last visited on 27-06-2015

²⁹⁷ Raj, supra note 27

In the words of Marshall McLuhan, Media is considered as the 'Extensions of Man'. Since its inception, Media has made a cardinal contribution in dissemination of information which enriches, sensitises and makes people aware. With a hefty discussion above about current status of Media, the crucial issues related to it and the laws governing it; we observe that the Media under the robe of technological advancement has been transcending with proficiency. But there are obstructions on every pathway and so also we locate few upheavals in the vast scope of Media.

Media's evident contribution wrapped up with innovation and creativity has created indelible impact on the citizens of the nation. Various articles on health and wellness like *Times Life*, instant delivery of news with the touch of finger tips, making people aware about multifaceted campaigns and even organizing campaigns of its own like Greenathon of *NDTV* has sensitised millions of people. While *Dainik Bhaskar* has its own 'No Negative News on Monday' to spawn positivity; *Times of India* has its 'Aman Ki Asha' initiative to attempt brewing mutual peace and development of diplomatic and international relations with Pakistan. Numerous cases of tremendous uproar and changing conditions have been already discussed upon. But, there are thorns to the roses as well and there creeps in loads of cons to the powerful Media.

The access to the media outlets being concentrated in a fistful of men is unfortunate; the unappreciated exercise of control has led to the introduction of bias in the information circulated. During the elections, reports were published of paid news which entails someone paying a newspaper and getting something favourable to him published. As many as 694 cases of paid news – or news for which the media organisations took money to publish or broadcast – were detected by the Election Commission in the 16th Lok Sabha election. "There is no accountability in the media. While some candidates willingly pay for positive coverage, in most other cases candidates have to pay to prevent negative coverage. The media is getting increasingly criminalised, and acting as extortionist," noted columnist and commentator Swapan Das Gupta commented.²⁹⁸ The media in such cases acts as a reckless body. Elections are the soul of a democracy. The media play the most crucial role in shaping the public opinion, but when such pertinent data as to the information about the political leaders and parties is tampered with it not only endangers the future and integrity of the nation, but also is against the essence of democracy.

²⁹⁸Almost 700 paid news cases detected in 2014 Lok Sabha elections, (May 18, 2014, 02:30pm), DNA, available at <http://www.dnaindia.com/india/report-almost-700-paid-news-cases-detected-in-2014-lok-sabha-elections-1989485>

The laws, thus, must act as a regulator by drawing the line between the effective media freedom and abuse so that the society basks in the foredeals of the technological era.

