CHAPTER 5
ROLE OF MEDIA VIS-A-VIS RIGHT TO PRIVACY IN INDIA

5.1 Meaning of Media-

The democracy breathes through the freedom of opinion. The existence of a well-informed society is a pre-requisite for democracy to function effectively. For this, it is essential that the media of the country should play a dynamic role in ensuring that the relevant and correct information reaches the society in a timely manner. News, which helps people to take an informed decision, will finally culminate in societal consensus. This consensus is what we understand as public opinion. For this purpose it is essential that media is given the requisite freedom so as to decide upon the issues which need to be brought into light. However, no freedom is limitless. As the law is best known to protect and balance the competing interests, so is the freedom of media. Independence and accountability are two counterparts of credible media. To understand this fine balance between freedom and responsibility, a close look of meaning of media, importance and protection of freedom of media and its ambit, are not less than compulsory. “In a democratic country like India, right to press is an important right but is not an unlimited privilege for its own sake. It is a limited right to be exercised for public good.”¹

What is construed as the media commonly today is not the entire media but only a part of it. The media includes both the traditional means

of mass communication, such as books and pamphlets, nautankies, puppet show, street plays, ballads, kirtans, pulpit and platform and the modern stage; small and big motion pictures, radio, print and the electronic media; SMS; Internet etc.\(^2\) The freedom of modern media has to be understood in the context of traditional press. In order to understand the amplitude of such freedom the traditional aspect of media that is press, is being studied first.

### 5.2 Meaning of the Press-

The term 'Press' in this work refers to a printing Press. But even in that context, the term is used in various senses and with different connotations. A reference to Webster's New World Dictionary will clarify:

(a) Clipped form of Printing Press;

(b) A printing or publishing establishment;

(c) The art, business or practice of printing;

(d) Newspapers, magazines, news services, etc., in general, or the persons who write them; journalism or journalists;

(e) Publicity, criticism, etc., in newspapers, magazines, etc.\(^3\)

Here the concern is only the legal aspect of the Press, but, in dealing with the law relating to the Press; it will embrace all the foregoing implications and functions of the Press, namely—

(a) The Press as an establishment where printing is done\(^4\)-

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\(^4\) Sec. 4 of the Press & Registration of Books Act, 1867.
In this sense, a 'Press' means all plant, machinery, implements and other materials, by means of which printing is done. But, in order to bring under control of the administration those who try to avoid the law of the Press by resorting to duplicators, instead of printing machinery, a regulatory statute sometimes enlarges the definition by including duplicating machinery as well. This has been done in the Press and Registration of Book Act, 18672, by inserting the definition of 'printing' in sec. 1 (1) as follows:

"Printing' includes cyclostyling and printing by lithography".

(b) The Press as a medium of publication, -- in which connection arises of the topic of 'freedom of the Press'.

(c) The products of printing, such as newspapers, pamphlets, handbills, books.

But even though a printing press produces printed matter of different kinds, including pamphlets, books or other documents, in a narrower sense (which may be said to be the common use of the term), the term 'Press' refers to the 'newspapers' in particular, -- as in the expression 'freedom of the Press', privileges of the Press'. A newspaper means 'any printed periodical work containing public news or comments on public news'. It not only presents facts, but also gives interpretation of facts and statement of opinions, through its editorials.

(d) Those who engage in the production of the foregoing articles, such as printer, editor, publisher, journalist, author.

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5(1765) IV Bl. 151-2.
6 Arnold v. K. E., A. 1914 P.C. 116
8 See supra note 3 at p.5.
(e) The business aspect of a printing establishment, and a newspaper, in particular, e.g., as an employer; as an advertising agency or a publisher of books, for consideration.

(f) The Press, as a medium of expression, publicity, criticism, etc., in relation to an individual (involving defamation); in relation to the State (involving sedition, incitement to offences, and the like); in relation to the Court (involving contempt of court); in relation to Parliament (affecting privileges of Parliament); in relation to the public in general (involving public order, decency).

5.3 Meaning of a Newspaper-

Since the law of the Press comprehends the materials printed by a printing press, it would be convenient to state the salient features of the various kinds of such products of printing.

Of these, the most important for our purposes is the 'newspaper' because the 'Press' is usually identified with the newspaper when we speak of 'freedom of the Press', and the like.

Though the definition given in sec.1 of the Press & Registration of Books Act, 1867, is for the purposes of that Act only, it is a fairly representative definition which gives the outstanding characteristics of a newspaper. It says—

"Newspaper' means any printed periodical work containing public news or comments on public news".

The requirements of newspaper are-

(i) It must be printed;

(ii) It must be issued periodically;

(iii) It must contain news or comments on news;
Such news must be public.

Since it must be printed, type-written, duplicated or cyclostyled periodicals are excluded. But it need not be issued in a sheet form and would include magazines, and even law reports.

It must be issued periodically, i.e., at regular intervals.

The Dictionary meaning of the word 'news' is –

"Tiding, news information, fresh events reported", "new information about anything, information previously unknown; reports, collectively, of recent happenings; any person or thing thought to merit special attention in such reports."

Hence, the news must relate to happenings of recent occurrence, or new information about past or coming events. It follows that a publication which exclusively publishes legal notices would not be a 'newspaper'.

Subject to the foregoing condition, it may relate to any subject for the information of the general reader, such as political, social, moral, religious or other matters of public interest-local or foreign.

The news which is reported or commented on in a newspaper must relate to public affair or matters of public interest.

In this connection we should also note the definition of a newspaper as given in s.9 (2) of the Post Office Act, 1898, for enabling a newspaper to be registered under that Act for obtaining the privileged rates for 'registered newspapers'. This definition says--

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9 Rameswar v. Emp., AIR 1931 Nag. 177.
10 Iyer v. Commr. of S.T., AIR 1960 Or. 221 (233).
11 Concise Oxford Dictionary.
12 Webster, New World Dictionary.
"For the purpose of such registration, every publication, consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topic, with or without advertisements, shall be deemed a newspaper, subject to the following conditions, namely:--

(a) that it is published in numbers at intervals of not more than thirty-one days; and

(b) that it has a bona fide list of subscribers".

It differs from the definition in the Press and Registration of Books Act in that it adds an additional requirement, namely, a list of bona fide subscribers, and excludes newspapers or magazines which are published at an interval exceeding one month. This definition is, however, confined to the purposes of registration under the Post Office Act.

The definition of 'newspaper' as given in the Press and Registration of Books Act, 1867, is adopted in s.2 (a1) of the Delivery of Books & Newspapers (Public Libraries) Act, 1954; s.95 (2) (a) of the Code of Criminal Procedure, 1973.

The definition in s. 2 (b) of the Working Journalists (Conditions of Service) Act of 1955 reproduces the definition given in the Press and Registration of Books Act, 1867 and then empowers the Central Government to include by notification in the Official Gazette, any other Class of printed periodical work.

S. 15 of the Prize Competitions Act, 1955 provides for the forfeiture of 'newspaper or other publication' containing any prize competition, but does not give any definition of 'newspaper'.

5.4 Importance of Freedom of Press-

The importance of media arises from the importance of information, from the need of the human beings to stay informed. In India, the first
recorded discussion of dissemination news can be traced back to Kauṭilya’s Arthasastra. In the 16th century, the Christian missionaries brought the printing press to India. By 1780, India had its first newspaper when James Augustus Hicky, an ex-employee of the trading firm East India Company in Kolkata, brought out the ‘Bengal Gazette’13. Later on in the far end of the 19th century and on the advent of the 20th century, newspapers became proponents of India’s ongoing freedom struggle. From the early newspapers to cable television, news channels media gas assumed an even bigger role. It now acts as a bridge for dissemination of information, news, trends across the world.

5.4.1 Justifications for Freedom of Press-

The argument in favour of freedom of the Press is the same as that for freedom of speech14, with a stronger appeal arising from the special features of printed matter, namely, that –

(a) Printed matter records the ideas in a permanent form-

A printed matter records the ideas in a permanent form, which speech cannot.

(b) Newspaper or book has a larger circulation than spoken words-

However larger the audience to a speech may be, a newspaper or book has a larger circulation than spoken words. Even though in modern times, a newspaper has other rivals in the realm of media of expression, such as the radio or television, the morning daily has still the widest

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demand in the world, and the most potent medium of mass communication.\textsuperscript{15}

What has been said in the U.S.A. is true of all modern democratic countries:

"The newspapers, magazines and other journals of the country ..... have shed and continued to shed more light on the public and business affair of the nation than any other instrumentality of publicity......"\textsuperscript{16}

\textit{(c) Freedom of the Press is nothing but the freedom of expression of every citizen-}

As is clear from Art. 19(1) (a) of our Constitution, the Press, as an institution,\textsuperscript{17} has no constitutional or legal privilege. What is known as the freedom of the Press is nothing but the freedom of expression of every citizen [guaranteed by Art. 19(1) (a)] which includes—

(i) The right to lay what sentiment he pleases before the public,\textsuperscript{18} or the right to import information and ideas;\textsuperscript{19}

(ii) The right to receive information\textsuperscript{20} and ideas from others through any lawful medium.

\textit{(d) Press recognized as an institutional limb of modern democracy-}

Historically, the growth and development of representative democracy (as against absolutism )\textsuperscript{21} is so much intertwined with the


\textsuperscript{16} Grosjean v. America Press Co., (1935) 297 U.S. 233

\textsuperscript{17} Sharma v. Srikrishna, A. 1959 S.C. 395 (para. 13 ).

\textsuperscript{18} (1765) IV BI. Com.152.

\textsuperscript{19} Art. 19, Universal Declaration of Human Rights, 1948.

\textsuperscript{20} Hamdard Dawakhana v. Union of India, (1960) 2 S.C.R. 671.
growth of the Press that the Press has come to be recognized as an institutional limb of modern democracy.

Ideologically, the indispensability of the Press for the proper functioning of democracy is so much embedded in the United States that Jefferson once said that if he had to choose between having 'a government without newspapers' on the one hand and 'newspapers without a government' on the other, he would have no hesitation in preferring the latter. This was the view which eventually triumphed in the adoption of the first amendment to the America Constitution, in 1791—

"The Congress shall make no law.... Abridging the freedom of speech or of the press...........

(e) Freedom of discussion is essential to enlighten public opinion –

As observed in a Canadian case,

"Freedom of discussion is essential to enlighten public opinion in a democratic State; it cannot be curtailed without affecting the right of the public to be informed through sources independent of the Government concerning matters of public interest."

A democratic political society or government which rests on the consent of the people and the contribution of their ideas to public questions can rest only on the free debate and free exchange of ideas

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22 Jefferson's letter to Carrington, Jan. 16, 1787.
26 Milk Wagon Drivers v. Meadowmoor Dairies, (1941) 312 U.S. 287 (301-2)
amongst the people.27 There cannot be any collective decision after mature deliberation upon any issue unless there is an opportunity for free exchange of views amongst the participants, which in a representative’s democracy means the electorate as well as their representatives assembled in Parliament.

On the one hand, the widest dissemination of information from diverse sources is necessary for public education,28 which is the foundation of a democratic society. On the other hand, it is by means of a free discussion29 and criticism that the government remains responsive to the will of the people and peaceful change is effected30 and errors of government are peacefully corrected and eliminated through the process of popular government.31

“A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.”32

(f) **Freedom to discuss public issues** –

If democracy means government by the people themselves, whether directly or through representatives elected on the basis of public issues, the people must be allowed freedom to discuss public issues and to express their judgment. Hence, even though as citizens they must abide by orders of public officers, laws passed by the Legislature or judgments

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30 Milk Wagon Drivers v. Meadowmoor Dairies, (1941) 312 U.S. 287 (301-2)
pronounced by the Courts, they must, at the same time, remain free, as ‘the people’, to criticize the competence of or orders made by public officers, the policies involved in legislative measures and the merits of judicial decisions, if they are to govern themselves.\textsuperscript{33} The State can punish offences but not the participation of the people in the government of the country, so long as that is done peaceably, and subject to regulations which are constitutionally valid.

The basic principle of democracy being that “in government the deliberative forces shall prevail over the arbitrary”,\textsuperscript{34} public discussion becomes “a political duty”,\textsuperscript{35} and the “greatest menace to freedom is an inert people”.\textsuperscript{36}

\textbf{(g) Freedom of press and free and fair elections—}

Representative democracy, the foundation of which is free election based on reason, cannot function in a society where there is no freedom to speech.\textsuperscript{37}

Mere freedom of election is not enough if there is no free Press to criticise the programme and action of the party in power, and the parties in opposition are not allowed to present their alternative programmes before the people, on the basis of which they can exercise their choice at the election effectively. In the words of Madison, “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy, or perhaps both....And a people

\textsuperscript{33} Meiklejohn, \textit{American Government and Politics} (Moe & Schultze), \textit{pp.} 512 et seq.

\textsuperscript{34} \textit{Whitney v. California}, (1927) 274 U.S. 357 (375).

\textsuperscript{35} \textit{Id.}

\textsuperscript{36} \textit{Id.}

who means to be their own governors, must arm themselves with the power which knowledge gives”.

In other words, an electorate is not free unless informed, and an informed electorate is dependent upon access to all shades of political opinion, which, conversely, means an opportunity for all groups (excepting those which are subversive of the very foundation of the State or of democracy itself) to take their messages to the electorate\textsuperscript{38} (subject, of course, to electoral regulations, e.g., those relating to corrupt practices)\textsuperscript{39}.

In the ultimate analysis, thus, freedom of the Press in a representative democracy with a party government means the right of all political parties to have access to the ‘mass media’ (i.e., the Press) so that they may appeal to the electorate based on their respective programmes and ideology.

The freedom of expression of a citizen must, therefore, include a right to receive information from any source,\textsuperscript{40} ‘without interference by public authority.’\textsuperscript{41}

In a collectivist society, founded on Plato’s Republic, the State would control education, in all its aspects,—literature, art, music and even gymnastics, because citizens themselves belong to the State. In a democracy, on the other hand, the State is not an end but is a means for

\textsuperscript{38} \textit{U.S. v. C.I.O.}, (1948) 335 U.S. 106 (143).

\textsuperscript{39} \textit{Id}.


\textsuperscript{41} Art. 10(1), European Convention on Human Rights.
the development of the potentialities of the individual. The individual should, therefore, be left free to make his own inquiry into knowledge; the State may aid such inquiry by providing opportunities but should not control; it may interfere where the expression of free opinion offends against some social interest, such as public morals, public order and the like, but it should not dictate what the individual should read or write.

(h) *Ultimate good in a free society can be reached only by a discovery of truth*-

No less important is the function of the Press in exposing abuses of power by and corruption of public officials and in keeping them responsible to the people whom they are expected to serve.\(^{42}\)

“The press, and particularly the newspaper press, stands by common consent first among the organs of public opinion .... The conscience and common sense of the nation as a whole keep down the evils which have crept into the working of the Constitution, and may in time extinguish them. That, which... we may call the genius of universal publicity, has some disagreeable results, but the wholesome ones are greater and more numerous... No serious evils, no ranking sore in the body politic, can remain long concealed, and, when disclosed, it is half destroyed. So long as the opinion of a nation is sound, the main lines of its policy cannot go far wrong.”\(^{43}\) When the earliest demand for freedom of the Press was made in the American colonies against British absolutism, it was asserted as an instrument “whereby oppressive were ashamed or intimidated into more honourable and just modes of conducting affairs”\(^{44}\)

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\(^{44}\) Resolution of the American Continental Congress (1774).
(i) Free Trade in Ideas-

Philosophically, the ultimate good in a free society can be reached only by a discovery of truth, and that can be achieved only by a free trade in ideas—good and bad. On this line of reasoning, the dissenting opinion of Holmes, J., in Abrams v. U.S. is classical:

"Persecution for the expression of opinion seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart, you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech is impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result.....But when men have realised that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.... We should be eternally vigilant against attempts to check the expression of opinions that we loathe... unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is necessary to save the country."

In short, instead of fostering noxious doctrines, a free trade in ideas is the only effective means of weeding out noxious doctrines, and exposing falsehoods.

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47 Id.
48 Id.
No more forceful advocacy in favour of the dissenting opinion could be made than in the words of J.S. Mill (Areopagitica)-

“...the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race, posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collusion with error.”

(j) Public criticism is essential to the working of democracy—

Public criticism is essential to the working of democracy.\textsuperscript{51} Subject, of course, to the power of the State to punish for offences and incitement to commit offences through the Press, Government should not suppress the freedom of a newspaper to publish any views or comments merely because they are critical of the Government.\textsuperscript{52} As Erskine argued in his defence of Thomas Paine, such suppression, instead of being beneficial to the Government in power, eventually becomes more dangerous for it because it drives the British regime in India. On the other hand, when men can express their suffering, real or imaginary, their passion spends themselves in the air:

“Let reason be opposed to reason, and argument to argument, and every good government will be safe”.

\textsuperscript{50} Id ,see also Bennett Coleman v. Union of India, A. 1973 S.C. 106 (149).

\textsuperscript{51} Bennett Coleman v. Union of India, A. 1973 S.C. 106 (149).

\textsuperscript{52} Expls. 2-3 to s. 124A of the Indian Penal Code. In a Calcutta case, it was observed that it was the duty of a journalist to criticize the Government and their policy, with aview to their improvement and without imputing dishonest motives [Dhirendra, (1938) 2 Cal. 672 (see, further, App. II), or inciting violence [Cf. De Jonge v. Oregon, (1937) 399 U.S. 353].
In the words of Bryce-

“Under a repressive government, the sense of grievance and injustice feeds the flame of resistance in a persecuted minority (meaning political minority). But in a country... where the freedom of the press, are daily exerted...., there is nothing to awaken that sense. He whom the multitude condemns or ignores has no further court of appeal to look to....His cause has been heard and judgment has gone against him”.\(^{53}\) As Hughes, C.J. observed, “the very foundation of constitutional government” lies in the belief that “changes, if desired, may be obtained by peaceful means”.\(^{54}\) Hence,” The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional right of free speech, free press and free assembly in order to maintain the opportunity for political discussion....”\(^{55}\) To quote Brandeis, J. - “....fear breeds repression;....repression breeds hate;....hate menaces stable government;....the path of safety lies in the opportunity to discuss supposed grievances and proposed remedies....”\(^{56}\)

5.4.2 Contents of Freedom of the Press –

Since freedom of expression includes the freedom to propagate one’s own views as well as of others\(^{57}\) and to communicate them to others, it follow that the freedom of the Press includes the right (subject only to such restrictions, imposed by the State, as are constitutionally permissible)-

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\(^{54}\) *De Jonge v. Oregon*, (1937) 299 U.S. 353.

\(^{55}\) *Id.*

\(^{56}\) *Whitney v. California*, (1927) 274 U.S. 357 (375-6)

(a) To print and publish news (i.e., the actual facts of contemporary history), and views.

(b) Such views or opinions may be those of the editor or author but also those of other people, printed under his direction.

(c) To distribute or circulate such printed matter to any other party.

(d) The freedom extends to the discussion and publication of views relating to 'all issues about which information is needed to enable the members of society to cope with the exigencies of the period', and is not necessarily confined to 'political' or 'public' affairs.

(e) It includes the right to comment on public affairs and to criticize public men and measures and to criticize the Government, including its defence policy and the conduct of the Armed Forces, without prejudice to the national security, e.g., by inciting insubordination, disloyalty or refusal of duty in the Armed Forces. This right to criticize the Government is reserved, in India, by Expls. 2-3 to s. 124A, I.P.C.

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64 Bennett Coleman v. State of J.K., (1975) Cr. L. J. 211 (paras. 12, 17)
(f) A corresponding right to collect the information relating to public affair or the right of access to the sources of such information.

This does not mean, however, that the Press has a constitutional right of special access to information which is not available to the public generally; nor has the Government any affirmative duty to make available to journalists sources of information not available to the public generally.

A corollary of the right to publish must be the right to gather news. News must not be unnecessarily cut off at its source, for without freedom to acquire information the right to publish would be impermissibly compromised.

(g) The right of the Press to collect information from diverse and antagonistic sources, on a competitive basis, free from any monopolistic control from the Government.

(h) The freedom not to publish any news, article, correspondence or any other matter, nor to include anything at dictates of any authority. In short, it must have the freedom to evolve a plan for carrying on of its

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activities, as regards the matter to be published, the class of readers it should address, the price and so on. An instance as to how the freedom of the Press may be impaired by a Government directive to publish a matter directed by the Government or its agency is offered by a Canadian case.\textsuperscript{76} The Province of Alberta sought to pass a Bill which authorized the Chairman of the Social Credit Board to compel, under pain of penalty, to publish any statement furnished by the Chairman relating any policy of the Government, for the purpose of furnishing correct information to the public. On a reference as to its constitutional validity, the Supreme Court of Canada held the relevant provision of the Bill to be unconstitutional on the ground, \textit{inter alia}, that it constituted an interference with the right of every Canadian citizen “to be informed through sources independent of the Government concerning matters of public interest”, for free discussion, which right was exercised through the Press, and which constituted the very foundation of democracy. The Legislature could exercise some degree of \textit{regulation} over a newspaper but “the limit is reached when the legislation effects such a curtailment of the exercise of the right of public discussion substantially interfere with the working of the parliamentary institution of Canada ....”\textsuperscript{77}

(i) The right to refuse any advertisement, including a Government advertisement.\textsuperscript{78} If, however, a newspaper accepts Government advertisement, it would be bound to abide by the terms and conditions of the contract or law relating to such contracts.

\textsuperscript{76} Ref. Re. \textit{Alberta Statutes}, (1938) 2 D.L.R. 81 (Can.)

\textsuperscript{77} \textit{Id.}

\textsuperscript{78} Thayer, \textit{Legal Control of the Press} (1962), pp. 152, 720 et \textit{seq.}, The converse of this right is the right not to be discriminated against in the matter of supply of Government advertisements in every newspaper. This rests on the assumption that advertisements in the modern world constitute the sustenance of every newspaper [\textit{Sakal Newspapers v. Union of India}, (1962) 3 S.C.R. 842 (861-2); \textit{Bennett Coleman v. Union of India}, AIR 1973 S.C. 106 (125-6).]
(j) Freedom of choice in the matter of employment or non-employment of the necessary means of exercising the freedom of expression, including employment in the editorial force.\(^79\)

(k) Immunity from any tax specially imposed on the Press or on advertisements in a newspaper which was calculated to limit its circulation.\(^80\)

### 5.4.3 Need for Limitation on Freedom of Press-

The press is such a useful and indispensible instrument for information and exchange of views and opinions in a modern democracy. Now there is a relevant question as to the need of any form of regulation or control. As we know that no liberty is absolute, so is the freedom of press. The need for balancing these two competing interests has been explained by Lord Denning in these words-

“The freedom of press is extolled as one of the great bulwarks of liberty. It is entrenched in the constitutions of the world. But it is often misunderstood.....it does not mean that the press is free to ruin a reputation or to break a confidence or to pollute the course of justice or to do anything that is unlawful ....”\(^81\)

Once the need for restriction is acknowledged, the inquiry would be how much of restriction would be reasonable in the public interest. The reasoning is,

“Freedom carries with it responsibility even for press; freedom of the press is not a freedom from responsibility for its exercise....”\(^82\)

\(^79\) *Express Newspapers v. Union of India, Casebook (I)*, 207 (para. 36(e)).


\(^82\) *Pennekamp v. Florida*,(1946) 328 U.S. 331 (356), per Frankfurter, J.
The press is not entitled to any absolute immunity\textsuperscript{83} from unlawful conduct anymore than any other individual.

This responsibility is to the society itself which has other public interests to maintain, apart from the freedom of expression. This is reason why not only freedom of the press, no constitutional right is absolute.

Rights are dependent upon the existence of the State and the maintenance of order so that the rights may be ensured and enforced. Hence, no right or freedom can be allowed to exercised in such manner as would jeopardized the very existence the state\textsuperscript{84} or the maintenance of public order, or undermine public morality, or a fair and impartial administration of justice\textsuperscript{85} which are essential for a civilized existence. Again, since a precondition of the enforcement of individual right is that the corresponding rights of other persons of should be similarly safeguarded, the freedom of expression cannot be so exercised as to undermine the reputation of any member of the public\textsuperscript{86}

5.5 Right to Privacy and Media-

Paradoxes are not new to India. But the current challenges to the freedom of expression and the freedom of the media are sure to confound a future historian looking for explanations. \textsuperscript{87} In the modern world we are undeniable against the media power in the present world which nearly absolutely influence on our life and society. Every day we get the instant information from all over the world through media; newspaper, magazine, television, and Internet. The media already globalize industry, which

\begin{footnotesize}

\textsuperscript{84} Frohwerk v. U.S. (1919) 249 U. S. 204 (206)


\textsuperscript{86} Time v. Firestone, (1976) 44 U. S. 448.

\textsuperscript{87} Fetters on the Media, Frontline, June 1 2012 at p. 4.
\end{footnotesize}
provided us the interesting and updated news in our society. The information that the media give us is necessary for our daily life and the future life decision. We watch television, read newspaper and magazine for entertainment, knowledge and updated events of running world. We access the Internet with overwhelming information and business issue. Each of generation consumes the product from media in the difference ways. Technology development contributes the media to become the important part of our lives. Everything and every events happen around us are brought to people’s acknowledgement so fast since the technology has stepped into the advance level such as some of equipments like digital camera, live news report via Internet and satellite network. Because of those high advantages of media technology, some questions will follow along; how we can manage or what we should manage with the media for proper influence on our lives when the world exists in the plentiful Information Age.

Describing the desirability and necessity for protection against encroachment to personal life, Samual D. Warren and Louid D. Brandeis argued,

“The press is overstepping in every direction the obvious bounds of propriety and of decency; gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcasting the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip which, can only be procured by intrusion upon the domestic circle. The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that the modern enterprise and invention have, through invasion upon his
privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury.\footnote{Warren and Brandeis, “The Right to privacy”, 4 Harvard Law Review, 193 (1890).}

### 5.5.1 Privacy vis-à-vis Media Freedom under Common Law -

Privacy in the twentieth and early twenty-first centuries has been a continuing concern and political issue. Since 1905 legal definitions of privacy torts expanded haphazardly, sometimes by legislative enactment and often by judicial or “common law” adoption of the concept. In 1960 Dean William L. Prosser of the University of California School of Law, America’s foremost torts scholar, wrote a remarkably influential *California Law Review* article, “Privacy,” defining four somewhat overlapping areas of law in a manner readily accepted by both state and federal courts: intrusion, false light, appropriation, and publication of private matters. Intrusion on a person’s physical solitude includes trespass, eavesdropping, and wiretapping or other interception of electronic communication. Prosser included window peeping in his definition, but his view from 1960 could not foresee all of the problems that would come to be associated with the use of increasingly sophisticated electronic devices, including “bazooka microphones,” miniature cameras, computers, cellular telephones, and the Internet. This Prosser category, by the late twentieth century, had assumed a journalism-specific libel, “newsgathering torts.”\footnote{Encyclopedia of Privacy, Volume 1 & 2, Edited by William G. Staples, Greenwood Press (2007), pp. 311-315.}

#### 5.5.1.1 Intrusion-

The key intrusion precedent involves a *Life* magazine reporter and a photographer who made an unethical deal with authorities to entrap an unlicensed medical practitioner. The *Life* staffers got into the practitioner’s home under false pretenses, with the woman reporter
claiming that she had a lump in her breast. The reporter had a transmitter in her purse, which broadcast her conversations with the practitioner, a plumber named A. A. Dietemann, to a nearby automobile, where representatives of the district attorney’s office and of the California State Department of Health listened and made a tape recording. *Life* published an illustrated article, and the information gathered by the reporter and photographer was used to convict Dietemann of the unlicensed practice of medicine. Dietemann then sued the magazine for invasion of privacy. *Life* attorneys argued that electronic devices and hidden cameras are indispensable tools of investigative reporting. Writing for the U.S. Court of Appeals, Ninth Circuit, in *Dietemann v. Time, Inc.* (1971), Judge Shirley Hufstedler upheld a small jury award of $1000 against the magazine for invasion of privacy. The award was small, but the message was clear: “investigative reporting is an ancient art,” existing long before electronic devices and miniature cameras. The First Amendment, Hufstedler declared, provides journalists with no immunity from torts or crimes committed in the gathering of news.  

5.5.1.2 Eavesdropping-

That principle applies to journalists and others who invade privacy by means of old-fashioned eavesdropping, or who use high-tech means to intercept cell phone messages, voicemails, or electronic mail messages via the Internet. Photographers and videographers are permitted to capture images in public spaces; they are not permitted, however, to intrude into private spaces or to use sophisticated telephoto lenses or microphones that can pick up conversations at a distance far beyond the range of human hearing. The egregiously aggressive shadowing of celebrities by “paparazzi” photographers, even on public thoroughfares, can be banned by judicial order. There are no trustworthy legal defenses if the tort of intrusion occurs. In this and other privacy torts, if a jury is convinced that

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90 *Id.*
a plaintiff’s legitimate “expectation of privacy” has been violated, a verdict against the media is likely.\textsuperscript{91}

5.5.1.3 False light-

False light (fictionalization) was defined by Prosser as placing someone in a false but not necessarily defamatory light in the public eye. This is the privacy tort closest to defamation of a person’s reputation, and it is the only area of invasion of privacy law where proof of truth is a viable defense. The key precedent here involved a woman, Margaret Mae Cantrell, who was included in a reporter’s story even though he had not spoken with her. The reporter gave the impression that he had talked to her about her life six months after her husband had been killed (along with 43 others) when a bridge collapsed. The story for the Cleveland Plain Dealer said that the reporter saw the woman “wearing the same mask of non-expression” that she had worn at her husband’s funeral. The Supreme Court of the United States agreed that this constituted an actionable knowing and reckless falsehood.

Media employees’ deceptiveness with sources is related to the false light tort. For example, the producers of NBC-TV’s Dateline news magazine convinced a truck driver and his employer that the program was going to focus positive attention on the trucking industry. Instead, the program declared that American highways are a trucker’s killing field. A U.S. Court of Appeals allowed the case to go to trial for negligent representation and false light.

The false light tort is similarity to defamation is illustrated by a lawsuit against Life magazine by the James J. Hill family. The Hill family had been held hostage for a day by three escaped convicts, who terrorized but did not harm the family. A best-selling novel based on a highly similar situation, The Desperate Hours, was made into a play, and a Life

\textsuperscript{91} Id.
photo-essay Headlined “True Crime Inspires Tense Play” depicted actors from the play in their roles as the son and one of the convicts.

The Supreme Court found that individuals who bring false-light lawsuits involving newsworthy accounts must meet the libel standard of proof set in New York Times v. Sullivan (1964); that is, the plaintiffs claiming “false light” in a situation of public interest must prove “actual malice”—publication with knowing falsity or with reckless disregard for the truth. As Justice William J. Brennan, Jr., wrote for a divided Court in Time, Inc. v. Hill, “Material and substantial falsification is the test.” the tort of defamation “while lacking many of its procedural limitations.”

5.5.1.4 Celebrities’ Right to Likeliness-

Celebrities have property rights in their likenesses or images. Successful suits have been brought by baseball players for unauthorized use of their likenesses on baseball “trading cards” or for videotaping, without permission, entertainment performances (including being shot from cannon, for example the case of case of Zacchini v. Scripps-Howard Broadcasting (1977).

The general rule in privacy lawsuits, as in libel law, holds that “the dead can’t sue.” However, the estates of deceased celebrities, including Elvis Presley, mystery author Agatha Christie, rock star Janis Joplin, and Rev. Martin Luther King, Jr., have on occasion successfully asserted “descendibility.” That means that a celebrity’s estate can at times control and profit from the commercial exploitation of aspects of the famous dead person’s appearance or performances.

Prosser defined this tort as the revelation of private information violating ordinary decencies, for which truth is no defense for the publisher. Newsworthiness, however, can be a potent defense, as Oliver Sipple learned from his effort to sue the San Francisco Chronicle. In 1975

\(^{92}\) 385 U.S. 374 (1967).

\(^{93}\) Id.
decorated U.S. Marine veteran Sipple became a national hero and made international news while watching a parade featuring President Gerald Ford. When Sarah Jane Moore pointed a pistol at the president, Sipple grabbed her arm, defeating her assassination attempt. A Chronicle columnist wrote that San Francisco’s gay community was proud of Sipple’s courage. Sipple argued that publication of his sexual orientation invaded his privacy, suing the Chronicle and the Los Angeles Times for damages totaling $15 million. His lawsuit failed when a California appellate court found that Sipple was such a newsworthy subject of public interest that he could not pursue his claim of invasion of privacy.

5.5.2 Public Records are not covered under Privacy Protection-

If private facts about a person become part of an official public document, disclosure of those facts will not support a lawsuit against the news media. Even disclosure of a rape victim’s identity—the kind of revelation that reputable media organizations generally avoid on ethical grounds—is not actionable if the information is gained from an official public record, the U.S. Supreme Court held in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975), a ruling later broadened in Florida Star v. B. J. F. (1989). Although private-facts lawsuits are difficult to win against news media, growing judicial impatience with intrusive news media procedures and public concerns over the evaporation of privacy may well make both judges and juries more supportive of privacy lawsuits\(^\text{94}\).

In Indian context the role of media and privacy could be understood on the common law basis of Indian Legal System.

5.5.2.1 New York Times Rule\(^\text{95}\) –

This rule in 1964 has expanded the freedom in Press to critically comment upon the conduct of the public official provided that it was

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published in good faith & without actual malice. The facts of the case *The New York Times Company v. Sullivan*\(^\text{96}\) are like this-

On 29 March 1960, as the civil right movement began to gather momentum in the south, the full-page advertisement appeared in the ‘New York Times’ signed by sixty-four people. It charged that thousands of black southern students. Then engaging in non-violent demonstrations to obtain their constitutional rights had to face ‘an unprecedented wave of terror by those who would deny and negate that document (the constitution) which the whole world looks upon as setting the pattern for modern freedom’.

There were some grave factual errors in the advertisement. L.B. Sullivan, commissioner of public affairs, in Montgomery, Alabama, seized on them and sired. *The New York Times* and the four black clergymen who had signed the advertisement for $500,000 for libel. A jury in the city awarded him the full amount. The Supreme Court of the US revised it, unanimously.

The Court spoke through JUSTICE WILLIAM J. BRENNAN;

“We are required in this case to determine for the first time the extent to which the constitutional protections for speech and press limit a state’s power to award damages in a libel action brought by a public official against critics of his official conduct”.

On the issue of falsity he had his conclusion on two grounds -

(1) That erroneous statement is inevitable in free debate and

(2) It must be protected if the freedoms of expression are to and have the breathing space that they “need .... To survive.”

\(^\text{96}\) *Ibid.*
He stated the rule of libel law that would satisfy the demands of the first amendment, the constitutional guarantee of free speech,

“The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with “actual malice” — that is, with knowledge that it was false or with reckless disregard of whether it was false or not. He also opined that the protection to public official when he is sued by a private citizen was analogous to the ‘citizen – critic of government.’”  

In another case The New York, State Supreme Court through JUSTICE SHIRLEY FINDERHOOD refused to execute a decree of English High Court awarding £ 40,000 as damages for libel against India Abroad Publications Inc. to Ajitabh Bachan. The reasoning was, ‘English law does not distinguish between private persons and those who are public figures or are involved in matter of public concern. None are required to prove falsity of the libel or fault on the part of the defendant.’ JUDGE FINDERHOOD said ‘placing the burden of proving truth upon media defendants who publish speech of public concern has been held unconstitutional because fear of liability may deter such speech’. Judge also pointed out a significant difference between the English and US Jurisdiction as in England there is lack of an equivalent to the first amendment of the US Constitution.

5.5.3 Indian Law on Libel-

5.5.3.1 Rules in Auto Shankar Case-

Such a difference also lies between English and Indian law. In the

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Nakkheeran\textsuperscript{98} case, the Supreme Court approved the rule in \textit{The New York Times} case as good law in India.

JUSTICE JEEVAN REDDY said that while the situation may call modification of principles laid down in English and American cases, their ‘major premises’ are similar though their swept is not identical. It was held that, ‘a public official has no right to privacy or for that matter, the remedy of action for damages is respect of conduct in his official capacity. He also stated,’ this is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publications was made with reckless disregard for truth. In such a case, it would be enough for the defendant to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true’.

In the case \textit{R. Rajagopal v. The State of Tamilnadu}\textsuperscript{99} Supreme court observed that ‘In relation to public officials, both the substantive law (Section 499 of the Penal Code) and the procedural law (Section 199 of the Cr. P.C.) are clearly violative of Article 19(1) (a) of the Constitution and are therefore, void.

Supreme Court in famous judgment in case of \textit{R.Rajagopal v. State of Tamil Nadu}\textsuperscript{100} stating that the government has no authority to impose a prior restart on publishing an autobiography, because it is going to be defamatory of some public officials. If it is alleged to be defamatory after its publication, the authorities have a remedy under the ordinary law. Eventually certain principals evolved in this case including the right to privacy-

\textsuperscript{98} \textit{Infra}.

\textsuperscript{99} 1994) 6SCC632 at p. 649, Para 22.

\textsuperscript{100} (1994) 4 SCC 632
(i) **Freedom of Press and Right to Privacy:** The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Art. 21. It is ‘a right to be let alone’. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent, whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in action for damage.\(^{101}\)

(ii) **New Exception under Art. 19(2):** The Supreme court suggested an addition to the list of exceptions under act 19(2) restrict the press freedom.

(iii) **Matter of Public Record:** Once a matter becomes as a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others however in the interest of decency\(^ {102}\) an exception must be carved out to this rule, viz., a female is the victim of a sexual assault, kidnap, abduction or a like offence should not be further be subjected to the indignity of her name and the indecency being published in the press/media.\(^ {103}\)

(iv) **No privacy for Public Authority:** In the case of public officials, it is obvious, right to privacy, for that matter, the remedy of action for damages is simply not available conduct relevant to their acts and conduct relevant to the discharge of their acts and conduct relevant to the discharge of their official duties.

So on right to privacy broad guidelines were issued by Supreme Court. However it gave a note of caution,

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102 Art. 19 (2) of the Indian Constitution.

103 Section 228-A of Indian Penal Code, 1860.
“The principals above mentioned as only the broad principals. They are neither exhaustive nor all-comprehending indeed no such enunciation is possible or advisable.\textsuperscript{104}

In this context, it can be said that the law of Torts is not as developed in India as in the US or say in Britain. The Civil remedy jurisprudence is not speedy in India, so until and unless the compensatory jurisprudence in the cases of defamation is ensured though a systematic process the law for criminal prosecution in case of libel (defamation) have to stay, when we are living in the age of ‘Media Trial’, ‘yellow journalism and investigative journalism’.

5.6 Paid News and Freedom of Media-

According to an Article in a newspaper, “Paid news has become a big threat to the world’s largest democracy. It raises serious questions of journalistic ethics and professional integrity. In the last elections to the Lok Sabha and a few State Assemblies, a section of the media- print and electronic – had indulged in nefarious monetary deals with some politicians and candidates by agreeing to publish only their views not as advertisements but as news items.

Paid News can be defined as “Any news or analysis appearing in any media (Print & Electronic) for a price in cash or kind as consideration.” Paid news is a complex phenomenon and has acquired different forms over the last six decades. It ranges from accepting gifts on various occasions, foreign and domestic junkets, and various monetary and non-monetary benefits, besides direct payment of money. Another form of paid news that has been brought to the notice of the Press Council

\textsuperscript{104} The Supreme court exception that the law on this matter should develop case by case as these concepts were under the process of evolution media Regulation case (\textit{Sahara India v. Sebi, supra})
of India by the Securities and Exchange Board of India (SEBI is in the form of “private treaties” between media companies and corporate entities. Private treaty is a formal agreement between the media company and another non-media company in which the latter transfers certain shares of the company to the former in lieu of advertisement space and favourably coverage.\textsuperscript{105}

Parliament, the Election Commission, the Press Council of India and organization like the Editors’ Guild of India and the Association for Democratic Reforms are deeply agitated about it. The Press Council of India\textsuperscript{106} examined the draft report of the inquiry conducted into this disturbing phenomenon.

\textsuperscript{105} See http://presscouncil.nic.in/.

\textsuperscript{106} The Press Council of India is a statutory body in India that governs the conduct of the print and broadcast media. It is one of the most important bodies that sustain democracy, as it has supreme power in regards to the media to ensure that freedom of speech is maintained. However, it is also empowered to hold hearings on receipt of complaints and take suitable action where appropriate. It may either warn or censure the errant journalists on finding them guilty. It did so on 21 July 2006, when it censured three newspapers — Times of India (Delhi and Pune), Punjab Kesri (Delhi) and Mid Day (Mumbai) — for violation of norms of journalistic conduct. The press council of India is protected by the constitution and its actions may not be questioned unless it is proved to be in violation of the constitution, which makes it exceedingly powerful a body. Retrieved from, http://en.wikipedia.org/wiki/Press_Council_of_India.

Realising the dangers of “paid news” to democracy as well as the right to freedom of expression enshrined in Article 19 of the Constitution of India, on June 9, 2009, the Press Council of India appointed a Sub-Committee comprising Shri Paranjoy Guha Thakurta and Shri Kalimekolam Sreenivas Reddy “to examine the phenomenon of paid news observed during the last Lok Sabha elections...based on inputs received from the members and others.” The two members met a cross-section of society in New Delhi, Mumbai and Hyderabad and also went through many letters and representations that were sent to the Council. The report of the Sub-Committee was discussed in detail by the Press Council in its two meetings held in Indore and
The PCI stated, “But we need to look beyond reports. There is need for exemplary action like impounding the license of a publication or a TV news channel if it is found guilty of the crime”.

In a petition to the Press Council, the Andhra Pradesh Union of Working Journalists (APUWJ) has charged six Telugu newspapers-Eenadu, Andhra Jyothi, Sakshi, Vaartha, Andhra Bhoomi and Surya – with succumbing to the lure of paid news. In a sample survey of these newspapers in West Godavari district during the election campaign in April 2009, it has alleged that the advertiser’s copy appeared as paid news along with the dateline and credit line to mislead the reader to believe that it was the reporter’s news story.

The respective newspaper managements, according to the APUWJ, collected money for space according to their advertisement tariff without acknowledging that it was an advertisement. Their designs were exposed when they published paid news sometimes on the same page and sometimes on different pages of the same edition, predicting the victory of more than one candidate in the same constituency with the same dateline and credit line.

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New Delhi on 31 March, 2010 and 26 April, 2010 respectively. Members gave a number of suggestions and thereafter, the Press Council of India Chairman appointed a Drafting Committee to prepare a final report for the consideration of the Council. The Chairman appointed a 12-member Committee consisting: S/Shri H N Cama, Lalit Mangotra, U C Sharma, Y C Halan, K. Sreenivas Reddy, Kalyan Barooah, S. N. Sinha, Anil Jugal Kishore Agarwal, Kundn R L Vyas, Paranjoy Guha Thakurta, P Javadekar, and Keshav Rao. The Drafting Committee considered the views expressed during various meetings of the Press Council and has drafted a report for the consideration of the Council.
The APUWJ has charged these newspapers with putting the credit line and dateline at the end of the story instead of at the beginning, which was the usual practice. Some other newspapers did not give the credit line but published it in the news format with just the dateline. But then, the usual attributes of a news story such as where it was said and the context were missing. From the tone and tenor of the story, a journalist with minimum experience would sense that it was a plant or an advertisement.

5.6.1 How Paid News are Threat to Media Freedom-

The media occupies a special place in society. It is the conscience-keeper of the nation. It enjoys freedom of speech and expression as guaranteed under the Constitution. It will have to inform the people and the government correctly and dispassionately. It does not enjoy freedom of speech and expression to misinform and give distorted news and project views of a particular party or group in the guise of news for monetary considerations.

A newspaper – or a TV news channel – is much more than a product. It is a live medium of communication, information, analysis and opinion and not a commodity. Its fundamental duty is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased and sober manner. The media ought to conduct itself in keeping with certain professional norms which are universally recognized.

The various norms and guidelines regulating the Press underline one fundamental principle or objective – that the media has some societal compulsions and moral obligations. Journalists may enjoy complete freedom in the exercise of their duties. But this freedom is not without responsibility and restraints. It is the ethical foundation, based on certain
norms and guidelines, which give the Press a stature and strength for a major societal role, particularly where credibility is the principal criterion. Ethical practices and norms distinguish rights from wrongs. An unfettered and restrained Press, without ethical concern, can be a threat to free society and to its very independence.

If a newspaper or a TV channel takes money to publish or telecast a news item, it will have a debilitating influence on society. Free and fair elections are sine qua non of a democratic form of government. And election will cease to be a level-playing field for all candidates if some, with bags of money, grease the palm of newspaper or television barons and get undue coverage. Clearly, paid news, if not checked, will subvert democracy.

5.6.2 Need for De-jure as well as De-facto Control Mechanism-

True, there are problems in bringing the guilty to book. Circumstantial evidence may not always be available. There is also the question of transactional evidence that would hold up to legal scrutiny. Yet, nothing prevents the government from framing suitable guidelines for an independent and transparent monitoring mechanism after due deliberations with bodies like the Editor’s Guild, the Advertising Standards Council, the Indian Broadcasting Foundation, the Press Council and the Election Commission. The Press Council needs to be given more teeth. At present, it is hardly able to do anything other than reprimanding or censoring those found guilty. It would be eminently sensible to empower the Election Commission to enforce the guidelines.

The Centre should also try for an all-party consensus for a legislation to tackle paid news. The suggestion for an amendment to the Representation of the People Act declaring paid news as an electoral malpractice merits serious consideration. The Editor’s Guild has
suggested that the expenditure limit of candidates be raised to a “realistic level” as the present ceiling on election expenses – Rs. 25 lakh for a Lok Sabha seat and Rs. 10 lakh for an Assembly seat – is being cited by politicians as a reason for resorting to paid news. But the Election Commission has expressed its limitations in this regards. Parliament alone can take the initiative in raising the ceiling on election expenses.

As paid news impinges on the people’s right to know and wrecks havoc on the democratic system, it must be tackled expeditiously. At stake are the credibility and moral foundation of the Indian media.”

5.7 Media Trial and Liberty of Individuals-

The subject of ‘Trial by media’ is discussed by civil rights activists, constitutional lawyers, judges and academicians, almost every day in recent times. With the coming into being of the television and cable-channels, the amount of publicity which any crime or suspect or accused gets in the media has reached alarming proportions innocents may be condemned for no reason or those who are guilty may not get a fair trial or may get a higher sentence after trial than they deserved. There appears to be very little restraint in the media insofar as the administration of criminal justice is concerned.

In a democratic country like India, right to press is an important right but is not an unlimited privilege for its own sake. It is a limited right to be exercised for public good. Article 21 provides that a suspect or an accused is entitled to a fair procedure. However, excessive publicity in


108 The Law commission of India lamented over the state of affairs because of media trial in criminal justice system in its 200th Report, see also The Madrid Principles on the Relationship Between Media and Judicial Independence (1994).
the media about an accused before trial may prejudices a fair trial.\textsuperscript{109} The commission explained that the report is all about maintaining a delicate balance between the freedom of speech and expression of the media on the one hand and due process rights of the subject and accused.\textsuperscript{110}

\textbf{5.7.1 Media Trial and Administration of Justice-}

The Supreme Court’s caution to lawyers and parties, on 29\textsuperscript{th} November 1995, against rushing to the media to air their views on proceedings pending in court came not a day too soon. It is preposterous for any lawyer to suggest that because the proceedings are open, he could talk about them before TV cameras focused on him. He has no such right. As Justice J. S. Verma observed, if the media is interested in a case it could attend the proceedings in the court and report them. It is one thing for a counsel to speak to a correspondent who wishes to understand a nuance. It is another for him to pontificate before TV cameras.\textsuperscript{111}

“The freedom of the media had to be balanced with the effect of improper reporting on the administration of justice.”\textsuperscript{112} The extensive meaning given by the courts to the right of freedom of speech and expression has of late generated great debate in the context of trial of media and the possibility of newspaper influencing the outcomes of the court cases\textsuperscript{113} A glaring incident of trial by media is the \textit{Parliament Attack Case},\textsuperscript{114} where in the police called a press conference just one week after

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\textsuperscript{109} Introduction to the Two Hundredth Report of Law Commission of India, presented on August 31, 2006.
\textsuperscript{110} Id.
\textsuperscript{111} A. G. Noorani, \textit{“Courts and Media”, Constitutional Questions and Citizens’ Rights,} (Oxford University Press, 2006), p.34.
\textsuperscript{112} Goolam E. Vahanvati, Attorney Journal, who represented SEBI in the case said .\textit{Letters on the Media}, Frontline, June 1, 2012 at p. 6.
\textsuperscript{113} Hon’ble Mr. Justice G.S. Singhvi “Trial by Media: A Need to Regulate Freedom of Press \textit{Bharti Review} Oct-Dec 2012 p.1-10
\end{flushleft}
the attack during the course of which, accused incriminated himself in front of national media. Similarly one of the co-accused in Parliament Attack case was initially sentenced to death despite overwhelming lack of evidence. Large section of the Indian media portrayed him as a dangerous & trained terrorist. On appeal, the Delhi High Court reversed his convinced and described the prosecution case absurd & tragic.†15

How can we forget to given a mention of the Double Murder story†16 which has seen trial & conviction by media, in an extended, unrestrained & unrelenting form? Coming out of jail where he was held for fifty days on suspicion of murdering his own daughters, dentist Rajesh Talwar was seen and heard pleading to the media to let him spend time with family. In the close of two months that father was innocent, the media speculated day in and day out about the father’s guilt, about the reputation of the young girl, in the process tarnishing reputational around. The commercialisation of the press & electronic media also calls for intense debate. †17 In India, the Legislature itself recognized the need of

†15 Ibid, G.S. Singhvi “Trial by Media”.

†16 Arushi Murder case; Nupur Talwar v. CBI & An. AIR 2012 SC 1927.

†17 A group of 40 distinguished legal experts and media representatives convened by the International Commission of Jurists (ICJ), at its Center for the Independence and Lawyers (CIJL), and the Spanish Committee of UNICEF met in Madrid, Spain between 18th-20th of January 1994. The objectives of the meeting were:
1. To examine the relationship between the media and judicial independence as guaranteed by the 1985 UN principles on the independence of Judiciary.
2. To formulate principles addressing the relationship between freedom of expression and judicial independence.

After long debate, the Commission drafted what are recognized as minimum standards of freedom of expression. These Are-
1. Freedom of expression (as defined in Article 19 of the Covenant), including the freedom of the media-constitutes one of the essential foundations of every society which claims to be democratic. It is the function and right of the media to gather and convey information to the public and to comment on the administration of
protecting media against the threat of contempt proceeding by incorporating Section 3 in the Contempt of Courts Act, 1971. Even pre-trial publications have granted immunity under Section 3(2) and Explanation. However, parallel investigations have not been favourably viewed by the courts. In *Saibal v. B.K. Sen*\(^{118}\) the Supreme Court said: “It would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because; trial by newspapers, when a trial by one of the regular tribunals of the country is going on must be prevented. The basis for this view is that such action on the parts of a newspaper tends to interfere with the course of justice.’’

The Fourth Estate can bully their way into anybody’s life and be voyeuristic about it. They can point fingers at anyone and they can cast aspersions on any institution in the name of the fundamental right granted to them. Every Constitutional and statutory right including privacy of individuals have been trampled upon with impunity by this class.\(^{119}\)

In a noticeable observation about the freedom of press it was stated,\(^{120}\)

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1. justice, including cases before, during and after trial without violating the presumption the presumption of innocence.

2. This principle can only be departed from in the circumstances envisaged in the International Covenant on civil and Political Rights, as interpreted by the *Siracusa Principles*, 1984 on the limitations and derogation provisions in the International Covenant on Civil and Political Rights.

3. The right to comment on administration of justice shall not be subject to any special restrictions.

The Commission emphasized the need of maintaining in balance between independence of Judiciary, freedom of press and respect of the individual particularly, of minors and other persons in need of special protection.

\(^{118}\) AIR 1961 SC 633.


\(^{120}\) By former Speaker of Lok Sabha.
“Freedom of the press, a cherished fundamental right in the country, is subject to reasonable restrictions as contemplated by the Constitution itself. It cannot and does not comprise deliberately, tendentious and motivated attacks on the great institution of this Republic, and their officers and functionaries. Freedom of press does not also contemplate making reckless allegations, devoid of the truth and lacking in bonafides. In the name of exercising freedom of the press, there could not be trial by press in which it place the role of both the accuser and judge. Freedom of the press also encompasses the fundamental duties of the press. These call for showing respect for other and responsible behavior, and cannot permit denigration of Constitutional bodies and institutions and their important segments.”

5.7.2 Judicial Response to Media Trial-

The freedom of press in the context of trial of criminal case came to be considered by the Supreme Court of India in the judgment in the State of Maharashtra v. Rajendra Jawamal Gandhi.\textsuperscript{121} This court expressed its displeasure over the phenomenon, which it called as, ‘trial by press, electronic media or public agitation.’ Further, the Hon’ble Supreme Court in 2005 when faced such a situation in the case of M. P. Lohia v. State of West Bengal\textsuperscript{122} took a similar view and echoed these lines: “.... This type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the

\textsuperscript{121} 1997 (8) SCC 386.

\textsuperscript{122} AIR 2005 SC 790; While granting anticipatory bail to an accused in a dowry death case pending in a Kolkata court, the Supreme Court recently castigated the media (which published an article based on the interview of the family of the deceased) for interfering with the administration of justice by publishing articles touching on merit of pending cases- N. R. Madhava Menon, “Media Reporting of Crime and Fair Trial Guarantee”, Soli Sorabji, \textit{Constitutionalism, Human Rights and the Rule of Law} p. 198.
publisher, editor and journalists, who were responsible for the said article against indulging in such trial by media when the issue is sub-judice.”123

In Express Newspaper Pvt. Ltd. v. Union of India124, the Supreme Court even while upholding the freedom of speech, which our court has always unfailingly guarded, also added: “This freedom is not absolute and unlimited at all times and under all circumstances, but is subject to the restriction contained in Article 19 (2). That must be so because unrestricted freedom of speech and expression which includes the freedom of press and is wholly free for restraints, amounts to uncontrolled license which would lead to disaster and anarchy, and it would be hazardous to ignore the vital importance of our social and national interest in public order and security of the State.”125

In State of Kerala v. Poothala Aboobacker126, the High Court of Kerala observed: “The Fourth Estate does seem to realize the irreparable damage inflicted on the victims of crimes and the alleged culprits and those close to them through the sensationalized journalistic adventures. Truth is very often surpassed, exaggerated or distorted to add flavor and spice to the stories. Trial by media can do more harm than good to the society at large. Instances are not rare when test parades are reduced to mere farce due to the injudicious publicity given to the alleged assailants by publishing their photographs. Every such act of adventurism exerts unnecessary pressure on the Courts which are to eventually try the alleged offenders. The fickle minded public which has been conditioned to believe a particular version through a calculated process of media indoctrination will be loathe accept a different conclusion. Hence, if the court who

124 AIR 1986 SC 872.
125 Ibid, “Trial by Media”.
126 2006 (2) KLD (Cr 1 482.)
finally tries the alleged culprit were to ultimately record an order of acquittal for want of legal evidence before it, it may not be out of place for the public at large to conclude that the verdict of the court is wrong. They may even attribute motives in presiding judge. No disciplined society which believes in Rule of Law can afford such state of affairs to come to stay. We wish to express our strong displeasure at the increasing trend of investigation lapses and trial by media in respect of matters of matters which are sub-judice. After the case under investigation is ceased by the court it is not open to the investigation agency or other bodies to give their own version about a crime and influence the mind of the public without realizing the worth, or otherwise of what has been collected during investigation and placed before the court concerned. Lapses in this regard will be viewed very seriously and the erring police officers and media persons will be proceeded against appropriately.\textsuperscript{127}

The court further issued directions that: “The Registry shall forward and extract of this judgment to the director General of Prosecutions for suitable prophylactic measures to ensure that recurrence of such lapses does not take place.”

The observations of Mr. Andrew Belsey in his article\textsuperscript{128} quoted by the Delhi High Court in \textit{Mother Dairy Foods and Processing Ltd. v. Zee Telefilms}\textsuperscript{129} aptly describe the state of affairs of today’s media. He says that journalism and ethics stand apart. While journalists are distinctive facilitators for the democratic process to function without hindrance the media has to follow the virtues of, ‘accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect or autonomy of ordinary people.’


\textsuperscript{128} Andrew Belsey, Mathew Kieran, (ed.) “Journalism and Ethics, can they co-exist”, \textit{Media ethics: A Philosophical Approach}.

\textsuperscript{129} IA 8185/2003 in suit no. 1543/2003, dated 24-1-2005.
These are all part of the democratic process. But practical considerations, namely pursuit of successful career, promotion to be obtained, compulsion of meeting deadlines and satisfying Media Managers by meeting growth targets, are recognized as factors for the ‘temptation to print trivial stories salaciously presented.’ In the temptation to sell stories, what is presented is what ‘public is interested in’ rather than ‘what is in public interest.’

In an interview by Justice J. S. Verma to Frontline while answering the question whether he thinks judges who are supposed to have a judicial mind will allow themselves to be influenced by trial by media, he answered\(^\text{131}\), “I never was and I don’t think that any judge would be. But that does not mean that the media should continue to misbehave in this sense. That is why I said reporting should be objective- it should be of actual facts, no sensationalism, no opinion mixed with facts- so that you inform people. Anyone who is present in the court knows what has happened. The media, when they report, tell the people who were not present in court what happened. And what happens in the court? The media do not participate in it. It is the people in the court- the lawyers, the judges and the witnesses in a trial. The media are not a participant in a trial and should not become a participant outside.”

5.7.3 Contempt of Court Act, 1971-

The provisions of this Act provide for the checks in relation to sub-judice matters. According to Sec 2 (c) of the Act, ‘Criminal Contempt’ means the publication,(whether by words, spoken or written or by signs, or by visible representations, or otherwise), of any matter or the doing of

\(^{130}\) Law Commission of India, 200\textsuperscript{th} Report on Trial by Media-Free Speech and Fair Trial under Criminal Procedure Code, 1973 (August 2006) 200.5.

\(^{131}\) “I am against any restriction”, Interview with Justice J.S. Verma, former CJI, Frontline, June 1, 2012 at p. 11.
any other act whatsoever which ....(ii) prejudices or interferes or tends with the due course of any judicial proceedings; or (iii) interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any manner."Sec. 3(1), however, exempts the following:

"innocent publication, if the publisher had no reason to grounds for believing that the proceeding was pending."

Even before 1971, the S.C. referred to ‘trial by press’, when a parallel investigation was undertaken at the pre-trial stage. The Court stated that such action on the part of the newspaper tends to interfere with the course of justice.\textsuperscript{132}

\textbf{5.8 Mumbai Terror Attack Case and Freedom of Media-}

The right of media always comes with a duty – duty to report fairly, objectively and accurately. That duty attracts restrictions and limitations which protect the right of an individual. The Committee on petition of Rajya Sabha\textsuperscript{133} expressed the view that freedom of the press is essential for healthy functioning of democracy; however, democracy comes with responsibility. Freedom of the press cast responsibility on media as well.

It has taken note of the recent direct live telecast of the sixty hours \textit{Operation Black Tornado} by the security forces to combat terrorist attack in Mumbai particularly on \textit{Oberai Trident} and \textit{Taj Mahal Palace Hotels} and \textit{Nariman House}, by news channels. It included live feed of air dropping of NGS commandoes on the rooftop of \textit{Nariman House} which had taken away the element of surprise and was critical and crucial in the operation of \textit{Black Tornado}. The committee apprehends that the live footage shown by TV channels to the viewers could also have been used as free intelligence input by the perpetrators sitting far away from the place of incident who allegedly guided the attackers to take appropriate


\textsuperscript{133} Committee on Petition of Rajya Sabha, 132\textsuperscript{nd} Report, (2008).
emergent measures against the positions of security forces through satellite/mobile phones. Such live feed of Commandoes being air dropped directly endangers the success of operations and safety of hostages as well as security forces. The Committee expects the media to treat information of sensitive nature carefully and Endeavour to ensure that the interest of Nation and lives of security forces and hostages in such type of operation is not jeopardised by live telecasting such nature of operations.\footnote{134}

While commenting on the role the media in Taj Terror attacks case, Mohammad Ajmal Mohammad Amir Kasab v. State of Maharashtra,\footnote{135} Supreme Court stated,

“….. The terrorist attack at all the places, in the goriest details, were shown live on the Indian TV from beginning to end almost non-stop. All the channels were competing with each other in showing the latest developments on a minute to minute basis, including the position and the movements of the security forces engaged in flushing out terrorist........”\footnote{136}

The Court further stated, “Any attempt to justify the conduct of the TV Channels by citing the right to freedom of speech & expression would be totally wrong and unacceptable in such a situation. The freedom of expression, like all other freedoms under Art 19, is subject to reasonable restrictions. An action tending to violate another person’s right to life guaranteed under Art 21 or putting the national security in jeopardy can never be justified by taking the plea of freedom of speech and expression.”\footnote{137}


\footnote{135} 2012 Cr.L. J. 4770 SC, see also Media Guideline Case, infra in Chapter 5.

\footnote{136} Para 403.

\footnote{137} Para 406.
“It is in such extreme cases that the credibility of an institution is tested the coverage of the Mumbai terror attack by the mainstream electronic media has done much harm to the argument that any regulatory mechanism for the media must only come from within.”

5.9 Sting Operation: The New Facet of Journalism -

Investigative Journalism has assumed a new role in which journalists investigate and expose unethical, immoral and legal behavior by individuals, businessmen and government agencies. Investigative reporting done poorly can also expose journalists and media organizations to negative reaction from subjects of investigations and the public. However, done well, it can bring to the attention of the public and government problems and conditions that the public deem need to be addressed, and can win recognition to the media outlet. With the advent of Sting Operation, the concept of Journalism has taken a drastic change.

Sting Operations are generally implemented by undercover agents to apprehend criminals. Now a day’s electronics and print media are very sensitive to sting operations. However, the word sting derives its origin from1930’s American slang, meaning an act of theft, especially one that was carefully planned in advance and swiftly executed. The term then evolved in 1970’s American usage to mean a police undercover operation designed to ensnare criminals. “Sting” is therefore a synonym for the expression “set a trap to catch a crook”.

In law enforcement, a sting operation is an operation designed to catch a person committing a crime by means of deception. A typical sting will have a law-enforcement officer or cooperative member of the public

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138 Para 407.


140 Ajay Dash, Sting Operation and Law, (Discovery, New Delhi, 2007) at p 1.
play a role as criminal partner or potential victim and go along with a suspect's actions to gather evidence of the suspect's wrongdoing.\footnote{Ibid.}

In Western democracies, there is no curb on the sale or purchase of hidden recording equipment and using them in one's own house or office, but in many countries, it is illegal to use them secretly against another person in his or her house or office. Water Gate is a famous example of a President leaving office in disgrace and his Lieutenants being jailed for trying to have recording equipment clandestinely fixed inside the office of a political adversary. The only exception to this in the US are the law enforcement agencies and police licensed private detectives, who are allowed to use them under certain circumstances and under carefully controlled conditions. Licensed private detectives can use them for the collection of evidence but not in a sting operation. Only the FBI can mount a sting operation.

Despite the legal safeguards in the US, there have been growing complaints of the misuse of such covert equipment not only by private individuals, but also by law enforcement agencies, resulting in the violation or distortion of the rules of natural justice and particularly of the basic constitutional or legal guarantee that no person can be made to incriminate himself by using force or deceitful means. In many judgments the US Supreme Court has condemned some FBI sting operations for taking advantage of the naivety, carelessness and negligence of the possibly innocent in order to make appear as possibly guilty.

In the \textit{Jacobson v. U.S. (1992)} relating to child sex, the US Supreme Court cited the following guidelines of the US Attorney General on FBI sting operations issued on Dec. 31, 1980: "...an inducement to commit a crime should not be offered unless, there is reasonable indication, based on information developed through informants or other means, that the subject is engaging, has engaged, or is likely to engage in illegal activity of a similar type, or the opportunity for illegal activity has
been structured so that there is reason for believing that the persons drawn to the opportunity, or brought to it, are predisposed to engage in the contemplated illegal activity.”

The Supreme court has ruled⁵: “The first duties of the officers of the law are to prevent, not to punish crime. It is not their duty to incite to and create crime for the sole purpose of prosecuting and punishing it. Such a gross abuse of authority given for the purpose of detecting and punishing crime, and not for the making of criminals, deserves the severest condemnation …… While there are those who do harbor an actual criminal predisposition, the reality is that the majority do not fit this description. These sting operations are constructed so as to take advantage of the fact that everyone makes mistakes. They refuse to discriminate between the “unwary innocent” who are legitimate victims of human nature, predisposed to eventually making a mistake and nothing more, and the “unwary guilty” who are looking for the opportunity to commit the crime, or the “unwary negligent” who just don’t care enough one way or the other.¹⁴²"

5.9.1 Threats to Privacy by Sting Operations-

Sting operations have raised many questions relating to citizen’s privacy or violation of existing laws. As for the sting operations, every channel is competing to undertake such operations to improve their ratings or viewership despite recent disclosures that such operations have not added many in numbers. But as sting operations have become a fashion, no channel would like to be left behind. The dangers of media being misused by local industrialist or any foreign agency have become real. Instance of such misuse has been brought out by several members of parliament in their representation to Prime Minister Dr. Manmohan Singh, Finance Minister P. Chidambaram and other officials. They have pointed out in their letters that in the recent controversy between siblings of

¹⁴² Ibid, “Freedom of Press and Sting Operation-The Legal Dimensions”.
largest industrial house in India, Reliance, and the large scale misuse of media has taken place. The MP’s have rightly demanded that such nexus between media and industrial house needs to be investigated by official agencies like SEBI and others.  

5.9.2 The Ethics of the Sting Operation-

Critics have questioned the morality of sting operation carried out by the journalist. The motives of the journalists may be questionable. The degree of entrapment practiced on the victims to fulfill a preconceived script raises serious questions about the extent of real guilt of those caught on camera. For instance, in the earlier Tehelka sting operation there were serious lapses that made the exercise spurious. Out of hundred hours of tape only selected portions suitting the political agenda of the journalists or their unseen mentors were shown. There was deliberate effort to persuade people on camera to take names and if names were taken to treat such as hearsay evidence.

Leading lawyers and journalists criticized the portal for using prostitutes to trap defence officials in a videotaped expose on corruption in defence deal. But the Press Council of India gave a clean chit to the web portal Tehelka.com for its corruption expose, saying the undercover operation was done in public interest. Another incident may also be quoted here. A Telugu TV Channel ABN and a newspaper, Andhra Jyoti (belonging to the same media house) came out with scathing allegations through sting visuals against the personal life of Governor, Narayan Dutt Tiwari. The Div. Bench of A.P. High Court issued an injunction restraining the channel from telecasting the same. The Andhra Jyoti channel episode raised serious issues such as invasion of privacy of Constitutional office- holders through sting operations, the justifiability of sting operations, conditions for acceptability of electronic recording of

\[^{143}\text{Radia controversy.}\]
scenes, protecting the honour of top executive offices through injunctions etc.

The careful considerations to the following factors may be taken into account for the approval of a proposed undercover application:

- The risk of personal injury to individuals, property damage, financial loss to persons or businesses, damage to reputation, or other harm to persons,
- The risk of civil liability or other loss to the Government,
- The risk of invasion of privacy or interference with privileged or confidential relationships,
- The risk that individuals engaged in undercover operations may become involved in illegal conduct,
- The suitability of Government participation in the type of activity that is expected to occur during the operation.\(^\text{144}\)

5.10 Regulation of Freedom of Press –

Democracy is a government by discussion and not by the arbitrary will of an individual or a few individuals. In the modern day representative democracy, where those entrusted with the task of governance are far removed from the people, the paramount need is to bridge of communication between the people and the governors. Peoples collective wishes can be communicated to them only through their organizations or by means of mass media communication. The media today is the best means of such communication. However, this means, though apparently, a mass communicator is capable of being converted into a sectarian manipulator, as is evidenced in some cases of the present scenario. The cost of running a media outlet, whether print or electronic, is becoming more and forbidding every day. The media has become a

\(^{144}\text{Ibid, “Freedom of Press and Sting Operation-The Legal Dimensions”}\).
profitable business. It is more astonishing that there is no compelling law on media to give fair information. Only journalistic ethics can be invoked against misconduct. In a democracy, all individuals and institutions whose activities have a bearing on the public interest are and have to accountable to the public.

5.10.1 Reasonable Restrictions on freedom of Press-

In Express Newspapers v. Union of India, the S.C. exhaustively dealt with freedom of press but stated that it cannot be unbridled. Like other freedoms, it can also suffer reasonable restrictions.

In Reliance Petrochemicals Ltd. v. Proprietors of Indian Express, Supreme Court referred to Art. 19(1) (a) which deals with the freedom of speech and expression and the restrictions stated in art. 19 (2). It pointed out that the American constitution does not contain any provision for imposition of reasonable restriction by law. It adverted to the absolute terms in which the U.S. First Amendment dealing with freedom of speech and expression is couched and to the theory of ‘real and present danger’, which was evolved by the U.S. courts as the only inherent limitation on that right in that country. It further stated that the position in India was different; here the right to freedom of speech and expression was not absolute as in USA.

5.10.2 Press Council of India-

The Press Council of India was born out of the anxiety of our Constitution fathers to ensure that democracy can flourish only where its citizens enjoy full freedom of speech and expression subject only to reasonable restrictions. The press is rightly covered within the ambit of Article (19) (1) (a), even without an express mention. However once the

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147 Article 19 (2) of the Constitution.
148 1988 4 SCC 592.
freedom struggle was over it was realised that a new kind of press was emerging in the post independence era whose aims and objectives were undergoing fast change. The first Press Commission set up in 1954, examined the issues in depth and proposed the establishment of a Press Council as a peer body to regulate the conduct of their own brethren without any outside or governmental interference, Similar bodies were functioning in several other democracies, but these were primarily voluntary organizations. In India, it was deemed more appropriate to give the Council the statutory backing affording due weightage of its adjudications and pronouncements. It was established to preserve the freedom of the Reporting in India. If someone believes that there is misconduct, the PCI can warn, admonish, if it agree with the complaint. Along with these powers the PCI has established a set of suggested norms for journalists while reporting. The PCI also has criminal contempt powers to restrict the publication of prejudice matter. But significantly these norms cannot be legally enforced. The press Council of India also functions as an advisory body to the government on matters affecting press freedom, These cover the areas of libel, invasion of privacy, right to information, parliamentary privileges, prevention of terrorist activities, official secrets and many more.

While media shackled by government, regulation is unhealthy for democracy, but the unregulated media is more damaging. The media have an obligation to respect the rights of individuals, protected by the International Covenant and the independence of the judiciary.

5.10.3 Norms of Journalistic Conduct-

Norms of Journalistic Conduct, 2010, includes principles of

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151 Ibid.
accuracy and Fairness, pre-publication verification, caution against
defamatory writings right to comment on the acts and conduct of public
officials, criticism of public figures, right to privacy, privacy of public
figures, caution in criticizing the judicial acts, obscenity to be eschewed,
caste, religion on community reference etc.

5.10.3.1 Right to Privacy-

The press shall not intrude or invade the privacy of an individual,
unless outweighed by genuine overriding public interest, not being a
prurient or morbid curiosity. Therefore, however, that once a matter of
public record, the right to privacy no longer subsists and it becomes a
legitimate subject for comment by the press and the media, among
other. 152 Special caution is essential in reports likely to stigmatize
women. 153

5.10.3.2 Caution against Identification-

While reporting crime involving rape, abduction or kidnap of
women/females or sexual assault on children, or raising doubts and
questions touching the chastity, personal character and privacy women,
the names, photography the victims or other particulars leading to their
identity shall not be published. 154

Principle 6(iii) 155 provides that minor children and instants who are
the offspring of sexual abuse or ‘forcible marriage’ or illicit sexual union
shall not be identified or photographed. Furthermore intrusion through

152 Norm of Journalistic conduct 2010, Principle no. 6(i). It explains that things
concerning a person’s home, family, religion, health, sexuality personal life and
private affairs are covered by the concept of PRIVACY excepting where any of
these impinges upon the public or public interest.
153 Added in the 2010 ed. of Norms of Journalistic conduct.
154 Principle 6(ii) of Norms of Journalistic conduct.
155 Norms of Journalistic Conduct 2010.
photography into moments of personal grief shall be avoided. However, photography of victims of accidents or natural calamity may be in larger public interest.\textsuperscript{156}

5.10.3.3 Privacy of Public Figures-

The degree of privacy differs from person to person and situation to situation. However, the public person who functions under public gaze as an emissary/ representative of the public cannot expect to afford the same degree of privacy as a private person. His acts and conduct as are of Public interest\textsuperscript{157} even it conducted in private may be brought to public knowledge through the medium of press. The press has a corresponding duty to ensure that such information is obtained by fair means properly verified and reported accurately.

5.10.3.4 Recording Interviews and Phone Conversation-

This should not be without person concerned knowledge of consult, except, where the recording is necessary to protect the journalist in a legal action or for other compelling good reason.\textsuperscript{158} Clause ii of sec 8\textsuperscript{159} restricts press to delete offensive epithets used during such conversation.

5.10.3.5 Newspaper to Eschew Suggestive Guilt-

Newspapers should not name or identity the family, relatives, or associates of a person convicted or accused of a crime, when they are totally innocent and a reference to them is not relevant to the matter being reported.\textsuperscript{160} During reporting of court proceedings the reporter and editor

\textsuperscript{156} Principle 6(iv) of PJC, 2010.

\textsuperscript{157} ‘Public interest’ being distinct and separate from ‘of interest of public’.

\textsuperscript{158} Principle 8 (i) of NGC 2010.

\textsuperscript{159} \textit{Ibid}.

\textsuperscript{160} Principle 10 (i).
are required to be ascertain about it genuineness and authenticity otherwise can be held guilty for furnishing incurred information.\textsuperscript{161}

5.10.4 Code of Ethics and Broadcasting Standards-

Hereunder there is a detailed statement of code of ethics for journalist. News Broadcasters Association New Delhi, provides for fundamental and self-regulation principles for journalists. These principles are as under\textsuperscript{162}.

\textbf{SECTION - 1}

\textbf{FUNDAMENTAL PRINCIPLES}

1) Professional electronic journalists should accept and understand that they operate as trustees of public and should, therefore, make it their mission to seek the truth and to report it fairly with Integrity and independence. Professional journalists should stand fully accountable for their actions.

2) The purpose of this Code is to document the broad paradigms accepted by the members of the News Broadcasters Association (NBA) as practice and procedures that would help journalists of Electronic media to adhere to the highest possible standards of public service and integrity.

3) News channels recognize that they have a special responsibility in the matter of adhering to high standards of journalism since they have the most potent influence on public opinion. The broad principles on which the news channels should function are, therefore, as stated hereinafter.

4) Broadcasters shall, in particular, ensure that they do not select news for the purpose of either promoting or hindering either side of any controversial public issue. News shall not be selected or designed to promote any particular belief, opinion or desires of any interest group.

\textsuperscript{161} Principle 12 (b)

\textsuperscript{162} Retrieved from the official website of the News Broadcasting Association, as updated on 01.04.08.
5) The fundamental purpose of dissemination of news in a democracy is to educate and inform the people of the happenings in the country, so that the people of the country understand significant events and form their own conclusions.

6) Broadcasters shall ensure a full and fair presentation of news as the same is the fundamental responsibility of each news channel. Realizing the importance of presenting all points of view in a democracy, the broadcasters should, therefore, take responsibility in ensuring that controversial subjects are fairly presented, with time being allotted fairly to each point of view. Besides, the election of items of news shall also be governed by public interest and importance based on the significance of these items of news in a democracy.

SECTION - 2

PRINCIPLES OF SELF REGULATION

The News Broadcasters Association (NBA) has established commonly accepted content guidelines as a way of practicing self regulation. The purpose is to define editorial principles which are consistent with the tenets of the freedom of speech articulated in the constitution of India; the regulatory framework; common sensibilities of television viewers.

The purpose of these principles of self regulation is to serve as an affirmative declaration of understanding of, and compliance with, the basic values and objectives that news channels enshrine.

It is to ensure that these principles are observed in spirit, and not just in the letter.

The purpose of putting together the principles of self regulation is to avoid compromising the genre of television news by broadcasting content that is malicious, biased, regressive, knowingly inaccurate, hurtful, misleading, or aimed at willfully concealing a conflict of interest. The purpose of these principles of self regulation is to empower the profession of television journalism by an abiding set of values, which will
stand the test of time, and ensure that balanced and comprehensive journalism flourishes, to strengthen India’s democracy.

Detailed below are some of the areas where the broadcasters seek to self-regulate.

1) Impartiality and objectivity in reporting:

Accuracy is at the heart of the news television business. Viewers of 24 hour news channels expect speed, but it is the responsibility of TV news channels to keep accuracy, and balance, as precedence over speed. If despite this there are errors, channels should be transparent about them. Errors must be corrected promptly and clearly, whether in the use of pictures, a news report, a caption, a graphic or a script. Channels should also strive not to broadcast anything which is obviously defamatory or libelous. Truth will be a defense in all cases where a larger public interest is involved, and in even these cases, equal opportunities will be provided for individuals involved to present their point of view. This also applies in cases where television channels report on those holding public office, though by virtue of doing so, no person can claim immunity from scrutiny from or criticism by news channels.

2) Ensuring neutrality:

TV News channels must provide for neutrality by offering equality for all affected parties, players and actors in any dispute or conflict to present their point of view. Though neutrality does not always come down to giving equal space to all sides (news channels shall strive to give main view points of the main parties) news channels must strive to ensure that allegations are not portrayed as fact and charges are not conveyed as an act of guilt.

3) Reporting on crime and safeguards to ensure crime and violence are not glorified:

Television news has greater reach, and more immediate impact than other forms of media, and this makes it all the more necessary that channels exercise restraint to ensure that any report or visuals broadcast
do not induce, glorify, incite, or positively depict violence and its perpetrators, regardless of ideology or context. Specific care must be taken not to broadcast visuals that can be prejudicial or inflammatory. Equally, in the reporting of violence (whether collective or individual) the act of violence must not be glamorized, because it may have a misleading or desensitizing impact on viewers.

News channels will ensure that such reconstructions will not cross boundaries of good taste and sensibility. This includes taking adequate precaution while showing any visual instance of pain, fear or suffering, and visuals or details of methods of suicide and self harm of any kind and will not cross boundaries of good taste and decency.

4) **Depiction of violence or intimidation against women and children:**

As an elaboration of Point 3, news channels will ensure that no woman or juvenile, who is a victim of sexual violence, aggression, trauma, or has been a witness to the same is shown on television without due effort taken to conceal the identity. In reporting all cases of sexual assault, or instances where the personal character or privacy of women are concerned, their names, pictures and other details will not be broadcast/divulged. Similarly, the identity of victims of child abuse and juvenile delinquents will not be revealed, and their pictures will be morphed to conceal their identity.

5) **Sex and nudity:**

News channels will ensure that they do not show, without morphing, nudity of the male or female form. Channels will also not show explicit images of sexual activity or sexual perversions or acts of sexual violence like rape or molestation, or show pornography, or the use of sexually suggestive language. (As a qualifier however, channels are not expected to be moralistic or prudish, and this self regulation is aimed not at moral policing, but rather at ensuring that overtly regressive and explicit acts and visuals do not slip into broadcasts).
6) Privacy:

As a rule channels must not intrude on private lives, or personal affairs of individuals, unless there is a clearly established larger and identifiable public interest for such a broadcast. The underlying principle that news channels abide by is that the intrusion of the private spaces, records, transcripts, telephone conversations and any other material will not be for salacious interest, but only when warranted in the public interest. However, it is also understood that the pursuit of the truth and the news is not possible through the predetermined principle of prior permission; hence door stepping individuals or authorities for the purpose of newsgathering may be used only in the larger purpose of public interest. Further, in the case of minors, in any broadcast that intrudes on their privacy, the channel should attempt, where possible, to seek the consent of the parent or legal guardian. However, the defense of the premise of privacy cannot be misconstrued as the denial of access, and this applies to all individuals, including those in the public eye and public personalities. It does however apply in its entirety, as per the provisions mentioned above, to their children and kin who are minors.

7) Endangering national security:

In the use of any terminology or maps, that represents India and Indian strategic interests, all news channels will use specific terminology and maps mandated by law and Indian government rules. (The depiction of the map of the territory of India will reflect official guidelines, as detailed in official literature). News channels will also refrain from allowing broadcasts that encourage secessionist groups and interests, or reveal information that endangers lives and national security. However, it is in the public interest to broadcast instances of breach of national security and loopholes in national security and reporting these cannot be confused with endangering national security.
8) Refraining from advocating or encouraging superstition and occultism:

News channels will not broadcast any material that glorifies superstition and occultism in any manner. In broadcasting any news about such genre, news channels will also issue public disclaimers to ensure that viewers are not misled into believing or emulating such beliefs and activity. Therefore news channels will not broadcast “as fact” myths about “supernatural” acts, apparitions and ghosts, personal or social deviations or deviant behaviour, and recreations of the same. Wherever references are made to such cases, news channels will issue on air riders/disclaimers/warnings to ensure that such beliefs or events are not passed off “as fact” since they can hurt rational sensibilities.

9) Sting operations:

As a guiding principle, sting and undercover operations should be a last resort of news channels in an attempt to give the viewer comprehensive coverage of any news story. News channels will not allow sex and sleaze as a means to carry out sting operations, the use of narcotics and psychotropic substances or any act of violence, intimidation, or discrimination as a justifiable means in the recording of any sting operation. Sting operations, will also abide by the principles of self regulation mentioned above, and news channels will ensure that they will be guided, as mentioned above, by an identifiable larger public interest. News channels will as a ground rule, ensure that sting operations are carried out only as a tool for getting conclusive evidence of wrong doing or criminality, and that there is no deliberate alteration of visuals, or editing, or interposing done with the raw footage in a way that it also alters or misrepresents the truth or presents only a portion of the truth.
10) **Corrigendum:**

All news channels will keep with the principle of due accuracy and impartiality, ensure that significant mistakes made in the course of any broadcast is acknowledged and corrected on air immediately. Corrections should also be scheduled in such a way that they attract enough viewer attention and are not concealed. This, like the other principles, must be observed in spirit, and not just in letter, to avoid any compromise to the reputation of the news broadcasting industry in India.

11) **Viewer feedback:**

All News Channels will on their website, create provision to receive consumer feedback. Further any specific viewer complaints will be responded to. In the event any news channel gets a specific complaint if found to be true it will admit to the same on air and will respond in fullness and fairness to the viewer. In the event, a viewer/body perceives prejudice by any specific report carried by the News channel, it will respond in fullness and without impartiality to the viewer.

After a careful study of the regulations for the control of media and journalists, one can easily conclude that there are almost all eventualities of infringement of the liberty of the individual by the media, are visualize. In other words there are plenty of norms to regulate the media extent but, Inspite of such regulations and judicial protection, these norms are violated and sidelined, repeatedly by the sensational media. So it is pertinent to note here that these norms are in need of great repair and require more teeth as stated by the President of Press Council of India, former CJI J. Markandey Katzu, on several occasions. Independence of media is no doubt, a must for the democracy but at the same time the task of law is to balance the compelling interests. So when there are threats to individual liberty of privacy by the media and specially, the new media, it is required to be scrutinized by the regulatory bodies, and whenever required by courts, and imposed with fine, penalty or made liable for the compensation to the aggrieved. There in need for strengthening the body
of law of torts in this way. Freedom of Press is combined with the responsibility for the consequences it follows.

Thus, it is true that the media forms the backbone of a democratic society. It subjects the functioning of all public institutions to public scrutiny, and makes them answerable and accountable to the public to whom they have to serve. It also plays an important role in assisting in administration of justice. However it cannot be ignored that at times the media fails to exercise the freedom of press conferred upon it by the Constitution in ‘public interest’ as pointed out above. It neglects the real and the core issues which the society is facing. It forgets social responsibility towards people. It is for this reason that a need arises to regulate this freedom of press.\textsuperscript{163} A responsible media is the handmaiden of effective judicial administration\textsuperscript{164}. Free and robust reporting, criticism and debate should be there which contributes to the public understanding of Rule of Law and better comprehension of the entire justice system.\textsuperscript{165} Nobody can deny the fact that so many of these scams would never have come to light but for the media. The roles of the media and the judiciary are complementary in improving the quality of governance. The media highlight them for the judiciary to take cognizance, and therefore the media are a very potent force. The media should be corrected by the judiciary on a case by case basis.\textsuperscript{166}

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\textsuperscript{163} \textit{Ibid.} \\
\textsuperscript{164} Narimam, Fali S., “Are Impediments to Free Expression in the Interest of Justice”, \textit{CIJL} Yearbook, Vol 4, 1995. \\
\textsuperscript{165} Hon’ble Mr. Justice G.S. Singhvi “Trial by Media: A Need to Regulate Freedom of Press \textit{Bharti Law Review} Oct-Dec 2012 p.1-10 \\
\textsuperscript{166} \textit{I am against any restriction}, Interview with Justice J.S. Verma, former CJI, Frontline, June 1, 2012 at \textit{p. 12}. \end{flushleft}