Chapter – 1

INTRODUCTION AND HISTORICAL PERSPECTIVES

**MASS MEDIA**

Mass Media denotes a section of the media specifically designed to reach a large audience. The term was coined in 1920, with the advent of nation wide radio networks, mass – circulation newspapers and magazines.\(^1\) Media a plural of word-medium refers to various means of communication e.g. Television, Radio and the Newspaper. Term can also be used as a collective noun for the press or news reporting agencies. In the computer world, media is also used as a collective noun, but refers to different types of data storage options. In communication, media are the storage and transmission channels or tools used to store or deliver information or data.\(^2\)

**HISTORY OF INDIAN MEDIA AND ITS REGULATIONS**

The Indian media was initiated since the late 18\(^{th}\) century with print media’s start in 1780. **James Augustus Hickey** is considered as the father of Indian Press. He started the first newspaper from Calcutta, the *Calcutta General Advertise* also known as the *Bengal Gazette* in January in 1780. After the first newspaper was published, many other journal - all british owned were produced many of them with official patronage. Some had missionary orientation and were

---

1. Available at: http://www.webcrawper.com (Visited on March 27, 2010).
addressed to Indians, thus included publication in Indian languages. 'Dig Darshan', a monthly Bengali magazine for youth, 'Samarchar Darpan', a weekly Bengali and 'Friend and India', a monthly in English, have been noted. The missionary character of these magazines is said to have prompted a response and to 'assert national self-respect', a few newspapers were published.³ In 1789, the first newspaper from Bombay, the Bombay Herald appeared. In 1790, Bombay Courier Started. The first newspaper in an Indian language was the Samachar Darpan in Bengali in 1818. In the same year, Ganga Kishore Bhattacharya started publishing another newspaper in Bengali, the Bengali Gazetti. The first Gujarati newspaper, the Bombay Samachar was published from Bombay. The three journals around 1821, 'Sambad Kaumudi' (Bengali), 'Mirat-Ul-Akbar' (Persian) and 'Brahmunical Magazine' (English) were launched. The Publications endeavored to counter the tirades of the missionaries and to educate the population about social reforms. There is a consensus that Raja Ram Mohan Roy's publications marked the beginning of Indian journalism. The first Hindi Newspaper, the Oodunt Marthand began in 1826. Since then the prominent Indian languages in which papers grown over the years were Hindi, Marathi, Malayalam, Kannada, Telugu, Tamil, Urdu and Bengali.⁴

³ Available at: http://indiamahesh.wordpress.com/2008/02/24/the-role-of-media-in-national-integration/ (Visited on Feb 12, 2010).

⁴ Available at: http://www.slideshare.net/historyofmedia/ (Visited on July 26, 2010).
In the ancient period the history of media was written by Europeans. In their historical accounts they referred to *Acta diurna* of the Roman Empire. It was closely akin to the newspaper of today. In India, the Rock Edicts of Emperor Ashoka, the Great (C. 273-236 BC) engraved on rocks contain in abundance, measures adopted and regulations issued by Emperor. In the times of Ashoka there were no restrictions on communication imposed by law. However, the *Arthashastra*, written originally in the reign of Chandragupta Maurya (C. 324-300 BC), by *Kautilya* mentions punishments for spreading false rumours. The *Arthashastra* and the *Rock Edicts* also speak of spies and reporters.6

The earliest mention of pre-typographic newspapers is to be found in a contemporary historical works (*Muntakhab-uls-Lubab* by Khafi-Khan)7 of the later Mughul times. Colonel James Tod (1782-1835) sent hundreds of original manuscript newspapers to the court of Aurangzeb, sixth of the Great Mughals to the Royal Asiatic Society in London. The size of these seventeenth-century papers, written in different hands, was 8 inches by 4½ inches.8 These were considerably

---

5 *Acta Diurna* (Latin: *Daily Acts* sometimes translated as *Daily Public Records*) were daily Roman official notices, a sort of daily gazette. They were carved on stone or metal and presented in message boards in public places like the Forum of Rome. They were also called simply *Acta* or *Diurna* or sometimes *Acta Popidi* or *Acta Publica* Available at: www.google.com. (Visited on March 27, 2013).


free and could report even personal affairs of the Emperor. There was no record of any law governing these newspapers. Perhaps, there was neither pre-censorship nor licensing, both being western institutions.⁹

It was sheer accident that brought printing press to India on 6 September 1556. Granting a request from Emperor of Abyssinia, the King of Portugal dispatched in 1556 a printing press and technicians via the cape route. But the Patriarch accompanying the press halted en route at Goa. From Goa his onwards journey to Abyssinia was first delayed and later abandoned. The Patriarch died on 22 December 1562. The press intended for missionary work in Abyssinia never left Goa, instead, it printed literature for Abyssinia from Goa.¹⁰ There was no press regulation until the British East India Company started ruling a part of India after the Battle of Plassey in 1757.

William Bolts, an ex-employee of the British East-India Company attempted to start the first newspaper in India in 1766 but was deported. Later a collection of papers on the affairs of India were published. These were particularly respecting the State of Bengal and its dependencies. It was published in 1773 by J. Almon, London. It was named as “Considerations on Indian Affairs”, in 2 volumes with maps and survey reports. In this publication J. Almon has been identified as former Judge of the Mayor’s Court of Calcutta.¹¹

¹¹ Supra n. 9.
The typographic media began in India with **James Augustus Hicky's** *Bengal Gazette or Calcutta General Advertiser*. Its first issue came out of the press on 29 January 1780. James Augustus Hicky's started to unmask Warren Hasting and East India Company's ruling clique (The Nabobs). At that time there was no law, which could restrict him. Hicky's Gazette put on record "the strictly private arrangement by which Mrs. Imhoff become the wife of the first Governor General in India." Hicky's courage gave birth to the first Government order against freedom of the press. Public notice is given that a weekly newspaper called the Bengal Gazette or Calcutta General Adviser, printed by J.A. Hicky, has lately been found to contain several improper paragraphs tending to vilify private characters and to disturb the peace of the settlement. It was longer permitted to be circulated through the channel of the General Post office. Libel suits resulting in heavy fines and imprisonments ultimately crushed J.A. Hicky. He had to sell his press and pass rest of his life in poverty.

William Dvane, an American Journalist, went to Calcutta in 1787. In Calcutta he edited the *Indian World*. But on 27 December, 1794 he was deported to England by Acting Governor-General Sir John Shore. His Calcutta property worth 50,000 dollars was

---


confiscated and his paper banned forever.\textsuperscript{14} The first newspaper in Madras, \textit{The Madras Courier} (October 1785) also had trouble with the authorities. Pre-censorship was first introduced in Madras in 1795. \textit{Madras Gazette} agreed to submit all general orders of the Government for scrutiny by the military secretary before their publication.

In 1798, Lord Wellesley became the Governor-General of India. His administrative set up was questioned by Tipu Sultan and the Europeans in India. Lord Wellesley wanted to ensure that newspaper should not carry any information which may prove helpful to the ruler of Mysore (Tipu Sultan) and so he decided to tighten his control over the newspapers. Lord framed regulations in 1799 to the following effects:

“Every printer of newspaper would print his name at the bottom of the paper, every editor and proprietor would communicate their names and places of abode to the secretary to the Government; no paper would be published on Sundays; and no paper would be published at all until it was previously inspected by the Secretary to the Government.” Any breach of the regulations was punishable with deportation from India.\textsuperscript{15}

Instructions were circulated to the Secretary to exclude from the newspapers information endangering British interest in India.


\textsuperscript{15} Richard Colley Wellesley, Marquess of (1760-1842), the East India company’s Governor General of India, 1797-1805.
Secretary was also required to censor news relating to the probability of war or peace with any of the Indian powers and all private scandals or libels on individuals. Nothing was to be published which might tend to affect the influence and credit of the British power with native Indian States.\textsuperscript{16}

During Second Maratha war which broke out in 1802, the publication of news concerning the movement of Company’s ship caused much concern to the Government which compelled the Governor General to issue fresh instructions to the Editors of some of the newspapers not to publish any such information during the war period. Lord Minto, who remained the Governor General during 1807-1813 took notice of provocation publication and took step to bring these publications under Government control.\textsuperscript{17}

After Lord Minto, Lord Hastings was appointed Governor General in 1813.\textsuperscript{18} Lord Hastings also known as Earl of Moira appreciated the important part played by an independent press and consequently encouraged the pressman to perform their legitimate functions. To begin with, he slightly modified the regulations regarding censorship in 1813. Five years after (1818) he abolished the post of censor on the receipt of certain complaints. Again fresh regulations were issued in

\begin{footnotesize}

\textsuperscript{16} Margarita Barns, \textit{The Indian Press}, n. 3, 80 (1940).

\textsuperscript{17} Report of Press Commission, Part II, 12 (1954).


\end{footnotesize}
the same year. According to those regulations, editors were required to desist from publishing animus versions on the proceeding of Indian authorities in England, disquisitions on the political transactions of the local administrations, offensive remarks on the public conduct of the judges or the Bishop of Calcutta in the press of council, discussion having a tendency to create alarm or suspicion among the natives as to any intended interference with their religion, the republication from English or other newspapers of passages giving under the preceding heads or otherwise calculated to affect the British power or their reputation in India and private scandal or personal remarks on individuals tending to excite dissensions in society.”

Pre-censorship was abolished in 1818. James Silk Buckingham who was editor of Calcutta Journal and Raja Ram Mohan Roy, who was basically a social and religious reformer, played a significant role in establishing freedom of the press in India.

**Munro’s Recommendations**

The Government of India deputed Sir Thomas Munro to examine and report on problems of press in India. Sir Munro's view was that problem of European press was not a serious one. In case of Indian press, he expressed both his anxiety and fears. According to him, “Though the danger be distant, it is nevertheless there. It could corrupt and disaffect the Indian army and work for the overthrow of the British power. It might spread among the people the principles of

---

19 V.D. Mahajan, *Modern Indian History* 488 (S. Chand Group, 1993).
liberty and stimulate them to expel the strangers who rule over them and to establish a national government. A free press and domination of strangers are things which are quite incompatible and cannot long exist together for long time.20

**Press Ordinance Act, 1823**

On 15 April 1823, Press Ordinance Act was passed which provided for the compulsory registration of press. The registration provided that no press was to be established nor any paper or book as to be printed without obtaining a licence for that purpose from the Government. All the papers and books printed under the system of licence were to be submitted to the Government for inspection and the Government was authorized to stop the circulation of any book or paper by a mere notice in the Government gazette.21

**Liberators of the Indian Press:** The regulations that were made in 1823 continued to remain in force up to 1835 when they were cancelled by Sir Charles Metcalfe.22 The latter took this step when he was acting as Governor-General. He was assisted in his work by Lord Macaulay who was the member of the law commission with the

---

20 Supra n. 19.
22 In 1830, Sir Charles Metcalfe, as a member of Governor-General’s council, said, “I think on the present occasion that I will be infinitely better to allow anything to the said, that to furnish a new source of discontent, by crushing the expression of public opinion. I have, for my own part, always advocated the liberty of press, believing its benefits to out weight its mischief and I continue to have the same opinion.” Charles Theophilus Metcalfe, 1st Baron Metcalfe (1785-1846), was the second son of Thomas Theophilus Metcalfe, then a major in the Bengal army, who afterwards become a director of the British East India Company, and was created a baronet in 1802. Cited in K.M. Shrivastava, Media Laws : A Historical Perspective, Mass Media in India 10 (2009) Publication Division, Ministry of information and Broadcasting, Government of India.
Government of India. Lord Macaulay disfavoured the idea of licencing and insisted for a declaration by the printer about the precise location of premises of its publication and get it registered. Macaulay was in favour of enacting a new legislation in place of the existing one which would enable a printer to publish without obtaining prior permission but at the same time make him liable for punishment for printing seditious matters. The Act prescribed a fine of rupees five thousand and imprisonment for a term not exceeding two years for not complying with the requirement of declaration.

**Licensing Act of 1857:** Freedom of the press having been firmly established under the Act of 1835 upto 1857, when the mutiny broke out in 1857. According to Act XV of 1857, there was regulation for establishment of printing presses and to restrain in certain cases the circulation of printed books and papers. These restrictions were of temporary nature and were withdrawn soon after the mutiny. In 1860, the Indian Penal Code was enacted. Though the code was not directed specifically against the press, it laid down offences which any writer, edition or publisher must avoid e.g. offences of defamation and obscenity.

---

23 Supra n. 19, p. 489.  
25 Supra n. 19, p. 489.  
Indian Penal Code 1860, Section 294. Obscene acts and songs: Whoever, to the annoyance of others—(a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.
Press and Registration of Books Act, 1867: The object of this Act was to regulate the printing presses and newspapers and also to preserve copies of books printed in British India and also the restriction on those books. The Act of 1867 is still in force although certain amendments were made in 1893 and 1940.27

The post mutiny period saw the coming up of a large number of newspapers edited by Indians in English and vernacular languages (local languages). In 1858, the Som Prakash, a Bengali weekly was founded by Pandit Ishwar Chandra Vidyasagar and Dwarkanath Vidyabhushan. Som Prakash upheld the cause of poor ryots against the mighty oppression of the English planters during the indigo disturbances of 1860. The Gramavasta Prakashika advocated the cause of the poor. The Amrit Bazar Patrika made its first appearance as a Bengali weekly. The paper played a significant role in imbibing a spirit of nationalism, patriotism, fearlessness and freedom. Besides newspapers, some periodicals of great repute were started during this period, such as the Banglarsharan of Bankim Chandra, Aryadarshan of Joginder Nath Vidyabhushan, and Bandhar of Kaliprasanna Ghosh.28

Indian Penal Code 1860, Section 295. Injuring or defiling place of worship with intent to insult the religion of any class: Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowing ledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

27 Ibid.
During this particular period, the Indian owned press adopted a nationalistic stance and criticised the Government policy of repression. Consequently, a new Section 124-A\textsuperscript{29} was added to Indian Penal Code in 1870, making penal all seditious writings and speeches calculated to excite feelings or dissatisfaction with a view to subverting the Government established by law in British India. However, the law failed to curb the problems presented by the native press of Bengal.

**The Dramatic Performances Act, 1876:** This Act empowers the Government to prohibit public dramatic performances which are scandalous, defamatory, seditions or obscene. The Act came into force under the administration of Viceroy Northbrook. The Act outlined the restrictions that public performances of a play, pantomime or any other drama would have to adhere to, if a State Government judged any play to be of scandalous nature; disrupting social values; or felt that it might excite feelings of disaffection against the Government established by law; or that it would corrupt persons, then the said performance would stand prohibited. The police was granted the

---

\textsuperscript{29} **Section 124A. Sedition:** Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

*Explanation 1:* The expression “disaffection” includes disloyalty and all fallings of enmity.

*Explanation 2:* Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

*Explanation 3:* Comments expressing disapprobation of the administrative or other action of attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.
license to enter the place, arrest the person, seize the scenery, costumes or articles which would be used in performances, whose use is prohibited under the Act. For the purpose of ascertaining the character of any intended public dramatic performance, the State Government may ask any information from author, proprietor or printer of drama,\textsuperscript{30} whoever contravenes this section shall be deemed to have committed an offence under Section 176 of Indian Penal Code, 1860.

The Indian Code Compilation of Unrepeated Central Acts declared in 1933 that the Act is one of the “obsolete laws” that exists in Indian today. But still, stringent censorship of public theatres has in fact continued in India in the post-independence era.

\textbf{Vernacular Press Act, 1878:} The disloyal tone of the Bengali newspapers came under close scrutiny of British Imperial Policy. Lord Lytton,\textsuperscript{31} therefore, passed the Vernacular Press Act in 1878 which was specially directed against newspapers published in Indian languages. The law provided for punishing and suppressing seditious writings calculated to produce dissatisfaction towards the British Government. It empowered the Government to issue search warrants and to enter the premises of any press, even without orders from any

\textsuperscript{30} The Dramatic Performance Act, 1970, Section 7.

\textsuperscript{31} Edward Robert Lytton, Bulwer-Lytton, 1st Earl of Lytton (1831-1891) was an English Statesman, who served as Viceroy of India; was a poet, under the pen name of Owen Meredith. Cited in K.M. Shrivastava, \textit{Media Laws : A Historical Perspective}, Mass Media in India 28 (2009) Publication Division, Ministry of information and Broadcasting, Government of India.
court. The Vernacular Press Act empowered a Magistrate with previous sanction of the Provincial Government to require a printer or publisher to deposit a security or enter into a bond binding himself not to print or publish anything likely to incite feelings of disaffection towards the Government or hatred between the different races of India. The Government was authorised to warn as well as to confiscate the press plant, the deposit etc. in the event of the publication of some undesirable matter. The printer was given the option of submitting proofs to the official censor and dropping all rejected matter and thus escape from the clutches of law.\(^{32}\) Vernacular Press Act was repealed by Lord Ripon\(^{33}\) on Jan 10, 1882.

**The Indian Telegraphic Act, 1885 :** The Government had exclusive privilege under this Act in respect of telegraph and power to grant licenses. The definition of telegraph in this Act is very wide as it later covered all other means of communication depending on electromagnetic waves, including teleprinter, telephone, fax, radio and television. It provides for interception of messages and takeover of licensed establishments by the Government in any public emergency or in the interest of public safety.

The Indian National Congress was founded in December 1885. Its formulation was hailed as a major event which added importance of the Indian Press as a whole. The press took a big initiative in

\(^{32}\) *Supra* n. 19, p. 489.

\(^{33}\) George Frederick Samuel Robinson, 1st Marquess of Ripon (1827-1909).
highlighting the aims and objects of the congress. Press became more and more nationalistic in attitude and political in tone.\textsuperscript{34} The writings of the press of Bengal came under close scrutiny of Government during the last days of Lord Dufferin.\textsuperscript{35} Press started publishing secret documents. So Government came out with new legislations titled as the \textbf{Indian Official Documents and Information Act, 1889}. The Act was framed so as to prevent disclosure of official documents and information. The Act was needed more for the Anglo-Indian Press than for the Indian Press because the Anglo-Indian papers were in the habit of publishing official secrets which used to make the Governor uneasy.\textsuperscript{36}

\textbf{The Indian Council Act, 1892 :} This Act added new dimensions to the progress of Indian Journalism. In 1898, rise of violence in the country against the imperialistic policies of the Government strengthened the belief of the Britishers to further tighten their control over the people and their freedom of expression. Government amended Indian Penal Code and code of criminal procedure so as to make the law of sedition more effective. The changes in the Penal Code made by the Amendment Act with which the press was concerned were:

\begin{itemize}
  \item \textsuperscript{34} G.S. Chhabra, \textit{Advanced Study in the Constitutional History of India} 181 (Prakash brothers Delhi, 1973).
  \item \textsuperscript{36} \textit{Ibid}. 
\end{itemize}
(i) The substitution of Section 124-A, to make it more effective,

(ii) Insertion of Section 153-A\textsuperscript{37} to punish the promotion of enmity between classes,

(iii) The substitution of Section 505\textsuperscript{38} relating to the making or publishing of statement conducive to public mischief.

\textsuperscript{37} 153A : Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintains of harmony :

(1) Whoever
(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on ground of religion, race, place of birth, residence, language, caste or falling or enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or
(b) Commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, or 2[(c) organizes any exercise, movement, drill or other similar activity intending that violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, religious, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.- (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

\textsuperscript{38} 505 : Statements conducing to public mischief :

(1) Whoever makes, publishes or circulates any statement, rumour or report,--
(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or
(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or
(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community; shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communicates, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc. : Whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance of religious worship religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.
The Newspapers (Incitement of offences) Act, 1908: With Swadeshi Movement and partition of Bengal by Lord Curzon there was lot of agitation in the country. Consequently, Newspaper (Incitement of offences) Act, 1908 was passed in June 1908. The object of the Act was to put an end to the existence of those newspapers which contained any incitement to murder or any offence under the Explosive Substances Act, 1908 or any Act of violence. According to this Act, a District Magistrate was empowered to confiscate the printing press where a newspaper containing an incitement to violence was printed. He was empowered to call upon the members to show cause as to why the orders should not be made absolute. If on hearing the evidence the magistrate was satisfied that the newspaper had committed the offence, the conditional order was to be made absolute and the police was directed to attach the press and other property mentioned in the order.

On Account of the stringent provisions of the Act of 1908, the Yugantar, the Sandhya and the Bandematram stopped their publication. Although the Government had vast powers under the Act of 1908, it was contended by the Government that those powers were not sufficient to stop the dissemination of seditious literature through the press. Consequently, the Indian Press Act was passed in 1910 to meet the situation.

Exception: It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it [in good faith and] without any such intent as aforesaid.
The Indian Press Act, 1910: Its aim was to provide for the better control of the press. The Act was directed against offences involving violence as well as sedition. The owners of the printing presses and publishers of newspapers were subject to very hard measures. The Act required security deposit by every person keeping a printing press. The Act provided forfeiture of such deposit in all cases where the matter contained in the newspaper mentioned violence or sedition. The provisions of forfeiture were attracted when the matter published in the newspaper had such tendency, directly or indirectly, whether by influence, suggestions or allusion.

In 1914, Indian Copyright Act, 1914 was passed, which was replaced by a comprehensive legislation in 1957 by the new Copyright Act (14 of 1957).

In 1918 Government passed the Cinematograph Act (2 of 1918), which was replaced by the Cinematograph Act, 1952 (37 of 1952).

The Indian States (Protection Against Disaffection) Act, 1922: The Act provided punishment of imprisonment upto 5 years for any person editing, printing or publishing any document which brings into hatred or contempt or excites disaffection towards any Prince or Chief of a State in India or the Government or the administration established in any such State. For this purpose the powers of

---

39 In K.A. Abbas v. Union of India (1970) 2 SCC 780, The Supreme Court held that censorship in India has full justification in the field of the exhibition of cinema films. It is in the interest of society. The censorship of films including prior restraint is justified under the constitution. It has been almost universally recognized that the treatment of motion pictures must be different from that of art & other forms of art and expression.
forfeiture under Sections 99-A to 99-C of Criminal Procedure Code and of postal interception under sections 27-B to 27-D of the Indian Post Offices Act were made applicable.

**The Official Secrets Act, 1923**: This Act was passed in order to update the existing provisions of Indian Official Secrets Act of 1889. Section 5 of this Act, which affects the press, deals with “official secrets” and relates to “wrongful communication of information.”

To meet the situation posed by the civil disobedience movement of 1930, British passed **Indian Press (Emergency Powers) Act, 1931**. The Act provides punishment where words, signs or visible representations which

(a) incite to or encourage or tend to or invite the commission of any offence of murder or any cognizable offence involving violence or
(b) directly or indirectly express approval or admiration of any such offence of any person, real or fictitious, who has committed or is alleged or represented to have committed such offence.”

**The Foreign Relation Act, 1932**: Its object was to penalize publications calculated to interfere with the maintenance of good relations between His Majesty’s Governments and friendly foreign states. Any book, newspaper or other document containing such specified defamatory matter which tended to prejudice the maintenance of friendly relation between His Majesty’s Government and the Government of such State could be retained in the same

---

40 Indian Press (Emergency Powers) Act, 1931, Section 4(1).
manner as seditious literature. Powers of forfeiture\textsuperscript{41} and postal interception\textsuperscript{42} were extended by Section 3 of this Act to documents containing matter defamatory of such ruler or his consort or son or principal minister of a state outside but adjoining India.

**The Indian States (Protection) Act, 1934** : The object of this Act was to prevent unreasonable attacks on the administration of Indian States in the newspapers of British India and provide authorities in British India with powers to deal with bands or demonstrators organised on semi-military lines for the purpose of entering and spreading disaffection in the territories of the Indian States.\textsuperscript{43}

In 1939, after the broke out of Second World War, Defence of India Act was passed. Action was taken against those newspapers which dared to violate the rules and law framed under this Act.

**The Press Trust of India Ltd., 1948** : The organization took over the supply of news to and from India. This was done on the basis of an agreement with the Reuters.\textsuperscript{44} This agreement enabled the Indian Press to get complete control over its own internal news supply. The Press Trust is a non-profit making concern and membership is open to all newspapers of India. The Press Trust of India has now become independent of the Reuters.\textsuperscript{45}

\textsuperscript{41} The Criminal Procedure Code, 1898, Section 99A-99C.
\textsuperscript{42} Indian Post Offices Act, 1898, Section 27-B-27D.
\textsuperscript{44} Reuters is an international news agency headquartered in London.
\textsuperscript{45} Supra n. 19, p. 496.
Press Laws Inquiry Committee, 1948 was set up under the chairmanship of Shree Ganganath Jha. The committee was required to gather all the existing press laws of India and make recommendations as to what directions in which law required to be modified. The committee made following recommendations:46:

1) An explanation should be added to Section 153-A of Indian Penal Code (Promoting enmity between classes) to the effect that it does not amount to an offence under that section to advocate a change in the social or economic order provided such advocacy does not involve violence.


4) Before taking action against the press under emergency legislation, Provincial Governments should invariably consult the Press Advisory Committee or similar body.

5) Section 124-A of Indian Penal Code relating to sedition should be amended so as to apply only to acts or words which either incite disorder or are intended or tend to incite disorder.

6) Section 144 Criminal Procedure Code should not be applied to the press and separate provisions should be made, if necessary, for dealing with the press in urgent cases of apprehended danger.

46 Supra n. 19, p. 497.
7) Necessary provisions should be made in the law to empower courts to order the closing down of a press for a special period in case of repeated violations of law.

The Press (Objectionable Matter) Act, 1951: According to the objects of the Act, new law was directed against the encouragement of violence or sabotage of certain other very grave offences and the publication of scurrilous matter. No pre-censorship was imposed on any newspaper. No action was to be taken against any newspaper unless it actually abused its freedom by the publication of some objectionable matter.

On 23rd September 1952, The Government of India appointed a press commission to enquire into the state of the press and to indicate the lines of its development in the future. Its recommendations resulted in establishment of the Press Council and a law to regulate working conditions of journalists, which provides for appointment of a wage Board periodically.

**ELECTRONIC MEDIA**

Electronic media are media that use electronic or electromechanical energy for the audience to access the content. This

---


48 It led to similar demand by Cine-Workers that ultimately led to the cine-workers and Cinema Theatre Workers (Regulation of Employment) Act 1981, and Cine-Workers Welfare Cess Act, 1981.

49 The Working Journalists Act, 1955 gives job security to working journalists, provides for Statutory Wage Boards, entitled them to payment of a gratuity and provident fund. It also regulates hours of work, holidays and notice period for termination of service.
is in contrast to static media – mainly print media. Print media which is most often created electronically but don’t required electronics to be accessed by the user in the printed form. The primary electronic media include video recording, audio recording, multimedia presentations, slide presentation, CD – ROM and online content. Most new media are in the form of digital media. An equipment used in the electronic communication process e.g. Television, Radio, Telephone, Desktop Computer, Game console, handheld device is also considered as electronic media.

The birth of electronic media took place with the invention of radio. Radio – as single voice mile way trilled millions across the continents who marvelled at this miraculous hearing of voice. Then the voice get a face through Television. Television was a revolution in itself. On September 15, 1959, Doordashan was inaugurated in India. With the introduction of cable television in 1993, electronic media has emerged as a greatest social force than ever. The electronic media is very useful – educationally, socially, politically and economically. Television can in fact, be used to as a powerful medium to spread social awareness among the illiterate masses against various social issues.50

**HISTORY OF ELECTRONIC MEDIA**

In electronic media, transmission through wire was in the form of Telegraph (1795 – 1832), facsimile (1843 – 1861), Telephone (1849 -

50 Available at: http://indialawyers.wordpress.com/category/media-law. (Visited at March 29, 2010).

**Primary uses of electronic media**

Primary uses of electronic media are journalism-news; marketing – advertising and graphic design; fine art – video; digital photography, digital art, experiment music; business presentation, video games, movies and music.\textsuperscript{52}

**RADIO**

Broadcasting of Radio was started in 1927 with two private transmitters in Bombay and Calcutta. In 1936, Delhi station started and in the same year, The Indian Broadcasting was named All India Radio (AIR). During the time of independence, six radio stations came to light – Bombay, Calcutta, Delhi, Madras, Lucknow and Tiruchi. From 1957, All India Radio was known as Akashvani. In 1957, Vividh Bharti, the All India Radio variety programme service was started at Bombay. In 1969, a new channel ‘Yuva Vani’ was started at Delhi. The sponsored programmes on the commercial service were introduced in 1970. In 1976, Radio and television were separated and became two independent corporations. Television set up was called Doordarshan.\textsuperscript{53}

\textsuperscript{51} Available at: http://en.wikipedia.org/wiki/electronic_media\textsuperscript{51}. (Visited on April 7, 2010).

\textsuperscript{52} Ibid.

\textsuperscript{53} Pramod K. Sinha, *Elements of Electronic Media* 9 (Kanishka Publisher Distributors, Delhi, 2007).
Radio gives information, education and entertainment. Radio is made effective as an agent for development, especially in the rural areas, 40% people in India are below the poverty line and half the population is illiterate. Radio being the medium of the spoken word uses conversational, simple and direct language. Rural programmes have been able to help the farmers in agricultural work.

**TELEVISION**

Satellite revolutionized television broadcasting from 1962. In that year appeared the first satellite called the bold bird. In 1965 came Intel sat, a big international communication system. Another such system, Intersputnik was added in 1971. Television came to India on September 15, 1959. The declared aim was to discover what television could achieve in community development and formal education. Entertainment programmes were stated on August 15, 1965. Programmes like *Krishi Darshan*, *Chaupal*, *Humlog* or *Chitarhaar* were telecasted from Doordarshan. In late 80’s and early 90’s Ramanand Sagar’s epic ‘*The Ramayana*’ and later BR Chopra’s ‘*The Mahabhatta*’ was started.54

With the emergence of Cable television in 1993, electronic media has emerged as a greatest social force than ever. Television can in fact, be used to as a powerful medium to spread social awareness among the illiterate masses against various social evils. Discussion on

---

54 *Supra* n. 53.
various topics can help the educated masses to increase their intellectual abilities and widen their horizons. The various news channels keep the vigilant citizens updated. Channels like Discovery and National Geographic keep the inquisitive mind busy and satisfy every intellectual query of a probing mind. Television can help popularize technology and internationalize and universalize our outlook.

Along with television, other means of electronic media are like internet and cinema which are fast growing and are extremely popular. Television can help in strengthening our unity and integrity and shake off social evils and superstitions.

Thus electronic media can play a great constructive role which help to build the social and cultural infrastructure of the nation if wisely used.55

**MASS COMMUNICATION**

Mass communication plays a vital role in creating awareness among people about national policies and programmes by providing information and education. It helps people to be active partners in the nation building endeavour. The ministry of information and broadcasting is responsible for development and regulation of information broadcasting and film sectors in the country. The broadcasting sector consists of Prasar Bharti. Prasar Bharti came into

---

55 *Supra* n. 53, p. 10.
existence by Act of 1997 and Doordarshan and All India Radio is put under it. Broadcasting sector has about 828 private channels\textsuperscript{56} and cable network all over the country. The information sector includes the print media which is regulated by press council of India. In addition to this, media units of government are:

- Press information Bureau,
- Directorate of advertising and visual publicity,
- Publication Division,
- Directorate of field publicity,
- Song and Drama Division,
- Photo division and
- Research, Reference and Training Division.

Film making is in the non–government sector. The government presence in this sector consists of film division, directorate of film festivals, National Film Development Corporation, the Central Board of Film Institute, Film Archives of India and Children’s Film Society. The government has set two film institutes one at Pune and other at Kolkata.\textsuperscript{57}

The information and broadcasting sector has been under going changes largely due to technological development during last two decades. In 1980, Doordarshan started using INSAT for nation–wide transmission of its channels. Through INSAT huge networks of more

\textsuperscript{56} Private Satellite TV Channels as on 20-3-2013, \textit{available at:} http://www.mib.nic.in (Visited on July 5, 2013).

\textsuperscript{57} \textit{Available at:} www.blog.co.uk. (Visited on April 15, 2010).
than 1,000 terrestrial transmit has been created all over the country. Use of computers has been revolutionising information collection and dissemination 58

Convergence is yet another technological revolution profoundly influencing the media scenario. Convergence is coming about in various branches of entertainment like film, television and music industry. The same satellite and optic fiber is being used as infrastructure transmitting information whether for telecommunication or for computers or for broadcasting. At the receiving end the computers being used as a tool not only for information processing, but also for receiving information and broadcasting programme. 59

**ROLE OF MEDIA**

"Give me the liberty to know, to utter and argue freely according to conscience above all liberties". 60

*John Milton*

Since then, the freedom of speech and expression has become a fundamental mantra to realize democratic aspirations.

In 1948, United Nations adopted the Universal Declaration of Human Rights. It states:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions*

---

58 *Supra* n.57.
59 Available at: www.webcrawper.com (Visited on April 16, 2010).
without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.\textsuperscript{61}

\textbf{Justice Palkhivala} observed,

\textit{Freedom is to the press what oxygen is to the human being; it is the essential condition of its survival. To talk of a democracy without a free press is a contradiction in terms.}

\textit{A free press is not an optional extra in a democracy.}\textsuperscript{62}

In Indian Scenario, during colonial administration in India, dissent was never encouraged. When India attained Independence, the framers of the Indian constitution being aware of the significance of right to free speech, made it a fundamental one. The freedom of speech and expression, which includes freedom of media also, is the soul of democracy. The press \textit{per se} is not given any special right. Yet the press being considered the voice of the people enjoys the same rights as individual citizens. Consequently, the healthy relationship between the media and the State is the desideratum for protecting human rights. But there is an inherent problem for ideas, beliefs and opinions when expressed, may cause conflicts.\textsuperscript{63} To resolve such conflicts, the Indian constitution has provided for certain 'reasonable' restrictions in Article 19(2).\textsuperscript{64} Press enables the public to keep a

\textsuperscript{61} Universal Declaration of Human Rights, 1948, Article 19.


\textsuperscript{63} Julius Stone, \textit{Social Dimensions of Law and Justice} 226-227 (Stevens & Sons Limited, 1966).

\textsuperscript{64} Article 19(2) reads : Nothing in Sub clause (a) of clause (1) Shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes
constant vigil over the affairs of the State and ventilate their views for corrective action if anything goes wary. An accountable and transparent Government and well informed people contribute to a successful democracy. Media have the role of educating people, guarding their freedom, watching over the Government, challenging it and forcing it into the open. Therefore, the media have a duty of watching the administration. It also enables the citizenry to demand positive action on the part of Government to ameliorate the condition of the society in general and of the weaker section of the society in particular.  

The role of the media is vital in generating a democratic culture that extends beyond the political system and becomes engrained in the public consciousness over time. It is through the media that people have greater effect *vis-a-vis* what a person says privately. In order, for the media to fulfill this function, it must guarantee its objectivity. The journalists should always be a neutral observer, unengaged with events but faithfully recording them.  

With the advent of new technologies, electronic media has become both popular and hyperactive. Cyber world opens up to electronic journals and the digital press has become a popular channel for 'expression' in the electronic age. The problem is whether

reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency and morality visited on contempt of court, defamation and incidence to an offence.

65 Available at: http://indialawyers.wordpress.com/category/media-law/ (Visited on July 25, 2010).

66 Available at: http://www.halsbuyvys.in/role-of-themedia.html (Visited on Aug. 11, 2010).
they truly represent the sentiments of people or whether they are only mouth pieces of some interested groups or remain tantalizing. Sting 'operations' by using electronic bugs while interviewing a person is good in their attempts to bring out truth, but if the same is used for blackmailing a person, it is not only illegal, but also immoral. Democracy may then denigrate into videocracy.67

**MEDIA AND ITS ACCOUNTABILITY**

The development of Independent, legally protected, professionally managed and economically viable news media is essential to social, political and economic progress. It is a society's most promising tool for providing citizens the information they need to bring about and sustain government reform.

The effectiveness of media, in turn, depends on access to information and freedom of expression, as well as professional and ethical cadre of investigative journalism.

Accountability, one of the most important principles of the media must be ensured in everyday practice of journalism. Accountability is must in time of conflict, turmoil and in times of transgressions. But with the growth of media in India over the last decade there is the steep decline in media accountability. Accountability even with in media organization is nowhere near transparency which results into further deterioration of media

---

67 *Available at*: [http://idialawyers.wordpress.com/category/media-law](http://idialawyers.wordpress.com/category/media-law) (Visited on July 22, 2010).
freedom and independence as a whole. The media in India have become more and more 'taploidised' and has packaged 'news' as entertainment society. It is still the primary conveyor of information, news and views in our society. As being fourth estate, media have vital in a democracy and acts as a watchdog.68

The media are expected to play a vanguard role in making the legislature and executive accountable. Media abdicate their role as educator in favour of being entertainer. Media become big business which relies on corporate advertising. Indian media where a product merely of immaturity. Media’s focus is on glamour and celebrity and it neglect the lives of ordinary Indians. Its disgusting to watch live coverages of celebrity wedding or murder cases of individuals for hours and hours together, as it puts no importance to anybody. Families of victims of rape or murder are rounded by all channels. Even a word uttered out of desperation or carelessness, is taken to the utmost limits and stories spun. Such stories affect the cases which are pending in the Courts So much resources be wasted on publicising the private facts of celebrities. Very less channels cover the serious problems like farmer suicides, increasing number of murders, suicide of Information Technology Personnel, increasing number of suicides, crimes committed by teenagers and students, youth unrest, unemployment among educated ones, public money and tax being

used by politicians for their luxuries and travelling. These are all the relevant social issues today, on which media are paying no attention.\textsuperscript{69}

The 'Breaking News' phenomenon has broken into the Indian television screens. In the war of Television Rating Points (TRPs)\textsuperscript{70} to air the news, little attention is paid to verify the information. Increasingly, these channels are drifting from their original trade and striving to take the place of entertainment channels. In Aarushi murder case even before the investigation was complete, the press had collected whatever bits of information they could gather and each channel had their own thesis to present on the issue. News channels need to replace 'sensational journalism' with 'sensitive journalism' for maintaining the status of fourth estate.\textsuperscript{71}

'Facts are sacred and comment is free' is the basic norm of journalism. This is reinterpreted as 'news in sacred and views are free'. But the situation is changed to 'false news is for a price and the views are free.'\textsuperscript{72}


\textsuperscript{70} TRP : TRP or Television Rating Point is a method of measurement of viewership of various TV shows. A Show's TRP indicates its popularity and helps advertisers decide which show to sponsor or advertise on. At the moment, TRPs are measured by TAM Media Research (Television Audience Measurement) TAM installs equipment (People Meter) in a few thousand homes and records their viewership. This is considered representative of the national population. "Needed, A Reality Check", \textit{The Tribune}, Nov. 22, 2010.


\textsuperscript{72} Comment made by Mr. S. Nagesh Kumar, Deputy Editor, \textit{The Hindu}, Hyderabad at a Seminar on General Election-2009, Media Reporting, organized by Press
Media by blatant abuse of freedom of speech and expression camouflage advertisement as news and in the process they are violating the norms under Indian Penal Code 1860, Income Tax Act, 1961 and Representation of People Act, 1951.

Selling news space by television Channels and columns by print media is breach of all ethical norms. An advertisement shall be distinguished from the news items or news programme and accompanied by the indication that it is an advertisement and the amount charged by media.73

The Media both print and electronic have freedom of speech and expression as part of the constitutionally guaranteed fundamental right.74 Media's freedom has to sub-serve the interests of the people's expression, right through which the governing process begins. The media which is hailed as fourth estate is expected to give unbiased and objective reports, informing and enlightening the people. The basic norm that there should be strict separation between news and views has been violated day in and day out. The thin line between 'news' and 'advertisement' is disintegrated today. News is supposed to be regarded as factual reporting of events. Advertisement is in fact selling the space of the newspaper for commercial promotion of the products and services offered by different companies. The newspaper or news channels are expected to mention that a particular piece is an advertisement.

73 Code of Conduct developed by Press Council of India and Advertisement Standard Council of India.
(1) All citizens shall have the right:
   (a) to freedom of speech and expression;
Though media enjoy the fundamental right of free speech at par with individual citizens, it is more powerful than that of ordinary citizens because it is organized. The media rightly enjoys the free speech right. But there are also certain negative aspects, which cannot be ignored. The media instead of being a noble profession is largely being considered a business. This commercialises the media. Some television channels sometimes indulge in what is known as 'Trial by Media' even before the alleged offenders are brought before Court. Some television Channels and photo journalists peep through the keyholes and invade the privacy, especially the privacy of celebrities (popularly known as paparazzi). Such acts by media lead to infringement of privacy and sensationalizing of issues. This is not conductive to public interest.\textsuperscript{75}

**MEDIA AND RIGHT TO INFORMATION**

At the time of framing of the Constitution, there was right to freedom of expression, but no right to information. One can’t access a master roll, a bill, a voucher, a list of people below the poverty line, anything with in the government. It was all a big secret. The Right to Information Act has been passed in 2005 to answer all the queries of general public.

Traditional system of information access in India has made journalists dependent on sources-which are people in power. They are bureaucrats or politicians. Much of government information is so

\textsuperscript{75} Role of the Media in a Democracy, Media Law, Law Resource India by NNLRJ India, Available at: http://indialawyers.wordpress.com/author/lawreports/ (Visited on Aug. 10, 2010).
badly collected that the data is unreliable and useless. Much of it is falsified data. If journalists use right to information they can embarrass such persons in power. The right to information is the citizen’s right to information, and it is the obligation of media to act as a watchdog and ensure that the citizen’s rights are enforced. In the United States and Canada, the right to information law has been used extensively by the media.\textsuperscript{76}

**RESEARCH METHODOLOGY**

The methods to research to be used in the proposed study would be analytical, comparative and empirical in nature. The main focus of this study is to:

1) Analyse the various provisions of laws regulating electronic media.
2) Coverage and extent of electronic media.
3) Accountability of electronic media.
4) Freedom of electronic media and interests of society.

For the completion of research work primary as well as secondary sources of information shall be utilised to collect data. The other sources of information also include standard books, journals, magazines and newspapers. The researcher would make efforts to obtain views from lawyers, law students, Journalism students, academicians and well informed persons from general public through circulating a detailed questionnaire and will make data evaluation.

\textsuperscript{76} Available at: http://www.indiatogether.org/2008/jun/rgh-watchdog.htm. (Visited on Aug. 24, 2010).
OBJECT OF THE STUDY

Standing on three pillars, Indian Democracy has legislature, executive and judiciary as its main organs. With the passage of time, these pillars started shaking, then the 'Fourth Estate' i.e. Media take the position. The freedom of media/press is impliedly enunciated under the provisions of Constitution. In the beginning, it showed desired results but with the passage of time, in the light of its narrow and vested interests, media especially electronic media showed lack of interest in performing its sincere duties and accountabilities by-passing norms of supreme constitution and honorable laws regulating it. It succumbed to the bad name of malpractices and corruption. It went on degrading day by day to the extent that it acquired the names of yellow journalism, paid news syndrome, investigative journalism and tainted communication. The object of study is to find out the freedom and accountability of media along with interests of public.

SCHEME OF THE STUDY

The study on "Role Of Law As A Regulator For Electronic Media : A Socio – Legal Study" is divided into six chapters.

Chapter-1 Introduction It provides information about history of laws regulating media; media; its role in society and its accountability.
Chapter-2 Freedom of speech and expression under Indian constitution with special reference to electronic media It provides detailed information about freedom of speech and expression and reasonable restrictions on electronic media enshrined under Indian Constitution.

Chapter-3 An analytical aspect of laws regulating electronic media It provides information about various laws enacted and amended from time to time to regulate electronic media.

Chapter-4 Freedom of speech vis-a-vis responsible journalism It provides about freedom of electronic media in disseminating any kind information or entertainment along with interests of general public.

Chapter-5 Role of law as a regulator for electronic media : An empirical and evaluative critique This chapter deals with questionnaires filled by persons of different categories and evaluation of those answers in the form of pie-chart and bar diagrams.

Chapter-6 Conclusion and Suggestions This chapter deals with conclusion of the whole study and provides suggestions to curb the menace of violations of laws regulating electronic media and effective implementation of legal provisions.