Chapter – 6

CONCLUSION AND SUGGESTION

In Old days men had the rack. Now they have the press. That is an improvement certainly. But still it is very bad, and wrong, and demoralising. Somebody was it Burke-called Journalism the fourth estate. That was true at the time, no doubt. But at the present moment it really is the only estate. It has eaten up the over three. The Lords Temporal say nothing, the Lords Spiritual have nothing to say, and the House of Commons has nothing to say it. We are dominated by journalism In America the president reigns for four years and journalism Governs, for ever and ever.

Oscar Wilde\(^1\)

In society, every community consists of groups with diverse backgrounds of social class, economic status and potential or religious affiliation. A society needs some communication system. Communication is a process of sharing or exchange of ideas, information, knowledge, attitude or feeling among two or more persons. Such communication takes place through the media. Media (Plural of Medium) means that by which something is done. ‘Mass Media’ means media which reaches the mass (enormous number of

---

\(^1\) The Soul of Man, 1891 [Cited in Madhvi Goradia, Facets of Media Law 308 (Eastern Book Company, Lucknow, 2010)].
people) spread over a vast area simultaneously. So any media that multiplies messages and takes it to a large number of people is called mass media.

Mass media may be divided broadly into two, namely, print media and electronic media. Print media consists of books, magazines and newspapers. Electronic media include radio, television, satellite TV, cable TV, cinema, internet, mobile phone and video games.

Media play its role efficiently in spreading information, as public watch dog, safeguarding democracy, entertainment, education, economic growth, environment, health and politics. But the entertainment value of media has overshadowed the other important fields.

Unlike other forms of media, television has now become one of the most powerful media of mass communication. With a modest beginning in the 1930s, it has grown into a massive networks of mass information and mass entertainment in the world today. The attraction of the ‘visualness’ of medium, the capacity to began images of actual events, people and places is so great that people remain glued to the television set for hours. With the advent of satellite television and cable television, television is now described as homogenising agent.

Private television in the fastest growing sector of media in many parts of the world along with India. In many cases, the owners of
private television broadcasting stations have explicit political and electoral ambitions. The main goal of private ownership of television is profit making like in any commercial organisation. In India, private television channels broadcast their own programmes.

To regulate electronic media, a number of laws have been framed from time to time. Earlier laws relating to wireless and radio broadcasting in pre-independence era were India Telegraph Act, 1933 and Indian Wireless Telegraphy Act, 1933. In 1950, Constitution of India was enforced and under Article 19(1) (a) i.e. fundamental right to freedom of speech and expression was conferred along with reasonable restrictions under Article 19(2). Media was impliedly conferred this right by various judicial interpretations. This fundamental right of media includes right to circulate information, right to receive information, right to criticise, right to conduct interviews, right to report court proceedings and legislative proceedings, right to advertise (commercial speech) and right to broadcast.

The term 'reasonable restriction' under Article 19(2) was interpreted by the Supreme Court in *A.K. Gopalan v. State of Madras*\(^2\) and *Narottamdas v. State of M.P.*\(^3\) Eight reasonable restrictions are in the interest of Sovereignty and Integrity of India, the Security of the State, Friendly relations with Foreign States, Public Order, Decency or

---

\(^2\) AIR 1950 SC 27.
\(^3\) AIR 1969 SC 1667

The Legislation which regulate the films is *Cinematograph Act, 1952* and *Cinematograph (Certification) Rules, 1983*. The Act deals with mainly two separate matters:

a) The examination and certification of films suitable for public exhibition.

b) Regulation of cinemas including their licensing.

The Centre Board of Film Certification (CBFC), the regulatory body for films, regularly orders directors to remove anything it deems offensive, including sex, nudity, violence or subjects considered politically subversive.

In *K.A. Abbas v. Union of India*[^4], the Supreme Court held that the pre – censorship of films is justified under Article 19(2) on the ground that the films have to be treated differently from other forms of art and expression because of its instant effect on persons who watch, particularly on adolescents.

[^4]: AIR 1971 SC 481
In ‘Bandit Queen’ case\(^5\) the Supreme Court observed that film that illustrates the consequences of a social evil necessarily must show that social evil. The guidelines in the Cinematograph Act must be interpreted in that light. No film that extols the social evil or encourages it is permissible but a film that carrier the message that the social evil is evil cannot be made impermissible on the ground, that it depicts the social evil. At the same time, depiction must be just, sufficient for the best left to the sensibilities of the expert tribunal.

In the ‘Bandit Queen’ movie a timeline of 12 minutes was deleted and edited on the orders CBFC, to make the movie eligible for an ‘A’ certificate. Under India law only the distribution of porn movies are prohibited and the films with censored material may be distributed via DVD. The DVD of this movie had all the obscene and disturbing scenes.

“S” Certificate Misused: Smart film distributors have quickly moved in to exploit the new classification of “S” certificate which was introduced in 1983 under the cinematograph (certification) Rules, 1983. Under this certificate a movie has been passed for strictly restricted showing to a specialised audience such as doctors, engineers, architects, scientists and academics. Some films are imported from East block, America and European markets. Some alter distributors saw an opportunity to import out-and-out blue films.

With the alleged connivance of certain bigwigs in the Ministry of Information and Broadcasting and Central Censor Board Bombay these films were brought in under “S” Certificate and sold to highest bidders.⁶

In the wake of the movie 'Vishwaroopam' pre-release censorship controversy, the ministry of Information and Broadcasting has set up a panel to review the existing issues of certification under cinematograph Act, 1952. This panel will review the mandate and functioning of CBFC and will recommend measures including statutory changes to enable CBFC to deal with contemporary requirements of certification and increased transparency. Such issues interalia may include, the process of certification under Act and Rules, including and revising committees, categories of certification, existing and proposed under the Cinematograph Amendment Bill, 2013.

For Broadcasting purpose, the Prasar Bharti Broadcasting Corporation of India Act, 1990 was passed. This Act aims at bringing the Government electronic media i.e. All India Radio and Doordarshan under the control of an autonomous organisation i.e. broadcasting corporation of India. This corporation is controlled by Broadcasting Council, Parliamentary Committee and the Central Government. There is interference of Central Government in matters of financial support, recruitment and broadcasting in certain matters. So in reality it is not

---

⁶ Available at: www.cscarchive.org (Visited on June 27, 2012).
an autonomous body and more over limited to AIR and Doordarshan and not to private broadcasters.

In Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal also known as Hero cup case the Supreme Court observed that there is no doubt that since the airwaves or frequencies are public property and are also limited, they have to be used in the best interest of the society and this can be done either by a central authority by establishing its own broadcasting network or regulating the grant of licenses to other agencies including private agencies. There is no exclusive privilege or monopoly in relation to production, transmission or telecasting and such an exclusive monopoly if claimed, was violation of Article 19(1)(a) of India Constitution.

Broadcasting freedom has four facets – freedoms of broadcasters, freedom of listeners/viewers to a variety of views and plurality of opinion, right of the citizens to have access to broadcasting media and right to establish private radio or Television stations.

In 1995, while delivering the Hero Cup judgment, the Supreme Court lamented the lacuna in this area of law and directed the establishment of an autonomous broadcasting authority to control and regulate media. The Broadcasting Bill of 1997 was introduced in

---

7 AIR 1995 SC 1236.  
8 Secretary Ministry of Information and Broadcasting, Government of India v/s Cricket Association of Bengal AIR 1995 SC 1236.
response to this judgment but languished in parliament. The Bill was to be replaced by the law on convergence under the name of 'The Communication Convergence Bill, 2001, which too, is yet to see the light of day.

The Cable Television Networks Regulation Act, 1995 was intended at curbing a perceived cultural invasion by regulation of content of the programmes being telecasted and by providing some accountability from cable operators. The Act provides for the mandatory registration for all cable operators but does not extend to private channel broadcasters. With the result that broadcaster remains unaccountable under this legislation. There is no power under the Act to take action against television channels or broadcasters but only cable operators are covered under it.

The Cable Television Network (Regulation) Amendment Act, 2011 has paved the way for digitalization of cable networks in a time-bound-phased manner in the entire country. Digitalization will facilitate on accurate and transparent subscription fee model, there by reducing the dependence of broadcasters on advertising revenue and this will in turn, considerably soften their anxiety for Television Rating Points (TRP).

The Copyright Act, 1957 was framed with the object to prevent plagiarism and unfair exploitation of creative work. The Copyright (Amendment) Act, 2012 is aimed at correcting an imbalance in India's
copyright law which was seen as favouring film producers and record labels rather than the lyricists, script writers and song composers. Right now, the lyricists sell their compositions to the production house and production house re-sell it to music companies, cell phone companies as ring tones, advertisements and use it wherever they can. In return, the creator of that song, music, tune gets nothing. The Amended Act, brings the concept of 'Digital Rights Management', which refers to access control technologies that can be used by hardware manufactures, publishers, copyright holders and individuals in order to impose limitations on the usage of digital content and devices. Three new section 2(xa), 65A, 65B deal with Digital right management. To curb piracy Sec 65A criminalizes the person who circumvents an effective technological measure for the purpose of protecting any of the rights. Many other sections relating to compulsory license, 3D-2D conversion of art, cover version, copyright societies, performance's right, fair dealing, author's moral rights etc. are added in the amended Act.

An independent self – regulatory body for non-news channels has been setup in June 2011 to receive complaints relating to programme content shown on private channels. This body is called as Broadcasting Content Complaints Council (BCCC). Self-regulatory Guidelines of BCCC identify seven themes whose violation can form the basis of filing a complaint. These are crime and violence; sex,
obscenity and nudity; horror and occult; drugs, smoking, tobacco, solvents and alcohol; religion and community; harm and offence and general restrictions. All through day and night, the channels continue to run an on-screen scroll, making the viewers aware of BCCC Electronic Media Monitoring centre (EMMC) of the Ministry of Information and Broadcasting has been of immense help in providing video clips of programmes against whom complaints are filed.

Advertisements including surrogate advertisement are monitored by Advertising Standards Council of India (ASCI) which issued directions to televisions channels. ASCI has banned the advertisements which are not in consonance with legal provisions which regulate them.

A Cap of 12 minutes per hour advertisement is applicable from October 1, 2013. This will help viewers in enjoying less interrupted programmes. But the result will be that advertisers have to pay more to television channels, as revenue of channels depends on advertisement. Final result will be that price of goods which are advertised on channels will increase.

For news channels-News Broadcasting Association (NBA), a self-regulatory association has been constituted. It has issued its guidelines to news channels broadcasting news.

Several code of ethics have been formulated from time to time to guide the persons of mass media such as journalists, broadcasters,
public relation persons etc. These code of ethics which are adopted by concerned associations of mass media are – International Code of Ethics 1991, The Code of Ethics and a charter for editors was formulated by the all India newspaper editor's conference in 1953, All India Newspaper Editor's Conference Code of Conduct, for the Media, 1962, Press Council Code of Ethics, Parliament Code of Ethics, 1976 and Code of Ethics for Broadcaster, 1969. A 9-Point code for broadcasters prohibits as: Criticism of friendly counties; attack on religion or communities; any obscene or defamatory matter; incitement to violence or anything against maintenance of law and order; aspersions against the integrity of President, Governor and Judiciary; attack on political party by name; anything amounting to Contempt of Court; hostile critics of any State or the Centre; anything showing disrespect to the Constitution or advocating change in the Constitution by violent means, but advocating changes in a Constitutional way should not be debarred.

In India each information and communication technology has its own regulatory authority. The press is monitored by Press council of India; Government channels i.e. Doordarhsan and all India Radio by Prasar Bharti (Broadcasting Trust); telecommunication is regulated by telecommunication Regulatory Authority of India (TRAI); Cinema and films by Central Board of Film Certification (CBFC); Advertisements by Advertising Standards Council of India (ASCI);
news channels regulated by News Broadcasters Association (NBA) and for non-news channels, self-regulatory body named Broadcasting Content Complaints Council (BCCC). Along with these regulatory authorities, there are plethora of laws which regulate Electronic media.

The regulations of modern media i.e. Electronic Media poses a challenge more than ever before. Firstly there is no single law or coordinate control by a centralised authority but a web of laws and authorities. The seamless web of laws and diverse authorities makes media regulations a rather complex and unwieldy task. Secondly, regulations have been made more challenging by globalization of news and entertainment with globalization and exposure to foreign culture, notions of social morals of morality and acceptability are becoming increasingly homegenised. Virtually now, it becomes impossible to control the flow of information from one country to another. This rendered censorship redundant. The availability of information on the internet is difficult to monitor and what may be banned in one place is easily available through internet and satellite Television at another place.

In India, with collapsing standards in public life cutting across party lines, the citizen, no longer depends upon the opposition as a watchdog of authority. Increasingly, he turns to the media to safeguard democracy and defend public interest, to expose corruption
and check the abuse of authority. Modern mass communication technology i.e. electronic media enables the media to extend its reach and to permeate all walks of life – political, social and economic. It is omnipresent, big brother watching everything, everywhere. When other estates fail, the media through its sustained campaigns evokes public indignation and spurs into speedy redress. Indeed, no other estate yields the kind of power and has influence on public opinion than the press does.

Modern media i.e. electronic media has enhanced the quality of democratic process by providing a platform for public participation on issues of national or social concern in a manner that is able to influence the Government. Media serves a two fold purpose. It not only carries information to the public, but also carries back public responses to the government, compelling the later to be more receptive to public opinion. In case of Jessica Lal Murder Case, Nitish Katara Case, Priyadarshini Matoo Case, witnesses turned hostile or investigations were manipulated through political influence. In such cases, there is danger of a trial by the media. But there is no denying that, had it not been for an activist media, the public would not have been adequately equipped to vocalise its demand for justice and the matter might well have died a quite death with the guilty going unpunished. The reopening of the case, a direct outcome of a sustained media campaign, brought a glimmer of hope that the guilty will not, after all, get off the hook quite so easily.
Media carries with it a corresponding responsibility imbued with a sense of trusteeship in providing the people with the kind of information needed for democratic participation, empowerment and informed choice. 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 by-passing norms of supreme Constitution and honourable laws regulating media. 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.

There is another side to the media revolution that has not been quite so commendable. The media’s preoccupation with the sensational and the salacious appears to have drowned news – worthiness and intelligent debate. The scores of twenty four hour channels beamed into TV homes everyday, coupled with the instant access to the web, relentlessly assault our sense with an overkill of information.

Competition began in the broadcasting media when the skies were opened up to private broadcasters in the 1990s. Private channels mushroomed and multiplied almost manically. Survival in this intensely competitive environment depends on ratings and the frantic
mantra of the time is Television Rating Points (TRP). India has more 24 hour news networks than any other country. The result of this intense competition is an obsession with grabbing 'eyeballs' and the desperation to carry 'breaking stories' even on issues unworthy of prominence. This results in journalistic ethics and propriety being compromised. Oftentimes, young reporters out to make a story indulge in crass voyeurism without the slightest notion of individual privacy or sensitivity to human tragedy. Diminished in the obsession with the immediate and the gratifying the capacity to provoke rational discourse on issues of meaningful national or social concern.

Undoubtedly, television captures the moment and brings home the horror of the event like no other medium can. But it make the viewers instantly judgmental. The instant impact of graphic, moving pictures without adequately exploring the context or the background of the event can lead to easy and often distorted conclusions.

News becomes a saleable commodity for the consumer rather than an instrument of intellectual debate and social change. The commercialisation of the media results in the editor having to act on the dictates of the management. The editor may lean in favour of the news worthy but the management exercise its veto in favour of what it regards as sale worthy. Traditionally, these were clearly demarcated roles and the editor was insulated from the demands of business. Now he can no longer be divorced from business.
The media acts as a repository of public trust for conveying correct and true information to the people. But, when paid information is presented as news content, it would mislead the public and hamper their judgment to form a correct opinion.

One question also arise whether electronic media is bane or boon. It provides useful information, but on the other hand sometimes mislead the public. Electronic media also disturb the mind set of young one's by showing violence and obscenity on the screen. As observed from the empirical study, around 85 – 100% agree that violence shown in TV programmes and cartoons have impact on mind and increase crime rate. [Graph 22 and Graph 23 (Chapter V)]. Indecency on screen have adverse impact on our social and moral values [Graph 24 (Chapter V)].

Critically analyzing the whole scenario, it can be concluded that with enormous dissemination capacity, easy acceptance by customers and monopolistic effect on users a medium like Television acts as a 'Third Parent' to children, a powerful and hypnotic gadget to adults and a 'Culture Melting Pot' for the society. This 'Cultural Melting Pot' provide common denominator and helps homogenization for a heterogeneous society. As a powerful and hypnotic gadget it affects behavior of viewers. In a multi religious, multi lingual and multi ethic denomination comprising the polity of India, the social fabric is quite delicate and no act should be done by media which even remotely
disturb the equilibrium of society. The media has always risen to the situation whenever there is crisis with booming information and mind boggling entertainment. In the context of global invasion and competition, the need of the hour is sober introspection by journalists and not losing the focus on the paramount duty of media to be Fourth Estate by by-passing the laws, without making any compromise with vested interests. Media should act as torch that shows the way and not fire that destroys; although both give light.

**Suggestions**

The existing laws and rules regulating electronic media are more than sufficient to stream-line the working. Infact the seamless web of laws and authorities makes media regulation a complex task. The need is the proper implementation of these laws. Its proper implementation can provide the media an honourable position.

The Right to Information Act, 2005 is a legislation which has the capacity to discover the truth of everything. It is suggested that the electronic media (Private TV channels) should be brought under Right to Information Act, 2005 so that some accountability comes into media operation and management.

It is suggested that the number of programmes spreading peace, stability and progressiveness among people should be increased and the number of advertisements relating to social welfare and public awareness should be increased by Directorate of Advertising and
Visual Publicity (DAVP). Electronic media should telecast programmes which give knowledge to illiterate, rural and poverty ridden people, relating to employment opportunities.

Crime, violence and obscenity related programmes should be restricted as it has deep impact on viewer’s mind.

Earlier the rights of people who originally make creative work and actual working of it favour the film producers and record labels rather than original lyricists, script writers and song composers. What was happening that song composes sell their production to production houses and production house re-sell it to music companies and cell phones companies as ring tones and use it wherever they can. In this way these production houses earn profit from the labour of another person. The original creator of song, music and tune get nothing. It is suggested that Copyright (Amendment) Act, 2012 which has tried to fill this lacuna should be implemented properly.

To tackle piracy of films and music an organised action from film industry should be taken. Setting up of a piracy prevention fund to tackle piracy in India and overseas will be useful for the purpose of litigation. Government and inter-governmental co-operation will ensure implementation of Copyright laws.

It is suggested that Laws regulating Advertisements ‘Advertisement Code’ should be implemented and amended in the tune so that all advertisement should be clearly distinguishable from
the programme and should not in any manner interfere with the programme via use of lower part of screen to carry captions, static or moving alongside the programme. The rules made under the Cable TV Network (Regulation) Act, 1995 should be enforced against the news channels telecasted by the cable networks. All advertisement must be truthful and capable of substantiations. Advertisement shall not contain a reference to person, firm or institution which confers an unjustified advantage or tends to bring the person to ridicule or disrepute. Advertisements shall not contain statements or visual presentations which directly or by implication or by omission or by ambiguity or by exaggeration are likely to mislead the people.

In case of terrorist or bomb blast attacks, electronic media should not give live coverage of hostage crises. It should block information that may help terrorists. It should not disclose information on rescue operations. Media should avoid live contact with victims and with security personnel engaged in rescue operations in 26/11-like situations. Media should avoid unnecessary repetition of archival footage which may agitate the mind of viewers. An ethical media can be a powerful tool to educate and prepare public to wage the real war against terrorism at the grass – root level.

The Cable Television network (Regulation) Act, 1995 provide for the mandatory registration of all cable operators. It is very commendable approach of this Act. But this Act does not cover private
channel broadcasters. The result is that these private broadcasters remain un-accountable under this Act. It is suggested that the Broadcasting services regulation bill, 2006, the aim of which is regulation of broadcasting service in objective and competitive manner should be passed and implemented fully.

The media especially electronic one impacts governance, society and the course of events. An objective and a balanced media coverage of varied important issues relating to human development, socio-economic development, governance and democracy would make an important contribution in protection and enlarging public interest. An excessive zeal to praise or blame cannot be the basis of good reporting. Journalism must go back to trenches and rediscover the basics.