



## CHAPTER-II

Concept, origin  
And Historical Background

## **CHAPTER II**

### **CONCEPTUAL FRAMEWORK, HISTORICAL AND EMERGING DIMENSIONS: MEDIA LAW**

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#### **2.1 CONCEPTUAL FRAMEWORK**

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#### **2.1.1 CONCEPT**

Media in India consist of several different types of Communications media: television, radio, cinema, newspapers, magazines, and Internet-based Web sites. The Indian media was initiated since the late 18th century with print media started in 1780, radio broadcasting initiated in 1927, and the screening of Auguste and Louis Lumière moving pictures in Bombay initiated during the July 1895 is among the oldest and largest media of the world. Indian media private media in particular has been "free and independent" throughout most of its history. The period of emergency (1975–1977), declared by Prime Minister Indira Gandhi, was the brief period when India's media was faced with potential government retribution. McLuhan split media history into four periods: the tribal age, the literate age, the print age, and the electronic age. Throughout the structure of their distinctive methods of communication (e.g., oral, written, printed,

electronic), different media arouse patterns in the brain that are distinctive to each and every particular form of Communication.<sup>1</sup>

Press is usually meant all the media of mass communication although the printed media, as the oldest, is treated as the exemplar in most discussions. Free press usually means the right to publish, a right to confidentiality of sources, and a right to access. Constitutional law is concerned with the relationship of individual to society, so it's only a small step to see the significance of the press as adjuster or mediator of relationships with all the important social institutions of society - family, religion, economy, polity, law, and leisure. Freedom of speech is the concept of the inherent human right to voice one's opinion publicly without fear of censorship or punishment. "Speech" is not limited to public speaking and is generally taken to include other forms of expression that is the political right to communicate one's opinions and ideas via speech. The term freedom of expression is sometimes used synonymously, but includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used. In practice, the right to freedom of speech is not absolute in any country and the right is commonly subject to limitations, as with libel, slander, obscenity and incitement to commit a crime.

### **2.2.1 Theories of Media**

Historically, the press first functioned from the top down, as house organs of the few who directed the opinions of the common people.

#### **The Authoritarian theory**

In English common law, the press always belonged to the King. This is called the authoritarian theory of the press.

#### **The Libertarian theory**

The Libertarian theory rests on a concept of negative liberty, "freedom from", or more precisely "freedom from external constraint. With the demise of monarchy, the press came to adopt a role as partner in the search for truth, a kind of free marketplace for ideas and opinions, devoid of government control. This is the type of press that was desired by the founding fathers for the United States. It's called the libertarian theory of the press. The

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<sup>1</sup> McLuhan, M.; Fiore Q.; Agee J. (1996). The medium is the message: an inventory of effects. San Francisco: Hard Wired. ISBN 978-1888869026 at P.235

libertarian theory of the press is that information is knowledge, and knowledge is power. It enables people to realize their potential, and since news is about people making the news, the press reminds us that society has not grown to an entity of greater importance than the people comprising it. Whether or not we regard free press as a natural or inalienable right depends upon how much we assume that people desire to know the truth, and will be set free by it. Perhaps the greatest spokesperson for these ideas was the English poet John Milton (1608-74) who said that people should have unlimited access to the ideas and thoughts of others in order to exercise their talent at reasoning between right and wrong. Milton also said that truth had a unique power of survival when allowed to assert itself freely and openly.

### **The Social Responsibility Theory**

In recent years, with media mega-mergers, some say the press has fallen back into the hands of a few, no more than three people control the broadcast media (radio and television). Not only do monopolies invite government intrusion, but they make it harder for the press to be a free marketplace of ideas. The best that can be accomplished are guarantees of equal time, and a professional sense of obligation to responsibly see that all sides are fairly presented in objective journalism. This is part of the social responsibility theory of the press. Libertarian theory and social responsibility theory are not incompatible." Social responsibility theory rests on a concept of positive liberty, "freedom for", or freedom to achieve goals by any ethical means necessary. Social responsibility theory adds to or corrects for things that the founding fathers neglected to consider with freedom of the press. Liberalism is a political philosophy that change is for the better, especially rational change toward rational ends, like the perfectibility of human nature and society. Liberalism is egalitarian both to people and to ideas. Evil is seen as arising out of ignorance and lack of information. Libertarianism is a philosophy of limited government and individualism which emphasizes if a thing is not harmful to another, and then no authority should restrict it. Libertarian philosophy holds that it is not the business of anyone to tell what they should believe or not believe. Both philosophies are behind the notion of a free marketplace of ideas.

### **The Utilitarian Right Theory**

The utilitarian right Theory is somewhat different from a natural or inalienable right. Under a natural rights conception, freedom of the press involves the right to read or listen,

with nothing preventing someone from throwing away the book or turning off the TV. Under a utilitarian conception, freedom of the press involves not just a right, but a duty, to read, listen, and think.

### **Concepts of press freedom**

The concept of press freedom is too complex to sum up simply. However, freedom of the press should be characterized by independence from internal or external factors and all other elements, which might make journalists hesitant in carrying out their media work.

Press freedom is freedom from all compulsions throughout the processes of press activities. The overall meaning of freedom in the media is that all processes of press activities should be conducted freely. This includes establishing a press Company, gathering news, writing articles, editing news, publishing and distributing.

### **Function of Freedom of speech and expression**

The following function of Freedom of speech and expression in democracy:

- (1) Educational function (to advance knowledge and potential for self-fulfillment)
- (2) Safety valve function (to speak openly without fear of government reprisal)
- (3) Truth-seeking function (to determine truth thru debate and adversity)
- (4) Social obligation function (to learn what is important to say)

The Freedom of the press is the freedom of communication and expression through vehicles including various electronic media and published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other legal protections. This philosophy is usually accompanied by legislation ensuring various degrees of freedom of scientific research (known as scientific freedom), publishing, press and printing the depth to which these laws are entrenched in a country's legal system can go as far down as its constitution. The concept of freedom of speech is often covered by the same laws as freedom of the press, thereby giving equal treatment to spoken and published expression.

The notion of freedom of expression is intimately linked to political debate and the concept of democracy. The norms on limiting freedom of expression mean that public debate may not be completely suppressed even in times of emergency.<sup>2</sup> One of the most notable proponents of the link between freedom of speech and democracy is Alexander Meiklejohn. He argues that the concept of democracy is that of self-government by the people. For such a system to work an informed electorate is necessary. In order to be appropriately knowledgeable, there must be no constraints on the free flow of information and ideas. Media democracy is a set of ideas advocating reforming the mass media, strengthening public service broadcasting, and developing and participating in alternative media and citizen journalism. The stated purpose for doing so is to create a mass media system that informs and empowers all members of society, and enhances democratic values. The freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects: the right to seek information and ideas; the right to receive information and ideas; the right to impart information and ideas.<sup>3</sup>

**Trial by Media** is another phrase popular in the late 20th century and early 21st century to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law

The advent of new technology create path to Information and Communication Technologies (ICT) - internet, web, and social media - are fast becoming a comprehensive repository and soon an archive of (most) human knowledge. With access to ICT, an individual can become informed on everything from healthcare issues to civic problems to legal concerns. One hundred years ago, people were discussing the need for basic literacy and its impact on the human condition. Today, we should be discussing digital literacy and access in the same way. Digital literacy can be seen as a basic human right. Individuals can impact society, react, and reach out with the aid of technology. ICT is a powerful tool for encouraging, teaching, and protecting the human rights.

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<sup>2</sup> Brett, Sebastian (1999). Limits to tolerance: freedom of expression and the public debate in Chile. Human Rights Watch p. 25, ISBN 978-1-56432-192-3

<sup>3</sup> Andrew Puddephatt, Freedom of Expression, The essentials of Human Rights, Hodder Arnold, 2005, p.128

## THE CONCEPT OF CYBERSPACE

The cyberspace<sup>4</sup> was new term, first coined by William Gibson in the 1984 sci-fi novel *Neuromancer*, and it has since come to mean any non-physical terrain created by online computer systems. It's the impression that what one is experiencing is real, as real as talking to somebody face-to-face, doing library research, or window shopping. It doesn't require virtual reality or tactile sensation, and at a minimum, only consequences that are real. People can get married in cyberspace, obtain college degrees, and order things that are delivered to their door.

The freedom of the press is an important concept in considering the role of the media in all aspects of the society. It is a necessary condition for the media to be effective in carrying out their functions. The right to press freedom warrants the media the right to determine the form which their programme will assume, as well as the appropriate form of reporting . Article 19 of UDHR guarantees press freedom<sup>5</sup>, but, the concept of press freedom is controversial because it is unclear to ascertain the meaning of press freedom in terms of „freedom from what and freedom for whom?

### **History of Media and Its Law in India**

Prior to the advent of the present Constitution, there was no Constitutional or statutory enunciation of the freedom of speech of the subjects or the liberty of the Press. Even in the famous Proclamation of Queen Victoria made in 1858 after the British power was firmly established in India, there was no reference to the freedom of speech or the liberty of the Press, although it was announced that “none be in any wise favoured, none molested or disquieted by reason of their Religious Faith or Observances; but that all shall alike enjoy the equal and impartial protection of the law...”<sup>6</sup> In *Arnold v. King Emperor*<sup>7</sup> which was a case of an appeal by the editor of a newspaper against his conviction for criminal libel under section 499 of the Indian Penal Code, Lord Shaw of Dunfermline in delivering the judgment of the Privy Council observed that “The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his

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<sup>4</sup> The term cyberspace is used to describe the virtual worlds of computers, networks of computers and sharing information i.e. sending Email.

<sup>5</sup> UDHR, it states that „Everyone has the right to freedom of opinion...to seek, receive and impart information and ideas through any media and regardless of frontiers□.

<sup>6</sup> *M.S.M. Sharma v. Sri Krishna Sinha and Ors.*, AIR1959SC395

<sup>7</sup> (1914) L.R. 41 I.A. 149

privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject.”The prefatory words that adorn the Indian Constitution in the Preamble explicitly give due prominence to the concept of liberty of thought and expression among other liberties.<sup>8</sup>

Unlike the U S Constitution, there is no separate provision providing for the above freedom. However, the Supreme Court in a score of cases has held that there was no need to explicitly mention these rights and freedoms.<sup>9</sup>In this context, it becomes pertinent to refer to the dictum of Justice Brandies: “...the final end of the state was to make free to develop their faculties and that in its governance the deliberative forces should prevail over the arbitrary.”<sup>10</sup>The rights provided under Article 19 are, however, not absolute. They are subject to certain reasonable restrictions. There are two kinds of the abridgment of freedom of speech known to Constitutional jurisprudence: prohibitions *ratione personae*, and prohibitions *ratione materiae*.<sup>11</sup>

### **2.3.1 Pre Independence Era**

#### **History of the media pre- independence**

When Europeans write on the history of the media they refer to the *Acta diurna* of the Roman Empire as closely akin to the newspaper of today. In India the Rock Edicts of Emperor Ashok (c.273-236 BC) engraved on the rocks contain in abundance measures adopted and regulations issued by him. This is not very different from the news content of modern media. In that era when Ashok, the Great, used this technology for communicating his message throughout his vast empire, we do not find any reference to restrictions on communication imposed by law<sup>12</sup>.

However, the *Arthashastra*, written originally in the reign of Chandragupta Maurya (c. 324-300 BC), by Kautilya mentions punishment for spreading false rumours. The

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<sup>8</sup> the preambular text recognizes importance of liberty as being the most fundamental human right as the word ‘liberty’ comes after ‘Justice’ and before ‘equality’ in the preamble. And, it appears to be in consonance with the twin principles of John Rawls

<sup>9</sup> See, *Express Newspapers v. Union of India*, (1959)SCR 12; *Bennett and Coleman v. Union of India*, AIR 1973 SC 106; *Indian Express Newspapers v. Union of India*, (1985)1SCC 641. Also see, Durga Das Basu, *Law of the Press*, (2002) Wadhwa Nagpur.

<sup>10</sup> Erwin Chemerinsky, *Constitutional Law*, 923(2006), Aspen Publishers

<sup>11</sup> See, D K Sen, *A Comparative Study of Indian Constitution*, Vol.2,( 1966), Orient Longmans, New Delhi.

<sup>12</sup> K. M. Shrivastava ; *Media Laws: A Historical Perspective*(2009)

Arthashastra and the Rock Edicts also speak of spies and reporters. Uzbek scholar Al-Biruni (973-1049 AD) in his book *Kitabu' Hind*<sup>13</sup> (1030AD) wrote: The Hindus are not in the habit of writing on hides, like the Greeks in ancient times. Socrates, on being asked why he did not compose books, gave this reply, "I do not transfer knowledge from the living hearts of men to the dead hides of sheep. The Hindus have in the south of their country a slender tree like the date and coconut palm, bearing edible fruits and leaves of the length of one yard, and as broad as three fingers one put beside the other. They call these leaves tar and write on them. They bind a book of these leaves together by a cord on which they are arranged, the cord going through all the leaves by a hole in the middle of each. In Central and Northern India people use the bark of the tuz tree one kind of which is used as a cover for bows. It is called bhurja. They take a piece one yard long and as broad as outstretched fingers of the hand, or somewhat less, and prepare it in various ways. They oil and polish it so as to make it hard and smooth, and then they write on it. The proper order of the single leaves is marked by numbers. The whole book is wrapped up in a piece of cloth and fastened between two tablets of the same size.

The first Mughul Emperor Zahirud-din Muhammad Babur Padshah Gazi writes<sup>14</sup> about announcement of vows before his all-important battle with Rana Sanga, "I sent for scribes (munshilar) and ordered them to write for their newsletters (akhbar) the farman concerning two important acts that I have done. Sheikh Zain wrote the farman with his own elegance (inshahi bila) and fine letter (insha) was sent to all my dominions." This farman is dated 20 of Jumada I, 933 AH (26 February 1527). Akhbar is the word used for newspapers today in Hindi and Urdu languages and Babur mentions it in such a way as if it is something routine. It was meant to communicate an official announcement by Babur that a tax would be waived on all Muslims if he won the battle and he himself had given up drinking and banned liquor in his dominions. However, there is no reference to any regulation on akhbar. The earliest mention of pre-typographic newspapers is to be found in a contemporary historical work (*Muntakhals-ul-Lubab* by Khafi Khan)<sup>15</sup> of the later Mughul times. Colonel James Toad (1782-1835) sent hundreds of original manuscript newspapers of the Court of Aurangzeb, sixth of the Mughuls to the Royal Asiatic Society

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<sup>13</sup> Al-Biruni, an abridged edition of translation by Dr Edward C. Sackau, edited for National Book Trust New Delhi by Q. Ahmad (1988:58).

<sup>14</sup> Babur Nama, translated from the original Turki text of Zahirud-din Muhammad Babur Padshah Gazi by Annette Suannah Beveridge. Published by translator in 1922, reprinted by Orient Book Reprint Corporation, New Delhi, 1979.

<sup>15</sup> Author himself styles *Muntakhabu-l hubab Muhammad Shahi*, is frequently called *Tarikh-i Khkfi Khan*. It is a highly esteemed history, commencing with the Invasion of Babar, A.D. 1519, and concluding with the fourteenth year of the reign of Muhammad Shah.

in London. The size of the seventeenth-century papers, written in different hands, was 8 inches by 4½inches.<sup>16</sup>These were considerably free and could report even personal affairs of the emperor. We have no record of any law governing these newspapers. Perhaps, there was neither pre-censorship nor licensing, both being Western institutions. It was sheer accident, however, 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 Caperoute. But the patriarch accompanying the press halted en route at Goa from where his onward journey to Abyssinia was first delayed and later abandoned. He died on 22 December 1562. The press, intended for missionary work in Abyssinia never left Goa, instead, it printed literature for Abyssinia from Goa.<sup>17</sup>

However, 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 “particularly respecting the state of Bengal and its dependencies” was published in 1773 by J. Almon, London as “Considerations on Indian Affairs” in two volumes with maps and survey reports. In this publication he has been identified as former Judge of the Mayor’s Court of Calcutta.

The typographic media began in India with James Augustus Hicky’s Bengal Gazette or Calcutta General Advertiser, the first issue of which came out of the press on 29 January 1780. When Hickey started to unmask Warren Hasting and East India Company’s ruling clique (the ‘Nabobs’) there was no law, which could restrict him. Hicky’s Gazette put on record “the strictly private arrangement by which Mrs. Imhoff became the wife of the first governor-general in India”. Hicky’s courage gave birth to the first government order against freedom of the press. “Fort William, November 14, 1780. 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 is no longer permitted to be circulated through the channel of the General Post Office”. Libel suits resulting in heavy fines and imprisonments ultimately crushed Hicky. He had to sell his press and pass

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<sup>16</sup> Shrivastava, K.M. (1977) Press Laws in India: Warren Hastings to Metcalfe Indian Press (Journal of Indian and Eastern Newspaper Society), Vol. IV No.8 August 1977.

<sup>17</sup> Early Printing In India, Printing Times, Vol 17 No 1, WAPC Special, February 1993, p. 28.

rest of his life in poverty. When newspapers in India were published by only Europeans expulsion of the editor (printer) was ultimate penalty. The Supreme Court of Judicature upheld this power. Every foreigner was required to obtain a licence for his residence in the territories of the Company and if any one incurred the displeasure of the officials by writing or publishing something which was not palatable to them, the licence was cancelled. William Duane (1760-1835), American journalist, born near Lake Champlain, N.Y., of Irish parentage. He learned the printer's trade in Ireland and in 1787 went to Calcutta, where he edited the *Indian World*. On December 27, 1794 Duane was invited by Acting Governor-General Sir John Shore (1746-1794) for breakfast and when he reached there he was handcuffed and after detention for three days deported to England on an armed ship 'Indiaman'. On his arrival in England he was set free without a word of apology or explanation. His Calcutta property worth 50,000 dollars was confiscated and his paper banned forever.<sup>18</sup>

These were stories from Calcutta Madras was no different. The first news paper in Madras, *The Madras Courier* (October 1785) also had trouble with the authorities. Pre-censorship was first introduced in Madras (now Chennai) as in 1795. *Madras Gazette* agreed to submit all general orders of the Government for scrutiny by the Military Secretary before their publication. In May 1799 Marquis of Wellesley<sup>19</sup> legalized this system by issuing the regulation for the control of newspapers. According to these the censor was instructed to prevent publication of matter relating to the following subjects: "Public credit and revenues or the finances of East India Company, military operations and intelligence, conduct of government officers, private scandal or libel of individuals, probability of war and peace between the East India Company and any of the Indian powers, information useful to the enemy and the observations likely to excite alarm or commotion." The penalty for infringement of the law was deportation, as till then the mischief of running a newspaper was confined to Europeans. This punishment was in fact legalised what was done arbitrarily to William Duane. It appears that growing importance of the Fourth Estate in England and the desire of missionaries to start newspapers in India ultimately led to abolition of pre-censorship in 1818 by Lord Hastings as missionaries of Serampore started the first Indian language journal *Samachar Darpan* on 23 May 1818. It became bilingual carrying news in Bengali and English in parallel columns in 1829. Like

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<sup>18</sup> Shankdhar, B.M. (1977) William Duane: a restless crusader *Indian Press* (Journal of Indian and Eastern Newspaper Society), Vol. IV No. 10 October 1977

<sup>19</sup> Wellesley, Richard Colley, Marquess of (1760-1842), the East India Company's governor general of India, 1797-1805.

editorial control, licensing was also a European institution to control the press. It was introduced in Bengal in 1823 through Adam's regulations. The East India Company also issued instruction that no servant of the company should have any connection with a newspaper. This decision was the result of an incident in Bombay (now Mumbai) where a member of the Council of the Governor owned a newspaper. Licensing regulations were replaced by Metcalfe's Act<sup>20</sup> which was applicable to entire territory of the East India Company and required that the printer and publisher of every newspaper declare the location of the premises of its publication. Licensing was, however, re-introduced in 1857 by Lord Canning and was applied to all kinds of publications. This was the year when Indians fought their war of independence against the East India Company after which the British Crown took over the territories of the Company. In 1860 Indian Penal Code was passed as a general law but laid down offences which any writer, editor or publisher must avoid - the offences of defamation and obscenity. The next important event in the field of media laws was the enactment of the Press and Registration of Books Act (25 of 1867). This Act is still in force, of course with amendments from time to time. The object of this Act was to provide for the regulation of the printing presses and of periodicals containing news, for the preservation of copies of books and for the registration of books. It contains rules for the registration of books. It contains rules for the making of declaration by the keepers of presses and publishers of newspapers (part II); rules regulations for the delivery of books (Part III); penalties (Part IV); registration of book (Part V). Part VI of this Act gave powers to the government to make rules and to exempt books or newspapers from the provisions of this Act. The Act 55 of 1955 added Part VA to provide for appointment of Registrar of Newspapers.

The role of the press during the Wahabi Conspiracy of 1869-70 led to the amendment of the Indian Penal Code (27 of 1870) to incorporate a section on sedition (124-A). This dealt with a person who "excites or attempts to excite feeling of disaffection to the government established by law in British India." It came handy to send many freedom fighters to jail for their writings in newspapers. Some of them were deported to Burma or Andamans and kept in prison there. Some of them were deported to Andamans<sup>21</sup> between 1908 to 1910

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<sup>20</sup> In 1830, Sir Charles Metcalfe, as a member of governor-general's council, said: "I think on the present occasion that it will be infinitely better to allow anything to be said that can be said, than 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 the press, believing its benefits to outweigh 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 became a director of the British East India Company, and was created a baronet in 1802.

<sup>21</sup> *Unsung Heroes of Freedom Struggle in Andamans, Who's Who*, Compiled and edited by Rashida Iqbal for Directorate of Education and Culture, Andaman & Nicobar administration, Port Blair (1998) p.88,109.

for contributing to or editing Swarajya, Inquilab and Yugantar. They were Govind Ram-Hotilal Verma (age 20years) and Hari Ram (age 22) in 1908- Ram Charan Lal (age 24) in 1909and Ladha Ram (age 21) and Nandgopal (age25) in 1910. There were more celebrated cases of sedition for writing in newspapers against political heavyweights like Lokmanya Bal Gangadhar Tilak and Mahatma Gandhi. Shortly after wards, the restrictions imposed by the East India Company prior to 1841 returned to the government officers, though in a milder tone.

In 1875, the government passed orders that no officer in the service of the government should be permitted without previous sanction to become the proprietor of any periodical or to edit or manage a periodical. Officers were advised to remain within the limits of 'temperate and reasonable' discussion. No document or information should be revealed to the press, which they might come to possess in their official capacity. In cases where doubts, may arise as to whether any engagements of officers with the press were consistent with the discharge of their duties to the government, the decision to that effect would lie with the government. For the purpose of ascertaining the character of any intended public dramatic performance the Dramatic Performances Act (19 of 1876) was passed as it was suspected that such performances may provoke people against the Government. When the Indian language press became very bold the Vernacular Press Act 1878 was introduced. It was comprehensive and rigorous, aimed at "better control" of the language press. It empowered any magistrate of a district or a commissioner of police in a presidency town to call upon the printer and publisher of a newspaper to enter into a bond undertaking not to publish certain kind of material, to demand security, and to forfeit, if it was thought fit, such presses and confiscate any printed matter as it deemed objectionable. No printer or publisher against whom such action had been taken could have recourse to a Court of law. It was particularly meant to crush Amrit Bazar Patrika, which was bilingual before this Act. But the smart owner foiled this attempt by turning it into an English language paper overnight. The main role in persuading Lord Lytton for the Vernacular Press Act was played by Sir Ashley Eden (1831-1887), the then Lieutenant Governor of Bengal. He was in a fit to crush the Amrita Bazar Patrika. Sir Ashley called the editor of the Amrita Bazar Patrika, Babu Shishir Kumar, and offered: "Let us three, I, you and Kristo Das, govern the province. Kriso Das has agreed to conduct his paper according to my direction... You will have to do the same thing. I shall contribute to your paper as I do to the Hindoo Patriot. And when you write an article criticizing the government you will have to submit the

manuscript to me before publication. In return the government will subscribe to a considerable number of your paper and I shall consult you as I consult Kristo Das in carrying on the administration of province.” Babu Shishir Kumar thanked him and quietly remarked, “Your Honor, there ought to be at least one honest journalist in the land”. Sir Ashley himself remarked, “If there had been only one week’s delay on the part of the proprietors to convert the Patrika into English we would have dealt a deadly blow at it by demanding a heavy bail-bond from them.”When Gladstone<sup>22</sup> who had criticized the Vernacular Press Act, became the prime minister and Lord Ripon the governor-general, and even before the retirement of Sir Ashley Eden the repeal of Vernacular Press Act had become a foregone conclusion. The repealing bill was passed without discussion, on December 7, 1881. In India telegraph was introduced in 1851 and was very useful to East India Company during 1857. However, the Indian Telegraph Act was passed in 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, thus 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. Lord Dufferin succeeded Lord Ripon in 1884, The Amrita Bazar Patrika published certain facts about the administration of Bhopal and commented adversely on the conduct of Sir Lepel Griffin (1838-1908), the agent to the governor general for Central India. Sir Lepel appealed to the government for action. The proposal was turned down on the ground that legal proceedings would draw greater publicity to the matter under dispute. In 1889, during Lord Lansdowne’s regime, The Amrita Bazar Patrika published what was purported to be a confidential Foreign Office document. It said that the Maharaja of Kashmir was deposed not because he resigned or oppressed his people, but because Gilgit was wanted for strategic purposes by the British government. No action was taken against The Amrita Bazar Patrika, but the Indian Official Secrets Act modeled on a similar Act of the British Parliament, was passed on October 17, 1889. It provided a penalty of imprisonment for one to two years and/or a fine according to the nature of the offence. Section 19 of the Sea Customs Act 1878 gave power to the central government to prohibit or restrict the importation or exportation of goods in to or out of India. Section 5 of the Telegraph Act 1885 gave power to the central government or provincial

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<sup>22</sup> William Ewart Gladstone (1809-1898) was a British Liberal Party statesman

governments of an official specially authorized by the government to take possession of licensed telegraphs and to order interception of telegraphic messages which include as per section 3 (1) of the Act telephone messages also. Section 25 of the Indian Post Office Act 1898 confers power on an officer of the post office to intercept during transmission by post goods which have been notified under section 19 of the Sea Customs Act or the import or export of which is otherwise prohibited. Section 26 of the Post Office Act provides power of interception of postal articles on the same lines as section 5 of the Telegraph Act. Thus by the turn of the century the government had wide ranging powers to intercept anything anywhere along all the possible channels. With Swadeshi Movement and partition of Bengal the opposition of the Government reached its zenith, both in the press and the public. In June 1908 the government passed the Newspaper (Incitement to Offences) Act, which gave power to local authorities to take judicial action against the editor of any newspaper, which indulges in writings calculated to incite rebellion. Nine prosecutions were instituted under this Act and as a result seven presses were confiscated. Then came the Press Act of 1910, which empowered the government to demand security from any newspaper, a provision similar to what existed in the Vernacular Press Act. British Parliament passed the Copyright Act in 1911. Similar provisions came to India by Indian Copyright Act, 1914 (3 of 1914). It was replaced by a comprehensive legislation only 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). In 1921, the government appointed a committee, with Sir Tej Bahadur Sapru (1875-1949) as chairman, to look into the then existing press laws. The committee unanimously recommended the repeal of the Newspaper (Incitement of Offences) Act 1908 and the India Press Act 1910.<sup>23</sup> In regard to the Press and Registration of Books Act, the committee recommended that the name of the editor should be inscribed on every issue of the newspaper and the editor should be subjected to the same liabilities as the printer and publisher as regards criminal and civic responsibility, that a person registering under this Act should be a major, that the term of imprisonment in part IV of the Act should be reduced from two years to six months, and that provision should be made for delivery to government of copies of newspapers printed in British India. The committee advocated the retention of powers to seize and confiscate seditious leaflets and literature. It recommended that the ancillary powers of preventing importation and postal transmission

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<sup>23</sup> Most of the witnesses examined by the committee expressed the view that Press Act had not been applied with equal severity to English-owned and Indian-owned newspapers

of such literature should be retained. The requisite amendments were carried out by the Press Law (Repeal and Amendment) Act of 1922 (14 of 1922). In 1922, on the request of the Chamber of Princes, the Princes Protection Bill was introduced in the Legislative Assembly. The Assembly rejected the bill. But the Governor-General, invoking treaty obligations and exercising his special powers under section 67B of the Government of India Act 1919, certified the Bill which became the Indian States (Protection against Disaffection) Act 1922. This Act provided punishment of imprisonment up to 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 administration established in any such state. For material of this nature, the powers of forfeiture under sections 99-A to 99-C of the Criminal Procedure Code and of postal interception under sections 27-B to 27-D of the Indian Post Offices Act were made applicable. In 1923 the Official Secrets Act was passed in order to update and consolidate the existing provisions of Indian Official Secrets Act of 1889, along the lines of the British Acts of 1911 and 1920. The earlier Act was repealed. 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, the government promulgated the Indian Press Ordinance to provide for “better control of the press”. This revived the stringent provisions of the repealed Press Act of 1910. Some 130 newspapers had to deposit securities, nine refused to do so and suspended publications. In 1931, the Indian Press (Emergency Powers) Act was passed. The operative clause of section 4(1) of this Act reads as follows: “Words, signs or visible representations which (a) incite to or encourage or tend to incite to or to encourage, 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.” Under the original sub-section (3) of section 1 the Act was to remain in force for one year only and the government were given the power to extend this period by another year. The operation of the Act was extended from time to time and ultimately sub-section (3) of section was repealed by the Criminal Law (amendment) Act 1935 making this a part of permanent law of the land. In 1932 the Foreign Relations Act was passed with the object of providing against the publication of statements likely to prejudice the maintenance of friendly relations between the British government and the governments of certain foreign states. The powers of forfeiture under sections 99A-99G of the Criminal Procedure Code and the

postal interception under sections 27B-27D of the Indian Post Offices Act were extended by section 3 of this Act to documents containing matter defamatory of such ruler or his consort of son or principal minister of a state outside but adjoining India. Indian States (Protection) Act was passed in 1934 to protect the administrations of states in India, which were under the suzerainty of the British crown from activities, which tended to subvert or excite disaffection towards or to obstruct such administration. Section 3 of this Act extended to Press Emergency Act Powers 1931 to protect these states. The Government of India Act was passed in 1935. In 1937 autonomous popular governments came to power in eight of the eleven provinces. They could do without using any special legislation against the press until they resigned in October 1939.

The first recorded discussion of dissemination of news in India can be traced back to Kautilya's 'Arthashastra'. The Muslim rulers reinforced Kautilya's system by appointing 'Waqaya Navis' (events reporter) in every 'Suba' capital. The 'Waqaya Navis' sent its reports to the Centre through 'Harkaras' (messengers). The Emperor on receiving these 'news-sheets' from the state capitals, shared the non-confidential ones with his Courtiers. Important events were recorded for posterity. For the common people, news was circulated by proclamations, accompanied by beat of drums or through word of mouth. The 'news-sheets' however, could not be called newspapers in the strict sense of the term

The Indian press is more than two centuries old. It was in the 16<sup>th</sup> century that Christian missionaries first brought the printing press to India. India's first newspaper as well as the first printed weekly appeared on January 29, 1780 when James Augustus Hicky brought out the first issue of the 'Bengal Gazette or Calcutta General Advertiser'-two page, 12 inches by eight- at 'Serampore. The paper depended on the support of the English trading community of Calcutta, which was opposed to the East India Company. The paper strongly upheld the liberty of the Press. Hicky's demand for the liberty of the Press was: "The subject should have full liberty to declare his principles and opinions, and every act which tends to coerce that liberty is tyrannical and injurious to the community."<sup>24</sup> India's second newspaper, 'the India Gazette' was established in November 1780 and managed to get free postal circulation from the government. This infuriated Hicky who scathingly lashed the printers and promoters of 'the India Gazette'.

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<sup>24</sup>. Justice V.R. Krishan Iyer and Dr. Vinod Sethi : Essays on Press Freedom, 1996, p. 27; also Mrs. Margarita Barns : The Indian Press : A History of the Growth of Public Opinion in India, 1940, p. 49.

The first attempt to start a newspaper in India, in fact, was made 14 years before Hicky, by William Bolts, author of 'Consideration on Indian Affairs'. In September 1766, he pasted a paper on the Council Hall's door in Calcutta, which reads as follows:

"To the public Mr. Bolts takes this method of informing the people that the want of a printing press in this city being of great disadvantage in business and making extremely difficult to communicate such intelligence to the community, as is of the utmost importance to every British subject, he is ready to give the best encouragement to any person or persons who are versed in the business of printing to manage a press the types and utensils of which can produce. In the meantime, he begs leave to inform the public that having in manuscript many things to communicate, which most intimately concern every individual, any person who may be induced by curiosity or other more laudable motives, will, be permitted at Mr. Bolts' house to read or take copies of the same. A person will give due attendance at the hours from 10 to 12 any morning."

His efforts, however, had a premature demise when the Bengal Government asked him "to quit Bengal and proceed to Madras on the first ship that sails from the Presidency..."<sup>25</sup> In February 1784 were published the Calcutta Gazette and Oriental Advertiser. In 1785 appeared the 'Bengal Journal' and the 'Oriental Magazine' and the 'Calcutta Amusement', the first monthly publication. The 'Calcutta Chronicle' commenced in 1786.

Richard Johnsten, in 1785, started the 'Madras Courier'. In 1793, Boyd came out with 'Hirkaru'. Two years later appeared the 'Madras Gazette'. The first English newspaper in Bombay (Mumbai), 'Bombay Herald', appeared in 1789. In 1790, Luke Ashburner began the 'Bombay Courier' and in 1791 appeared the 'Bombay Gazette'.

After 1790, there was a spurt in newspapers. The 'Asiatic Mirror' was founded in 1794, the 'Indian World', the 'Calcutta Courier' and the 'Bengal Harkaru' in 1795 and the 'Telegraph' and 'Oriental Star' in 1798. In 1789, Governor General Wellesley came to India and was enraged by an article in the Asiatic Mirror. In May 1790, he issued his "notorious Regulations" for the control of the Press in India. The main points are as follows:

1. Every printer of a newspaper to print his name at the bottom of the paper.

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<sup>25</sup> Proceedings of the Select Committee of the Council of Fort William, April 18, 1767.

2. Every editor and proprietor of a newspaper to deliver his name and place of abode to the Secretary to the Government.
3. No paper to be published on Sunday.
4. No paper to be published at all, until it shall have been previously inspected by the Secretary to the Government.
5. The penalty for offending against any of the above regulations to be immediate embarkation for Europe.<sup>26</sup>

During Lord Minto's time, in 1811, the proprietors of all printing presses and their dependencies in Calcutta were instructed to affix the names of the printers to all papers published by them. The 'Bengal Gazette' of 1816 was a landmark in the history of the Press in India. For the first time, a paper was brought out by an Indian Gangadhar Bhattacharjee, a votary of Raja Ram Mohan Roy's liberal ideas.

In 1818, the Department of Censor of Newspapers was abolished by Warren Hastings, who laid down certain restrictions on editors. Newspapers were not allowed to publish matters relating to :

1. Animadversions of the measures and proceedings of the Honourable Court of Directors or other public authorities in England connected with the Government of India, or disquisitions on political transactions of the local administration or offensive remarks leveled at public conduct of the members of the Council, of Judges of the Supreme Court or the Lord Bishop of Calcutta.
2. Discussions having a tendency to create alarm or suspicion among the native population of any intended interferences with their religious opinions or observations.
3. The re-publication from English or other newspapers of passages coming under any of the above heads otherwise calculated to affect the British power or regulation in India.
4. Private scandals and personal attacks on individuals tending to excite discussion in society.

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<sup>26</sup>. Justice V. R. Krishn Iyer, Dr. Vinod Sethi : Essays on Press Freedom, p. 28; also Hemendra Prasad Ghosh : Press and Press Law in India, 1930.

These regulations were signed by John Adam, Chief Secretary to the Government on August 10, 1818.<sup>27</sup> Soon after, Raja Ram Mohan Roy started the 'Sambad Kaumudi' (the date of its commencement is debatable) and the 'Mirat-ul-Akhbar'. He thus, started the first Indian language newspapers (in Bengali and Persian). In 1820 he published the English Brahmanical Magazine in Calcutta. He used these to spread his reformistic ideas. On the prospects of 'Mirat-ul-Akhbar' he wrote : "...my only object is that I may lay before the public such articles of intelligence as may increase their experience and tend to their improvement, and that I may communicate to the Rulers a knowledge of the real situation of their subjects, and make the subjects acquainted with the established laws and customs of their Rules : That the Rulers may more rapidly find an opportunity of granting relief to the people, and the people may be put in possession of the means of obtaining protection and redress from their Rulers".<sup>28</sup>

James Silk Buckingham started the 'Calcutta Journal' in 1818. But having invited the wrath of the Government, his licence was cancelled and he was asked to leave India.

In 1823, an Ordinance was issued by then Governor General introducing licensing of the Press under which a licence was required for all matters to be printed. Similar regulations were made in 1825 and 1827.

Lord William Charles Metcalfe, hailed as the liberator of the Indian Press, along with Macaulay, played an important role in the freedom of the Press. In 1835 he introduced the Act XL of 1835 which repealed many earlier Acts imposing restrictions, and was applicable to the whole of the territory of the East India Company. It required the printer and publishers of every newspaper to declare the location of the premises of its publication, failing which a penalty of Rs. 5,000 and imprisonment of two years could be imposed.

Lord Canning's Act of 1857 reintroduced licensing which applied to all kinds of publication including books in all languages. The Act gave the Government discretionary power to grant and revoke licences. This was rightly called the Gagging Act<sup>29</sup>. In 1860, the Indian Penal Code was passed, which laid down offences that writers, editors or publishers

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<sup>27</sup> The Government Gazette, October 21, 1819, Home Public Original Consultations, August 28, 1818, No. 9; also Hemendra Prasad Ghosh : Press and Press Laws in India, p. 213; Justice V.R. Krishana Iyer, Dr. Vinod Sethi : Essays on Press Freedom, 1996, p. 30).

<sup>28</sup> B.B. Majumdar : History of Indian Social and Political Ideas, p 2-3; also Justice V.R. Krishana Iyer, Dr. Vinod Sethi : Essays on Press Freedom, p.31

<sup>29</sup> Nadig Krishna Murthy : Indian Journalism, 1966, p. 2-3

are liable to commit. These offences are those of obscenity and defamation. Various amendments to the IPC introduced other offences like sedition, promoting enmity between classes, imputations or assertions prejudicial to national integration and outraging religious feelings.

After 1857, periodical journalism had a consistent growth along with newspapers. Some of the well-known English periodicals included G.A. Natesan's 'Indian Review', Sachidanand Sinha's 'Hindustan Review', Ramanand Chatterjee's 'Modern Review' and Tej Bahadur Sapru's 'Twentieth Century'. Some of the politically-oriented magazines of the pre-Independence era were Bal Gangadhar Tilak's 'Kesari' and 'Maharatta', Annie Besant's 'Commonweal', Abul Kalam Azad's 'Al Hilal', Mahatma Gandhi's 'Young India' and 'Harijan', Lala Lajpat Rai's 'People', Natarajan's 'Indian Social Reformer', and Balkrishan Bhat's 'Hindu Pradeep'.

Bharatendu Harishchandra contributed immensely to Hindi journalism. Mahabir Prasad Dwivedi revolutionised it by standardising the language with the development of 'Khariboli' prose in his monthly 'Saraswati'. He even introduced book reviews and short stories.

Other important journals in the vernacular languages were 'Dig darshan' and 'Gnyan Prakash' in Marathi, 'Anandniketan' and 'Kalhi' in Tamil, 'Biswin Sadi' and 'Shama' in Urdu, 'Asha' and 'Samaj' in Oriya and 'Krisha Patrika', 'Andhra Prapha', 'Andhra Patrika' and 'Andhra Jyoti' in Telugu.

The rudiments of news agencies in India can be traced back to March 1866, when Reuters sent a representative to India to cover business developments in India. In the first decade of the 20<sup>th</sup> century, K.C. Roy, an Indian journalist, decided to establish an Indian news agency. Along with two other British Journalists, Roy founded the Associated Press of India (API). But soon, Roy broke away and formed the Press News Bureau (PNB). In 1919; both API and PNB were acquired by Reuters, who then enjoyed a monopoly over distribution of news across the country. In the 1930s however, S. Sadanand set up the Free Press of India (FPI). But owing to financial crunch, it had to be shut down, and from its remnants emerged the United Press of India (UPI) in 1933.

Introduction of the tele printer by Reuters in 1937 further facilitated the dissemination of news, bringing down subscription rates and making news available to small newspapers as well.

### **2.3.2 Post Independence Era**

In April 1946 popular governments returned to power in the states and a popular Interim Government came to power at the Centre in September 1939. On 30 September 1946 the wide powers for the control of the press, which were available under the Defence of India Rules, came to an end. To meet the grave communal situation the central and provincial governments promulgated ordinances during 1946-47 to be replaced in due course by emergency legislations. The provisions affecting the press related to imposition of censorship, control of publications, import, possession or conveyance of documents of objectionable nature. Before Independence, the Interim Government appointed the Press Laws Enquiry Committee in March 1947 to examine the press laws. The Committee gave its report on 22 May 1948 after Independence and partition of India. Ganga Nath, Mohan Lal Saxena, Tushar Kanti Ghosh, Diwan Chaman Lall, Mohd. Ismail Khan, Sri Narayan Mehta, S.A. Brelvi, Kasturi Srinivasan and G. V. Bedekar signed the report. It recommended some minor amendments in the Press and Registration of Books Act; repeal of the Indian States (Protection Against Disaffection) Act 1922, and the Indian Press (Emergency Powers) Act 1931; modifications of Section 124-A of the Indian Penal Code and exclusion by explanation of the application of Section 153-A of the Advocacy of Peaceful Change of the Socio-economic order; and exclusion of Section 144 of the Criminal Procedure Code from application to the press.

The Committee also recommended the repeal of the Foreign Relations Act and recommended another more comprehensive legislation to take its place in the changing circumstances. It suggested amendment of the Telegraph Act and the Post Office Act to provide for review by responsible ministers of the government of the actions and orders of subordinate officers. It suggested that all action taken against the press in the exercise of the emergency powers should be preceded by consultation between the provincial governments and the Press Advisory Committee or similar body.

After the report of this committee the Act of 1931 was replaced by Press (Objectionable Matter) Act 1951. However, the mood was so much for freedom of press that it was allowed to lapse in February 1956 and was repealed in 1957. The Indian Constitution gives every citizen fundamental right to freedom of speech and expression and the Courts have interpreted that it includes freedom of the press. On 23 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. Major setback to the freedom of press in India was when Emergency was imposed in June 1975 and censorship was introduced. However, after the defeat of the then ruling party in 1977 General Elections it has not been possible for anybody to follow the example. Press Council advised the Government not to put curbs on the press even in disturbed areas like Jammu and Kashmir. This policy appears to be better than the curbs on the press by Government. Liberal ethos reinforced after 1977 has affected broadcasting as well. While demand for autonomous corporation to control All India Radio and Doordarshan was accepted and finally Prasar Bharti, an autonomous corporation came into existence from 15 September 1997 after the notification of the Prasar Bharti Act. It has not been possible to come up with a regulator for broadcasting content despite several bills that came to Parliament over the years and private satellite and cable channels are in field day enjoying more freedom than in any other part of the world. Though the Government has not allowed news on private radio outfits yet, freedom of print and television channels make India one of the most liberal countries in the world as far as the freedom of media goes. Right to Information Act 2005<sup>30</sup> has been implemented and this has further extended freedom of media in India.

After independence in 1947, the Indian and Eastern Newspaper Society bought over the Indian interests of Reuters and formed the Press Trust of India (PTI).<sup>31</sup>

In 1959, PTI stopped depending solely on Reuters for foreign news and made arrangements with Agence France Presse (AFP), the United Press International (UPI) and some other small news agencies.

In 1958, the United Press of India shut down and PTI was left as the only big news agency in India. Feeling the need for a competitive news agency, B.C.Roy, the then Chief Minister of West Bengal, took the initiative and came out with the United News of India on March 21, 1961, which has a wide network all over India. For world news it collaborates with several foreign news agencies including the Associated Press of America

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<sup>30</sup> On 15 June 2005, President APJ Abdul Kalam gave his assent to the national Right to Information Act 2005. With presidential assent, the Central Government and State Governments had 120 days to implement the provisions of the Act in its entirety. The Act formally came into force on 12 October 2005

<sup>31</sup> February 1, 1949, PTI entered into an agreement for purchase of Reuters news and sale of Indian news to the British agency.

(AP), Deutsche Press Agentur of West Germany (DPA), Agenzie National Stampa Associata of Italy (ANSA) and Tass of Russia.

Besides UNI and PTI were Hindusdtan Samachar and Samachar Bharti, Hindustan Samachar was India's first multilingual agency, set up in 1948 by S.S. Apte.

The Press however suffered a lot due to the Gagging Act which also came be criticesed in official circles. The Act provided for *inter alia*:

1. Keepers of printing presses shall make a declaration before a Magistrate.
2. The printer and the publisher shall make a declaration with a precise description of the premises where the printing of publication is conducted.
3. The printer shall deliver, free of expense, to the Government, two copies of each issue of the newspaper, failing which he shall pay a fine of Rs. 2,000 or in default, undergo imprisonment for six months.<sup>32</sup>

In 1867 was passed the Press and Registration of Books Act (XXV of 1867). This was a regulatory law<sup>33</sup>, which enabled the Government to regulate printing presses and newspapers by a system of registration and to preserve copies of book and other matter printed in India.

In 1878, the Venacular Press Act was passed for punishing and suppressing seditious writings in newspapers published in India languages. It was repealed on January 19, 1888 On the occasion of the repeal of the Act, Lord Ripon said, "I do not wish to detain the Council by any observations of my own, nor do I think, I am any way called upon to review the reasons or motives for which this Act was originally introduced. All I desire to say is that it will always be a great satisfaction to me that I should have been, during the time I held the office of Viceroy that the Act was removed from the Indian Statute Book.<sup>34</sup>" In 1898, both the IPC and the Criminal Procedure Code were amended. The Newspapers (Incitement to Offences) Act was passed in 1908. It empowered a magistrate to seize a Press if a newspaper printed by it published matter which incited murder or any other act of violence or an offence under the Explosive Substances Act.

This was followed by the Indian Press Act of 1910 which was directed against offences involving violence and sedition.

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<sup>32</sup>. Vinod Sethi : Laws, Press and Advertiser's Handbook, 1994.

<sup>33</sup> Taramati v. ADM, AIR 1964 Guj 278 (280)

<sup>34</sup> Hemendra Prasad Ghosh : Press and Press Laws in India, 1930, p.30

The Criminal Law Amendment Act, 1913 and the Defence of India Regulations were promulgated on the outbreak of the First World War in 1914. The Newspapers (Incitement to Offences) Act, 1908 and the Indian Press Act, 1910 were repealed in 1922 and provisions of these Acts were incorporated in the Press and Registration of Books Act, Sea Customs Act and the Post Office Act, by subsequent amendments.

The official Secrets Act of 1923 was aimed at maintaining the security of the State against leakage of secret information and sabotage.

The Indian Press (Emergency) Power Act 1931, made it obligatory for the Press to furnish security at the call of the Executive. This was replaced by the Press (Objectionable matter) Act, 1951, which also replaced the States (Protection against Disaffection) Act, 1922, the Indian States (protection) Act, 1934 and the Foreign Relations Act, 1932. This Act was repealed in 1957.

The Newspaper (Price and Page) Act, 1956 was annulled by the Supreme Court in 1962 in **Sakal papers v. Union of India**,<sup>35</sup>The apex Court held that the freedom of the Press could be interfered with by the Government indirectly by enacting laws which did not directly impose any restriction on that freedom on the ground of security of State or the like.

The Act was framed to prevent unfair competition among newspaper through price-cutting. Empowered by this Act, the Central Government issued the Daily Newspapers (Price and Page) Order, 1960, whereby the number of pages published by a newspaper was made to depend upon the price charged to the readers, so that a newspaper could not increase the volume of its publication without raising its price. The Government vindicated its stand by saying that such a regulation was essential to protect the smaller newspapers from unfair competition with bigger newspapers. Moreover, it wanted to prevent concentration of ownership in the hands of a few commercial groups of newspapers. The Supreme Court turned down the contentions of Government and observed as follows:

- (a) The fixation of a minimum price of the number of pages which a newspaper is entitled to publish would deter a class or section of its readers from purchasing such newspaper (because of the higher price) and thus curtail its circulation;

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<sup>35</sup> AIR 1962 SC 305

- (b) Limiting the number of subscribers of a newspaper is an infringement of the freedom of the Press, guaranteed by Article 19 (1)(a), even though it is effected through a schedule of rates;
- (c) The volume of circulation of a newspaper cannot be curtailed for the purpose of protecting or promoting smaller newspapers or for suppressing unfair practices by other newspapers or for prevention of monopolies.

In 1966, a Press Council was constituted under the Press Council Act, 1965, to preserve the freedom of the Press and to maintain and improve the standards of newspapers in India. This Act was repealed with the promulgation of the Publication of Objectionable Matter Ordinance, 1975. This became the Prevention of Publication of Objectionable Matter Act in 1976. Simultaneously were passed the Press Council (Repeal) Act, 1976 and the Parliamentary Proceedings (Protection of Publication) Repeal Act, 1976.

The Prevention of Publication of Objectionable Matter Act was repealed in 1977 and the Parliamentary Proceedings (Protection of Publication) Act, 1977 was passed. This was given a stronger foundation by the insertion of Article 361 A in the Constitution by the 44<sup>th</sup> Amendment in 1978. The Press Council Act, 1978 was enacted; re-establishing the Press Council. The chapter on broadcasting began in India in 1926 when the Indian Broadcasting Company came into being. The Government gave it license to set up broadcasting stations. On July 23, 1927, the first station was opened in Mumbai and on August 26 of the same year, the second radio station opened in Calcutta.

However, due to acute pecuniary problems, the Indian Broadcasting Company went into liquidation in 1930. The morale of the public, who had been excited about broadcasting and had bought their own radio-sets, went down. They appealed to the Government to salvage the situation. In 1931, the Government took over and renamed it as the Indian Broad-casting Service. Later, in 1936, it developed into the All India Radio<sup>36</sup>. Government broadcasting was not a *vox populi*. The masses could not identify with alien programmes and much of the news lost credibility. But with the coming of Independence, the entire scenario changed. The first 20 years saw a 40-fold increase in the number of radio sets. The historic speech by Jawaharlal Nehru, the 'Tryst with Destiny' at midnight on August 14-15, 1947 was broadcasted all over the nation. Few months later,

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<sup>36</sup> Mass Media in India ,2009, Ministry of Boardcasting and information ,Government of India

Nehru's voice was heard again by a stunned audience-“The light has gone out of our lives. Bapu is no more”.

In 1952, the National Programme of Music was started by the All India Radio. The inaugural programme comprised a 'surbahar' and a sitar recital by Pt. Ravi Shanker, who was then an AIR staff member. In 1955 began the Sardar Patel memorial lectures. The 'Vividh Bharati' came into being in 1957, which provided light music programmers. The early sixties saw a massive growth in rural broadcasting. By 1965, all stations of All India Radio began special programmes for the rural population. At present, the All India Radio has the largest network, reaching around 110 million homes. With the advent of the television, the radio took a backseat. But the coming of the FM (frequency modulation) has revived the radio.

In 1956, New Delhi hosted the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), a significant outcome of which was UNESCO's decision to make a grant of \$ 20,000 to India to set up a 'pilot project' to study the use of television in the country. The United States too, rendered help for the project and on September 15, 1959, the then President Rajendra Prasad, inaugurated the first experimental TV centre in India.

Initially, the TV programmes were of 60 minutes duration and were telecast twice a week. Twenty community viewing centers were established in the middle and lower income group areas of New and Old Delhi and about 200 people watched these programmes at each centre. From June 1, 1965, the duration of the programs over Doordarshan was increased to four days a week and by August 15, 1965 a daily service of duration commenced. In 1967, Doordarshan began catering to the rural viewers with special programmes for them.

The seventies saw a spurt of RV stations all over India. In 1975-76, under the Satellite Instructional Television Experiment (SITE), India used the ATS-6, a very sophisticated and powerful satellite to beam instructional programmers in four languages to 2,400 villages across seven states on agriculture, health and primary education.

Doordarshan was delinked from All India Radio in April 1976 and established as a separate department. The Varghese Committee had recommended a single National Broadcast Trust under which should function, both Akashvani and Doordarshan. As a result, the Prasar Bharati (Broadcasting Corporation of India) Bill was introduced in Lok

Sabha in 1779. It became the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 and was enforced *vide* the Amendment Ordinance of 1997. However, just after eight months, in May 1998, it lapsed and now a fresh legislation is under contemplation. In March 2000, the Minister of State for Information and Broadcasting, Aun Jaitley, said that the draft for the Broadcasting Bill was ready. He said that there was a Presidential assent on an enabling clause introduced in the Telecom Regulatory Authority of India Act which says that not only telecom, but other related issues can also be brought under that law. Jaitley pointed out that the question now is whether to have a separate Broadcast Bill or merge it with the Information Technology Bill and the telecom laws so that there is synergy. He also said that the Cable TV Networks (Regulation) Act, 1995 will be repealed and merged with the proposed Broadcast Bill.

Cable TV had come to India as a result of the Iran-Iraq war in the early '90s, when people wanted to watch the war over CNN and BBC<sup>37</sup>. Private network operators fully cabled urban India without any sanction of law, as there was no law in existence to regulate such activities. In 1995, the Cable Networks Act was hurriedly enacted for this purpose.

The Associated Chambers of Commerce and Industry has mooted a proposal for converting The Indian Telegraph Act to Indian Tele-Carriers Act. Assocham Telecommunications Committee Chairman P.K. Sandal said, "The Act should remove all barriers either at one stroke or stipulate a time-frame entry of any carrier into any sector except where the regulator body lays down conditions to promote convergence and help different services and networks to work together besides intensifying competition."

Arun Jaitley said that the group which had been formed to study the impact of knowledge convergence had changed the basic definition of 'broadcast'. The new definition provides an enabling provision to enable the Government to keep updating it with changes in technology.

India's first encounter with the Cinema took place on July 7, 1896, when a representative of the Lumiere Brothers for the first time showed films at Watson's Hotel in Mumbai. Soon thereafter, Harishchandra Sawa Bhatvadekar in Mumbai and Hiralal Sen in Calcutta got movie cameras and began making films. Bhatvadekar made films on

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<sup>37</sup> British Broadcasting Corporation

wrestling matches and Sen on theatrical performances. None of their films have survived. Meanwhile, in 1902, J.F. Madan began showing indigenous cinema in Calcutta.

The first feature film in India was shown in 1913, 17 years after the Lumiere show. It was 'Harishchandra' produced by Dhundiraj Govind, better known as Dadasaheb Phalke. Phalke, the father of Indian Cinema, established the genre of mythological film in India. Though he died a poor man, till 1920, Phalke dominated the Indian cine world. By the mid-twenties, India became a prolific producer of films with Dhiren Ganguly and Debaki Bose in Bengal and Chandulal Shah (Gunasundari) and Himanshu Rai (Light of Asia) in Mumbai. Ardeshir Irani produced India's first sound film—'Alam-Ara' in 1931.<sup>38</sup>

The eminent personalities dominating the field in those days were Prometheus Barua in Bengal, Shantaram in Maharashtra and K. Subramanyam in Tamil Nadu.

New Theatres in Calcutta, Bombay Talkies in Mumbai, Prabhat Films in Pune and Pancholi Studios in Lahore (Pakistan) came into being. Regional cinema began in the South. Soon, Sulochana, Devika Rani and Durga Khote became the favourites of the masses. In commercial cinema, Raj Kapoor, Guru Dutt and Bimal Roy became great successes, not only in India but also in the then USSR and Eastern Europe as well. Among less commercial films, K.A Abbas earned distinction with his 'Dharti ke Lal'.

Important milestones in Indian cinema were the founding of the Calcutta Film Society in 1947, India's first International Film Festival in 1952, contact with famous film personalities from abroad Jean Renoir from France, Frank Capra from Hollywood and V.I. Pudovkin from the then USSR, emergence of documentary cinema with Dr. Pati, Paul Zil and the Films Division of the Government of India. Satyajit Ray (Pather Panchali, 1955), Ritwik Ghatak and Mrinal Sen were among the prominent names.

With the growth of cinema in India, a need was felt to regulate the exhibition of films including their certification and licensing. As such, the Act dealt with two separate issues- examination and certification of films for public exhibition and regulation of cinemas including their licensing. In the Seventh Schedule of the Constitution, while, "Sanctioning of cinematograph films for exhibition" comes under entry 60 of the Union List, "Cinemas, subject to the provisions of entry 60 of List I" comes under entry 33 of the State List. There was no clear demarcation in the Act as to which provisions should be the

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<sup>38</sup> Mass Media in India ,2009, Government of India

concern of the Central Government and which of the state. The Act was amended in 1949 to introduce “A” and “U” certificates and centralize censorship.

The Cinematograph Act, 1952 (37 of 1952), which came into force on July 28, 1952, separates the provisions relating to the sanctioning of films for exhibition (a Union subject) from the provisions relating to licensing and regulation of cinemas (a state subject). This Act was amended in 1953,1957,1959,1960,1973,1981 and 1984. The Central Board of Film Certification (commonly referred as Censor Board) is Censorship Body under the Ministry of information and Broadcasting, Government of India<sup>39</sup>.

## **2.4 FACETS OF MEDIA LAW**

Indian Media consist various types of information, communication and broadcasting media: India also has a strong music and film industry. India has more than 70,000 newspapers and over 690 satellite channels (more than 80 are news channels) and is the biggest newspaper market in the world - over 100 million copies sold each day<sup>40</sup>. Indian media was active since the late 18th century with print media started in 1780, radio broadcasting initiated in 1927, and the screening of Auguste and Louis Lumière moving pictures in Bombay initiated during the July of 1895. It is among the oldest and largest media of the world. Media in India has been free and independent throughout most of its history, even before establishment of Indian empire by Ashoka the Great on the foundation of righteousness, openness, morality and spirituality. The period of emergency (1975–1977), declared by Prime Minister Indira Gandhi, was the brief period when India's media was faced with potential government retribution.

The first printing press arrived in India on 6th September 1556 & was installed at the college of St.Paul in Goa. The first major newspaper in India—The Bengal Gazette—was started in 1780 under the British Raj by James Augustus Hickey, Other newspapers such as The India Gazette, The Calcutta Gazette, The Madras Courier (1785), The Bombay Herald (1789) etc. soon followed. These newspapers carried news of the areas under the British rule.

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<sup>39</sup> [www.cbfcindia.gov.in](http://www.cbfcindia.gov.in), visited on 5<sup>th</sup> may2015

<sup>40</sup> "Why are India's media under fire?". BBC News. 12 January 2012. available at [www.bbc.com/news/world/asia/india](http://www.bbc.com/news/world/asia/india), visited on 5<sup>th</sup> may2015

The Bombay Sam char, founded in 1822 and printed in Gujarati is the oldest newspaper in Asia still in print.<sup>41</sup> The Times of India was founded in 1838 as The Bombay Times and Journal of Commerce by Bennett, Coleman and Company, a colonial enterprise now owned by an Indian conglomerate. The Times Group publishes The Economic Times,<sup>42</sup> Navbharat Times (Hindi language), and the Maharashtra Times (Marathi language).

The Radio broadcasting was initiated in 1927 but became state responsibility only in 1930. In 1937 it was given the name All India Radio and since 1957 it has been called Akashvani. Limited duration of television programming began in 1959, and complete broadcasting followed in 1965. The Ministry of Information and Broadcasting owned and maintained the audio-visual apparatus—including the television channel Doordarshan—in the country prior to the economic reforms of 1991. The Government of India played a significant role in using the audio-visual media for increasing mass education in India's rural swathes. Projected television screens provided engaging education in India's villages by the 1990s. In 1997, an autonomous body was established in the name of Prasar Bharti to take care of the public service broadcasting under the Prasar Bharti Act. All India Radio and Doordarshan, which earlier were working as media units under the Ministry of I&B became constituents of the body. On 16 November 2006, the Government of India released the community radio policy which allowed agricultural centre, educational institutions and civil society organisations to apply for community based FM broadcasting license. Community Radio is allowed 100 Watt Effective Radiated Power (herein after referred as ERP) with a maximum tower height of 30 meters. The license is valid for five years and one organisation can only get one license, which is non-transferable and to be used for community development purposes.

As for as Information technology and Communications in India, the Indian Government acquired ES EVM computers from the Soviet Union, which were used in large companies and research laboratories. Tata Consultancy Services – established in 1968 by the Tata Group were the country's largest software producers during the 1960s. The 'microchip revolution' of the 1980s had convinced both Indira Gandhi and her successor Rajiv Gandhi that electronics and telecommunications were vital to India's growth and development. Mahanagar Telephone Nigam Ltd. (herein after referred as

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<sup>41</sup> "One night in Mumbai" National Post, 15 March 2011, Available at [www.nationalpost.com](http://www.nationalpost.com), visited on 24 December 2011

<sup>42</sup> launched in India 1961,

MTNL) underwent technological improvements. Between 1986–1987, the Indian government embarked upon the creation of three wide-area computer networking schemes: INDONET (intended to serve the IBM mainframes in India), NICNET (network for the National Informatics Centre), and the academic research oriented Education and Research Network (herein after referred as ERNET).

The timeline on the role of the state in the development of media in India for more than a century,<sup>43</sup> that divides the timeline into three 'ages'. The Age of Formulation, which starts with the Indian Telegraph Act in 1885 and ends with the Report of the Sub-Committee on Communication, National Planning Committee in 1948. State of Modern Mass Media: After Independence, the Indian media had evolved, realigned and reinvented itself to a large extent, and now-a-days we can see a clear division between commercial and aesthetic expressions of our Media Giants, sometimes arbitrary. Modern mass communication media is poles apart relative to any aesthetic feeling: vulgarity and arrogance nullify any hypothesis of meaning. Aesthetics is the more powerful answer to violence of modern mass communication. Today's mass communication media seems to escape every determination, exposing its message to all possible variants, it finishes to abolish it. Goal of mass communication is always the unbiased dissipation of any content, and the World Wide Web is no exception, and surely is the most efficient media tool. It's also very interesting to observe how the old media are becoming more and more permeable to blogs. This phenomenon is not due to a fascination in more democratic information sources. On the contrary - the pressure is rising due to the growth of the eyes' (cameras and new digital devices) that are watching the same events that mainstream media are reporting to us: the possibility of being uncovered are too many and broadcast journalists are forced to tell the truth (or at least a plausible version of it). As a consequence, blogs have become the major source of news and information about many global affairs. We also have to consider that bloggers are often the only real journalists, as they (at their own risk) provide independent news in countries where the mainstream media is censored, biased or under control.

This time in the history of Indian media is critical: it's overwhelming in the quick and dramatic changes over the last few years. Today's vastly changed media scenario calls for a recasting of the role of media in promoting pro-social change. The media scenario in the

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<sup>43</sup> Bagchi, Jeebesh, Sarai Reader 2001 'A Chronicle of Media and the State'.

country has definitely changed in the past few decades, or it can be said from the pre to the post independence epoch to an entirely new facade now, in both- favorable and adverse facets.

In India, media freedom has been a controversial issue, on one side right to information and freedom of expression is provided on other side media regulations and Press laws are ready to curb the media freedom. The party and government are attempting to act as a media watch dog in fast changing world of open communication.<sup>44</sup> Since newspapers began as a journal (record of current events), the profession involved in the making of newspapers began to be called journalism. In the yellow journalism era of the 19th century, many newspapers in the United States relied on sensational stories that were meant to anger or excite the public, rather than to inform. The restrained style of reporting that relies on fact checking and accuracy regained popularity around World War II. Criticism of journalism is varied and sometimes vehement. Credibility is questioned because of anonymous sources; errors in facts, spelling, and grammar; real or perceived bias; and scandals involving plagiarism and fabrication.

By the late 1990s, the availability of news via 24-hour television channels and then the Internet posed an ongoing challenge to the business model of most newspapers in developing countries. Paid circulation has declined, while advertising revenue — which makes up the bulk of most newspapers' income — has been shifting from print to the new media, resulting in a general decline in profits. Many newspapers around the world launched online editions in an attempt to follow or stay ahead of their audience.

However, in the rest of the world, cheaper printing and distribution, increased literacy, the growing middle class and other factors have more than compensated for the emergence of electronic media and newspapers continue to grow.<sup>45</sup> At issue is whether the newspaper industry faces a cyclical trough, or whether new technology has rendered obsolete newspapers in their traditional format.

The media in India is one of the freest in the world in terms of legal constraints. Freedom of expression incorporated in her Constitution in Article 19(1) (a) remains an important facilitator for widespread engagement within a democratic atmosphere. As beautifully remarked by the first Prime Minister of independent India Pt. Jawaharlal Nehru –

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<sup>44</sup> <http://www.merineews.com/article/changing-face-of-indian-media/15790451.shtml> ,visited on 21 may 2013

<sup>45</sup> N. Ram, Newspaper futures: India and the world, 15 August 2007, The Hindu,available at <http://www.hinduonnet.com/af/india60/stories/2007>, visited on 21 may 2013

*“I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press.”* But that great man could not foresee the danger involved in the ‘administration of justice’ which is the very essence of the natural justice and the rule of law or rather he would not have expected the press to get involved into something which is beyond its limit and ethics too. To realize the vision of Mr. Nehru, the media has been provided with many freedoms and immunities so that this fourth pillar of democracy stands tall and strong. But what Lord Atkin relates with power is also well placed with the notion of liberty. Liberty does corrupt into license and is prone to be abused. Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy<sup>46</sup>. It has to be remembered that freedom of expression is not absolute, unlimited or unfettered and in all circumstances, as giving on an unrestricted freedom of the speech and expression, would amount to uncontrolled license. Media has now reincarnated itself into a ‘public Court’ (Janta Adalat) and has started interfering into Court proceedings. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of ‘presumption of innocence until proven guilty’ and ‘guilt beyond reasonable doubt’. Now, what we observe is media trial where the media itself does a separate investigation, builds a public opinion against the accused even before the Court takes cognizance of the case. By this way, it prejudices the public and sometimes even judges and as a result the accused, that should be assumed innocent, is presumed as a criminal leaving all his rights and liberty redressed. If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who had indeed committed the crime, it amounts to undue interference with the “administration of justice”, calling for proceedings for contempt of Court against the media. Unfortunately, rules designed to regulate journalistic conduct are inadequate to prevent the encroachment of civil rights.

### **History of Trial by media**

Trial by Media is a phrase popular in the late 20th century and early 21st century to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a Court of law. In the

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<sup>46</sup> Express Newspapers Vs. U.O.I.,(1997) 1 SCC 133. See also re:Harijai Singh and re:Vijayakumar,AIR 1997 SC 73 wherein the Supreme Court of India has observed that the freedom of press is regarded as “the mother of all liberties in a democratic society”.

United Kingdom there is a heated debate between those who support a free press which is largely uncensored and those who place a higher priority on an individual's right to privacy and right to a fair trial. During high publicity Court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that regardless of the result of the trial the accused will not be able to live the rest of their life without intense public scrutiny. The counter-argument is that the mob mentality exists independently of the media which merely voices the opinions which the public already has. There are different reasons why the media attention is particularly intense surrounding a legal case: the first is that the crime itself is in some way sensational, by being horrific or involving children; the second is that it involves a celebrity either as victim or accused. Although a recently coined phrase, the idea that popular media can have a strong influence on the legal process goes back certainly to the advent of the printing press and probably much further. This is not including the use of a state controlled press to criminalize political opponents, but in its commonly understood meaning covers all occasions where the reputation of a person has been drastically affected by ostensibly non-political publications.

A string of high-profile cases, sensationalized by the media, have focused the debate between freedom of speech and expression; as claimed by the media, and the right of fair trial as proclaimed by the judiciary. It began in 1807, in the United States of America with the case of Aron Burr<sup>47</sup>; subsequently, it erupted in England; it has finally reached the shores of India. Since the controversy is of a new vintage in India, the Indian judiciary finds itself at a crossroad. Similar to the difficulties faced by the American and the English judiciary, the task before the Indian judiciary is to balance the competing fundamental rights of the media and of the accused. Since we can learn from the American and the English experience.

In 20th century one of the first celebrities in the 20th century to be arguably tried by media was Roscoe 'Fatty' Arbuckle who was acquitted by the Courts but nevertheless lost his career and reputation due to the media coverage. Parallels can be drawn between these cases and the trial of O.J. Simpson. The connection is less about guilt or innocence but about the promotion of the media coverage in the public mind above the status of the Court. Another case in the United States was the Rodney King incident and subsequent

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<sup>47</sup> United States v. Burr, 25 F Cas 55 (D Va 1807).

trial of the police officers involved. The acquittal was challenged by the media reporting with violent consequences. What makes this case particularly important historically is the fact that it was amateur video footage which provided the key evidence of perceived guilt. As video cameras and their digital successors and CCTV become wide spread, this type of 'caught on camera' incident become more and more common. This can pose real problems for the legal system as the evidence they provide may be inadmissible for technical reasons (e.g. not being able to pinpoint exact times) but they give very strong images for the media (and public) to seize upon and the potential to manipulate by editing.

Even where a criminal Court finds somebody guilty the media can still appear to sit in judgement over their sentence. Examples include Myra Hindley whose proposed release from prison after thirty years was widely condemned by the British press (the argument became moot when she died in 2002); Maxine Carr who, having served her sentence, has been released and is, according to some commentators being "demonised by the press". One case popularized by the media between 1980 and 1982 was the murder trial of Lindy Chamberlain in Australia who was convicted of killing her baby, but later released in 1986 on new evidence showing that a dingo had in fact committed the act as was originally claimed by Chamberlain. The motion picture *A Cry in the Dark* depicted Chamberlain, as played by actress Mery Streep, caught in a "trial by media" which fed the public's, and subsequently the jury's false conviction of her.

Often the coverage in the press can be said to reflect the views of the person in the street. However, more credibility is generally given to printed material than 'water cooler gossip'. The responsibility of the press to confirm reports and leaks about individuals being tried has come under increasing scrutiny and journalists are calling for higher standards. There was much debate over U.S President Bill Clinton's impeachment trial and prosecutor Kenneth Starr's investigation and how the media handled the trial by reporting commentary from lawyers which influenced public opinion. Another example was the investigation into biologist Steven Hatfill allegedly sending anthrax through the U.S. mail as a terrorist attack, which resulted in no conviction, but Hatfill went on to sue as his reputation was severely tarnished and career destroyed. Families and friends of persons convicted of crimes have apparently successfully used the power of the media to reopen cases, such as the Stephen Downing case in Derbyshire where a campaign by a local

newspaper editor resulted in a successful appeal and his release after twenty seven years in prison.

### **Trial by Media in India**

In India, trial by media has assumed significant proportions. Some famous criminal cases that would have gone unpunished but for the intervention of media are Priyadarshini Mattoo case, Jessica Lal case, Nitish Katara murder case and Bijal Joshi rape case.

The media however drew flak in the reporting of murder of Aarushi Talwar, when it preempted the Court and reported that her own father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar were involved in her murder, thus reviving memories of JonBenet Ramsey murder, which was hauntingly similar. The CBI later declared that Rajesh was not the killer.<sup>48</sup>

Between September 2004 and March 2005, the media - print, audio and visual all wrote about His Holiness Sri Jayendra Saraswathi Swamigal, a Hindu religious leader, suggesting his guilt in a murder case, but the High Courts of Madras and Andhra Pradesh and the Supreme Court of India repeatedly found that there was no material evidence to find him guilty and came down heavily on the media and the Government of Tamil Nadu for misuse of government machinery.

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<sup>48</sup> [http://en.wikipedia.org/wiki/Trial\\_by\\_media](http://en.wikipedia.org/wiki/Trial_by_media) accessed on 11june2010