

MEDIA AND LAW: A NEXUS BETWEEN FUNCTION AND FUNCTIONALITY

Ms. Aayushi Singh*
Mr. Kartik Arora**

Introduction

The Germany of the 1930s and 1940s - a catastrophic image of censorship and media surveillance, where Joseph Goebbels and Adolf Hitler made sure Germans could only see what the Nazi hierarchy wanted people to see, hear what they wanted them to hear and read only what the Nazis deemed acceptable. India has also seen a gruesome censorship on media during the 1975 Emergency declared by the Hon'ble Prime Minister of India, Mrs. Indira Gandhi. However, the Indian Media was strong enough to stand against the upsurge and rebuild itself in the following decades. The Indian media has metamorphosed and has appeared as a harbinger of change in more than just one way.

Be it capturing at the war front or bringing out heinous crimes against women like the Nirbhaya rape case, media has been ever energetic and enthusiastic in bringing forward the truth, sometimes exaggerations, but still conveying the essence of the incident.

From such a pillar of democracy or as we may designate it as the fourth pillar, the minimal expectation would be conveyance of news that is free from bias and any sort of prejudice. Even though our own nation's constitution does not specifically speak of a certain freedom of press except of it being latently envisaged under Article 19(1)(a), the *American Press Council* comprehensively explains the term "freedom of press" as –*"A freedom, won in centuries of struggle against political and commercial interest which includes the right of a newspaper to publish what it reasonably considers to be news, without fear or fervor, and the right to comment fairly upon it."* Beyond merely reporting facts, the media plays the role of a social catalyst and the mammoth organization is often lauded for holding the finest repertoire of change makers who expose political

* Student, Symbiosis Law School, Pune, India.

** Student, Symbiosis Law School, Pune, India.

inclinations and agendas, throw light on lesser known facts of prominent cases. Media undoubtedly even today stands as the sole source of disseminating information amongst the commoners in India.

Objective, Research Methodology and Hypothesis

The objective of the research is to bring out the effectiveness of media in the largest democracy of the world. It aims at finding out whether the efforts made by media in providing awareness and justice to the commoners are worthwhile or only a means to raise their funds. We have focused on the positive aspects of media the reason for which is stated in the conclusion of this research paper.

Towards the end of the research we will be able to clearly understand the difference between media trial and the trial by courts and whether interference of media in the justice system could be regarded as contempt of court or not. We will also be comparing the laws during the British rule and the altered laws in the present times. The sole motto of the research is to explore, describe, explain, compare, evaluate, criticize and draw inferences to bring about the true spirit of media in India.

Our research is based on primary and secondary data including judgments also.

In sight of the present topic for research, mainly case laws, day-to-day activities and coverages have been taken into consideration to frame an outline of the entire scenario. However, the survey conducted brings out the true image of media in India.

It can be hypothesized that media trials can lead to effective and speedy justice to victims not undermining the prestigious role of the Indian Judiciary. What we hypothesize is that media along with Judiciary can become a strong forum of providing correct and speedy justice.

Literature Review

The articles, journals and judgments we have referred to have been mentioned as follows:

- "Political Efficacy on the Internet: A Media System Dependency Approach by Ognyanova, K.; Ball-Rokeach, S.J. (2012).
- "A dependency model of mass-media effects", Communication Research by Ball-Rokeach, Sandra J; DeFleur, ML (1976).

- *Reviving the fourth estate* by Julianne Schultz, Cambridge University Press. p. 49, ISBN 978-0-521-62970-6.(1998).
- "The Soul of Man under Socialism" by Oscar Wilde, Fortnightly Review 49 (290): 292–319. (February 1891).
- "Freedom of the Press," by Durgabai Deshmukh, Indian and Foreign Review, Vol.3, No. 10, (October, 1965).
- The Role of Media in Democracy: A Strategic Approach, 1999, Center for Democracy and Governance.
- *Trial-by-Media: Derailing Judicial Process in India*, by Zahra Khan, Media Law Journal Volume 1 90, (90-112) (2010).
- *Right to Privacy in Sting Operations of Media* by Om Prakash, Odisha Review 56- 60 (2013).
- *Manu Sharma v State (NCT) of Delhi* (2010) 6 SCC 1.
- *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* 1986 AIR 515, 1985 SCR (2) 287.
- *Shreya Singhal v Union of India* Writ Petition (Civil) No. 758 of 2014 and Writ Petition (Criminal)No. 196 of 2014.
- *Labour Liberation Front v. State Andhra Pradesh* 2005 (1) ALT.
- *Jessica Lal Murder case* 2010 6 SCC 1.
- *State (Through Cbi) vs Santosh Kumar Singh* 2007 CriLJ 964, 133 (2006) DLT 393.
- *Aniruddha Bahal v. State* CrI.M.C. 2793/2009.
- *Hamdard Dawakhana v. Union of India*, AIR 1960 S.C 554.
- *Kharak Singh v. State of UP* 1963 AIR 1295, 1964 SCR (1).
- *Sherman vs. United States* 356 U.S. 369 (1958).

Inception: The Idea of Restrictive and Autocratic Dissemination of Information

Media laws in India came into existence since British Rule. The British government laid certain rules and regulations such as *First Press Regulations*¹, 1799 which mandated the newspapers industry to mention the name, address and other basic information of editors, writers and publishers. Second was the *Gagging Act*, 1857 which mandated a compulsory license to run a printing press. It also gave power to the government to prohibit the circulation of any printed materials such as books, reports and newspaper. Then came the *Vernacular Press Act*, 1878 which gave illegitimate power to District Magistrate or Police Commissioner to ask for security and power to forfeiture such security and any printed material if considered objectionable in the interest of British government. The *Indian Press Act*, 1910 was based on *Vernacular Press Act*, 1878 to ask for security money and confiscate printed material if considered objectionable in

¹ It was promulgated by Lord Wellesley on 13th May, 1799.

the interest of British government². Information dissipated during the Colonial period was mainly limited to all that was approved by the British officials to be published in the newspapers. The media was neither free nor it had the opportunity to serve as a medium for creating awareness. However, during the same time certain determined freedom fighters took over to break this ted stigma and reach out to people. The newspapers were started with the objective of public service by the patriots. The sole objective was to arouse the political consciousness to imbibe the feeling of nationalism, to expose the fake and disloyal intentions and policies of the government. The most important writers were Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Bankim Chandra, M.G. Ranade, and many more by their literary works fostered the spirit of patriotism and national consciousness among the masses. Kesari and Harijan were the most popular newspapers which started the revolution.

Media Laws in India

There are several legislations which have been followed since British rule and some of them have been passed by the Indian Parliament in order to maintain a democratic environment. *The Press and Registration of Books Act, 1867* which mandated to mention the name of the editors, writers and the publisher on every copy of newspaper and publisher is required to submit two copies of the newspaper as it get published to the State government free of cost.

The Delivery of Books and Newspapers (Public Libraries) Act, 1954 laid down an efficient principle in order to disseminate general knowledge at a large scale. The act mandated that the publisher is required submit one copy of newspaper to every public library.

Similarly *Copyright Act, 1957*, section 52 does not constitute infringement of copyright, such as if for fair use or used for bona fide purpose.

The Press Council of India Act, 1965 was enacted in order to protect the freedom of press, to maintain and improve the standards of both news agencies and newspapers³. M V Kamnath the famous journalist and Chairman of Prasar Bharti once stated that media is not “Court of Law” but “Court of Honour”. Its decisions are not judicial pronouncements so therefore a journalist or newspaper agencies cannot be held liable.

² Media Laws - An Overview. <<http://www.legalserviceindia.com/articles/media.htm>> (Last visited on 9th April 2015 at 12.00 hrs).

³ Preamble of *Press Council of India Act, 1978*.

Media and Law: Nexus between Function and Functionality

The first thought that comes to our ever judgmental mind when we talk about media is exaggeration, spiced up stories etc. However, this is not the complete truth. Media more or less shapes the way we perceive the world. Talking about the functioning of media, its reports the news, acts as a functionary between the democracy and the government, becomes a watchdog for the policies that are implemented in the country, criticizes them according to people's opinion and sometimes also serves as a mode of entertainment.

Media plays a very important role in establishing various kinds of relationships in a society. The dependency on media arises out of the various kinds of associations that are created by it. We shall now list down the associations:

- The relationship between society and media- media is the voice and reflection of the society as it takes up issues which are likely demanded, desired and preferred by the society. For instance the national as well as the vernacular press which takes care of the needs of the urban as well as the rural people.
- The relationship between media and audience- media responds to the questions of the audience. Simultaneously it also takes up suo motto cognizance of larger causes of public interests.
- The relationship between society and audience- individual views that propagate through the media affect the society through the opinions and moulds perceptions. Audience functions as a link between media and society.

Ball-Rokeach and DeFleur suggests that the cognitive, behavioral and affective consequences of media use are premised upon characteristics of both individuals and their social environment^{4 5}. The basic functions of the media can be listed as follows⁶:

- inform (a teacher function)
- surveillance (a watcher function)
- service the economic system
- hold society together (act as sort of a cultural glue)
- entertain
- act as a community forum (media equivalent of town hall meeting or group discussion)
- set the agenda

⁴ Ognyanova, K.; Ball-Rokeach, S. J. (2012). "Political Efficacy on the Internet: A Media System Dependency Approach". Academia.edu. Retrieved 5 May 2014.

⁵ Ball-Rokeach, Sandra J; DeFleur, ML (1976). "A dependency model of mass-media effects". Communication Research.

⁶ <http://hope.journ.wvu.edu/tpilgrim/j190/190.8functionslist.html>.

- service the political system

The very essential duty of the media is the resolution of ambiguity. Although certain ambiguities are created by the media also in various matters but we cannot blame it completely because media is an industry which needs to make money to survive in this ever growing non ending economic scenario. For instance during the Kargil War of 1999, the media very actively was reporting from the war front but the tapes that were played on the news channels were one day late reported as live. This created restlessness in the minds and hearts of the people as well as led to certain positional disclosures of the deployment of the Indian Army Troops.

Media as the sole promulgator of the rights, duties, laws and policies of the country helps citizens to know their value in the society. Before a question is raised stating that are very laws are sufficient enough make people aware of their rights and duties, I would like to clarify that there are a number of people who don't even know the opening lines of the Constitution of India. How will these common people be made aware of their basic rights unless media tells them? For instance in 2011, Anna's rigorous struggle against political corruption and bringing Jan Lokpal Bill into force, it was the media coverage of the entire anti-corruption movement in India that led us to know how detrimental corruption was to the Indian society and how the world's largest democracy was being fooled and eaten up by the high as well as low profile politicians, government officials and private parties.

Media provides a forum for public discussions, debates, campaigns⁷, advertisements etc. Functionality refers to the quality of being suited to serve a purpose well, practically. Looking into this aspect and relating it with media, we think that the job that the media is doing is amazing. It is well suited to create awareness; hence there are a lot of campaigns being run in this regard. It is well suited to put forward one's views and opinions; hence debates and conferences for the same are organized. Media is supposed to bring out the truth; hence it conducts sting operations to expose the crooked souls of the country. Yes, I agree that sometimes it becomes over and matters are way too much sensationalized but we all know nobody is perfect.

Media has been a very active agent in carrying out activities that shall trigger the speed of justice in India, not only speed but trigger justice in India. To cite the case of Jessica Lal⁸ would be a cliché as the

⁷ The Great Indian Litterbug, 2015.

⁸ *Manu Sharma v State (NCT) of Delhi* (2010) 6 SCC 1.

case gathered much media hype during the first trial undertaken after charge sheets were filed with the court on 3 August 1999. The prime accused, Manu Sharma, was charged with murder, destruction of evidence among other offences, while the 3 accomplices, Gill, Khanna, and Yadav faced lesser charges as destruction of evidence, harboring a suspect and conspiracy. At the face of it this was clearly an open and shut case. Then why is it that this case invited public gawking and media interference? By the end of the hearings, four of the main witnesses allegedly present on the night of the murder turned hostile by retracting their initial statements and not only this, nearly three hundred other party-goers claimed to have either not attended the event or to have left before the incident occurred.

The case did not quite turn extraordinary as Shayan Munshi, the primary witness, claimed that the statement he signed was written in Hindi, a language he allegedly did not understand and took his words about Manu Sharma possessing a gun back. . For someone whose career depended on knowing the language as the witness was a struggling actor, Shayan dug his grave with that denial. This is when Tehelka jumped into the scene, and seeing that Munshi had acted in a Bollywood movie, the organization cast individuals who met him posing as casting agents and producers of an Indo-British bilingual production. Munshi walked the extra mile to justify his Hindi skills on being pressed by the agent, even proving his efficiency in different Hindi dialects. There, the prime witness carefully walked into his own trap. Though we know the findings of sting operations are not considered as evidences in the court of law but this case was purely based on the findings of the media along with the help provided by the Delhi police. In March 2006, The Delhi Police filed an appeal in the High Court. In October 2006, the High Court began to hear the matter on a day-to-day basis. This led to conviction of Manu Sharma and the eight other accused in this case. Later when the convict filed an appeal in the Supreme Court, not much could he change in his fate. The Supreme Court upheld the conviction of Manu Sharma and the others.

So is the power of the media when it comes to provide justice. But there can be laxes also. For instance in the Arushi murder case, the entire matter was heavily sensationalized and all the focus diverted towards the character of the victim. There was carelessness on part of the police which allowed a dozen of media personals to enter the crime scene which led to destruction of evidence. Also media coverage in this case only made the people extensively confused.

Nonetheless, we do not criticize the media. It is the backbone of our country performing its functions and duties in accordance to the law of the land and also assisting the law and the law makers.

Revival of the Fourth Estate

The Fourth Estate (or fourth power) is a societal or political force or institution whose influence is not consistently or officially recognized. "Fourth Estate" most commonly refers to the news media, especially print journalism or "the press". Thomas Carlyle attributed the origin of the term to Edmund Burke, who used it in a parliamentary debate in 1787 on the opening up of press reporting of the House of Commons of Great Britain⁹. The other three estates are those of the French States-General: the clergy, the nobility and the commoners. We shall not get into the details of the other estates as they are not the subject matter of the paper.

Before we move further, I would like to quote Oscar Wilde," *In old days men had the rack. Now they have the Press. That is an improvement certainly. But still it is very bad, and wrong, and demoralizing. Burke called journalism, the fourth estate. That was true at the time no doubt. But at the present moment it is the only estate. It has eaten up the other three. The Lords Temporal say nothing, the Lords Spiritual have nothing to say, and the House of Commons has nothing to say and says it. We are dominated by Journalism*".¹⁰

We shall now talk about the rebirth of the fourth estate in the largest democracy of the world after the Emergency of 1975. During the mid of 1975, when Mrs. Indira Gandhi became more and more threatened by the increasing criticism against her government, she immediately took over the press prohibiting them from reporting matters on domestic and international fronts. Since independence the Congress party had been in power majorly promising a democratic socialist country. However, many incidents under the leadership of Mrs. Gandhi showed a gradual drift from parliamentary democracy to what we may call to be autocratic governance.

After the declaration of Emergency in 1975, most of the newspapers were censored and gradually gave up on their freedom to express. The newspapers were extensively filled with fawning accounts of national events, flattering pictures of Mrs. Gandhi and her ambitious son and

⁹ Schultz, Julianne on *Reviving the fourth estate*. Cambridge University Press. p. 49. ISBN 978-0-521-62970-6. (1998).

¹⁰ Wilde, Oscar on "The Soul of Man under Socialism". *Fortnightly Review* 49 (290): 292-319. (February 1891).

of course lucrative government advertising¹¹. However when all newspapers had given up, two of the dailies namely The Indian Express and The Statesman became profoundly dissenting and anti-Indira and stood by what they believed in-Freedom of Speech and Expression and the Right to know the truth. But it was not too late when the Indira Government started taking back the government advertisements which were the main revenue generation source of the newspapers. This ultimately led to the fall of the two dailies and with it the fall of all hopes.

After the 19 months long Emergency in India when Morarji Desai took over the country in 1977, the press media was restructured and that was the revival of the fourth estate in the largest democracy of the world. The Government announced three distinct steps toward restoring freedom of the Indian mass media. These were: (1) to establish a committee to study misuse of mass media during the internal emergency; (2) to establish a working group to study the question of converting All India Radio and Doordarshan (television) into autonomous institutions; and (3) to establish a committee to study the feasibility of restructuring the existing news agency (Samachar).

The reports clearly stated that the Indira Government misused the mass media and exploited the intrinsic weaknesses of a system that was at that time built on a vulnerable foundation¹². Freedom of press was restored, the print media came back to life and the largest democracy was restored with the freedom to be heard and to say.

Since then and till now the media has been ever growing, thus establishing the revival of the fourth estate in the country. Here I would like to quote Thomas Jefferson on the importance of having a free media, "If it were left on me to decide whether we should have government without newspapers or newspapers without government, I should not hesitate a moment to prefer the latter."

Contempt of Court

To elucidate, let us take up Chapter IX of The Law Commission of India's 200th Report titled as, "*Trial by Media : Free Speech and Fair Trial under the Code of Criminal Procedure, 1973*" that constitute interference of the press in the administration of justice including:

¹¹ Times (New York: Times Inc., Dec. 20, 1976), p. 68.

¹² Durgabai Deshmukh on "*Freedom of the Press*," Indian and Foreign Review, Vo1.3, No. 10,(October, 1965).

- (1) Publications concerning the character of accused or previous conclusions;
- (2) Publication of Confessions;
- (3) Publications which comment or reflect upon the merits of the case;
- (4) Photographs related to the case which may interfere with the identification of the accused; (5) direct imputations of the accused's innocence;
- (6) Creating an atmosphere of prejudice;
- (7) Criticism of witnesses;
- (8) Premature publication of evidence
- (9) Publication of interviews with witnesses.

Section 3 of the Contempt of Courts Act, 1971 speaks of how court proceedings shall be deemed to continue to be pending until heard and finally decided. A person shall be held guilty of contempt of court if he publishes any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice, if at that time he had no reasonable grounds for believing that the proceeding was pending.

Section 4 of the Act talks about how “*Fair and accurate report of Judicial proceeding*” is not contempt while *Section 5* deals with how “*Fair criticism of judicial act*” does not amount to contempt. While the latter section deals with how a person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided, the former safeguards the press among other entities against any arbitrary restrictions as long as the report that is being turned in by them is one that is elaborate and well-researched and most definitely not a work put together by pitching in spices only to make an article or a news hour intriguing to an audience that often demands scandal over substance.

Criticism which in any way undermines the dignity of court cannot be permitted under the veil of freedom of speech. The powers to punish for contempt conferred on the Supreme Court and High Courts by *Articles 129* and *215* are constitutional in nature. *Section 15(1)* of the Contempt of Courts Act, 1971 additionally provides that power of the court to punish for contempt prevents any unlawful interference with the administration of justice. The power of contempt of court is definitely not a safeguard for judges as distinct individuals but for the functions which they shoulder in the long run. If this function must be carried out efficiently in a particular case pending before the court and awaiting judgment, it is pivotal that human beings, despite their strength of character and weight of morality and sound judgment must not be torn from the opinions of the plebeians or be dwindling

between “*moorings of impartiality.*” In securing freedom of speech, the Constitution in no case tried to create the right to influence jurors.

Freedom of Press and the Judiciary: Development through the Times

Media/press serves as a neutral conduit between information and dissipation of information. Before independence in India, there was no constitutional or statutory rule which could guarantee freedom of individual speech or press. At most, some common law freedom could be claimed by the press, as observed by the Privy Council in *Channing Arnold v. King Emperor*: The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute law his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject.

It has been said that access to information is a process of healthy democratic environment¹³. The Rule of Law also states freedom to media as to keep the check on judiciary, reports issued by the courts in order to promote effective justice¹⁴. According to Professor George Gerbner mass media, news or for that matter public entertainment promotes cultural pressure of the social order. At the same time judiciary effort to adjudicate individual cases in accordance to law¹⁵. From the perception of community at large it has been stated that media “*shows what public wants to see and in which public is interested*” instead of “*what is of public interest*”.

The Preamble of the Constitution of India in its core belief ensures to all its citizens freedom of liberty to express and be heard. The constitutional significance of the freedom of speech and expression is enshrined in Article 19(1)(a) of the Constitution with certain reasonable restrictions as mentioned in Article 19(2). Venkataramiah, J. of the Supreme Court of India in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*¹⁶ has stated that “In today’s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly

¹³ *Right to Information*, 2005.

¹⁴ *The Role of Media in Democracy: A Strategic Approach*, 1999, Center for Democracy and Governance.

¹⁵ Zahra Khan on *Trail-by-Media: Derailing Judicial Process In India*, Media Law Journal Volume 1 90, (90-112) (2010).

¹⁶ *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* 1986 AIR 515, 1985 SCR (2) 287.

in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.” The above statement very clearly highlights that the media acts as a watchdog in the proper functioning of the democracy as well as assisting the judiciary.

Recently in 2012 we witnessed a case where in two Marathi girls had expressed their opinions regarding Shiv Sena Party on facebook. The very next day the girls were arrested and a complaint filed against them under Section 66A (and various other sections of different statutes but here we shall be restricting ourselves to the issue regarding freedom of speech and expression only) of the Information Technology Act of 2000. In the case of *Shreya Singhal v Union of India*¹⁷ which was decided on 24th April 2015, the Supreme Court has stated that Section 66A does not have any proximate connection with the incitement to commit an offence. Firstly, the information disseminated over the internet need not be information which "incites" anybody at all. Written words may be sent that may be purely in the realm of "discussion" or "advocacy" of a "particular point of view". Further, the mere causing of annoyance, inconvenience, danger etc., or being grossly offensive or having a menacing character are not offences under the Penal Code at all. They may be ingredients of certain offences under the Penal Code but are not offences in themselves. For these reasons, Section 66A has nothing to do with "incitement to an offence". As Section 66A severely curtails information that may be sent on the internet based on whether it is grossly offensive, annoying, inconvenient, etc. and being unrelated to any of the eight subject matters Under Article 19(2) must, therefore, fall foul of Article 19(1)(a), and not being saved Under Article 19(2), is declared as unconstitutional. This is a revolutionary stand on the freedom to express one's views and grievances on a public forum be it via posts on the internet or discussions in general. It was only because the media that sensationalized this issue to such an extent that people all over the country were very strongly against the entire act of arresting the girls and conducting criminal proceedings against them. Declaring the above mentioned provision unconstitutional only boosts up the people to speak against what they feel is inconsistent

¹⁷ *Shreya Singhal v Union of India* Writ Petition (Civil) No. 758 of 2014 and Writ Petition (Criminal) No. 196 of 2014.

with the development of the country but also encourages them to come forward and express.

The Hon'ble Supreme Court in *Labour Liberation Front v. State Andhra Pradesh*¹⁸ stated that over commercialization and competition among journalists had led to gross misuse of media which has misled to the fact of the case.

But at the same instance in *Jessica Lal Murder case*¹⁹ it was the media due to victim and her family were able to get justice. The retired judge RS Sodhi who delivered the High Court verdict stated that "*I am happy that my judgment has found favour with the Supreme Court*", "*It was the media*²⁰ *that brought it to our attention that this case had been lingering on for such a long time,*" said Sodhi²¹.

Similarly in *Priyadarshini Mattoo's case*²² the accused was released by the lower court because the proper facts and evidence were not furnished. The media played a proactive role and associated in the process of justice.

Elaborating on the judiciary part, former Additional Solicitor General K.T.S. Tulsi remarked, "*Even judges are human beings and get influenced by what they see and read. They cannot remain immune to media and what is happening around them.*" Indeed, and it must be pertinent to say that often the tampering of witnesses and evidence is so sickening that the existence of an organization that incites a blasé public and brings to their notice that Jessica Lals, Priyadarshini Mattos, Daminis are not populace from the newspapers, they were living, breathing individuals who were put to a fate, anyone could meet. The public outrage has not just led to reopening of cases in which justice was either denied or delayed however it has also infused the masses with an almost electric passion. We must not overlook the fact that in many cases when media has conducted a so called trial, it has also successfully not just educated but impelled

¹⁸ *Labour Liberation Front v. State Andhra Pradesh* 2005 (1) ALT at page 740- "*once an incident involving prominent person or institution takes place, the media is swings into action, virtually leaving very little for the prosecution or the Courts*".

¹⁹ *Jessica Lal Murder case* 2010 6 SCC 1.

²⁰ String operation by the news magazine Tehelka and showed on television. Due to which it was proved that witness were bribed. <Link-
http://en.wikipedia.org/wiki/Murder_of_Jessica_Lal> (Last visited on 24th March 2015).

²¹ *Jessica Lal case, Manu Sharma gets life sentence from Supreme Court.* <<http://www.ndtv.com/india-news/jessica-lal-case-manu-sharma-gets-life-sentence-from-supreme-court-415712>>. (Last visited 28th March 2015 at 18.50 hrs).

²² *State (Through Cbi) vs Santosh Kumar Singh* 2007 CriLJ 964, 133 (2006) DLT 393.

masses to come to the streets and demand justice where they think justice has not been done, or seem to be done.

Legality of Sting Operations

The Hon'ble Delhi High Court in *Aniruddha Bahal v. State*²³ held that a sting operation conducted by a person is a legitimate exercise. The court further held that even though there is no proper law but such right can be put forward in accordance to Article 51A(b) of the Constitution of India.

Sting Operations are generally of two types a) Positive Sting Operations and b) Negative Sting Operations. Positive Sting Operations are those which are carried in the favour of public interest or for the benefit of the society. Negative Sting Operations are those which violate the right of an individual and not also benefit the society at large.

The right to conduct a sting operation and freedom of press is not mentioned anywhere in the Constitution of India. The right to freedom of press is a liberty incorporated under Article 19(1) *freedom of speech and expression*²⁴ and the sting operation violates the right to privacy²⁵ of an individual which is incorporated under Article 21²⁶ of the Constitution of India, further it has been argued that sting operations are done to increase the "TRP of the television shows" or to "gather interest of the public" rather than "public interest"²⁷. The US former Chief Justice Earl Warren in *Sherman v Unites State*²⁸ stated that "*a line must be drawn between a trap for the unwary innocent and a trap for the unwary criminal*"²⁹. The 17th Law Commission in its 200th report recommended enacting a law and preventing media from interfering with privacy rights of individuals. However, we contend that in certain situations the results of sting operations be given validity as mostly in cases where such operations are carried out, it is done to unveil the criminal behind. Reiterating the famous sting operation in Jessica Lal murder case against Shayan Munshi, it led to reveal the truth and provide the victim's family with justice.

²³ *Aniruddha Bahal v. State* CrI.M.C. 2793/2009.

²⁴ *Hamdard Dawakhana v. Union of India*, AIR 1960 S.C 554.

²⁵ Article 12 *Universal Declaration of Human Rights* (1948).

²⁶ *Kharak Singh v. State of UP* 1963 AIR 1295, 1964 SCR (1) at page 332.

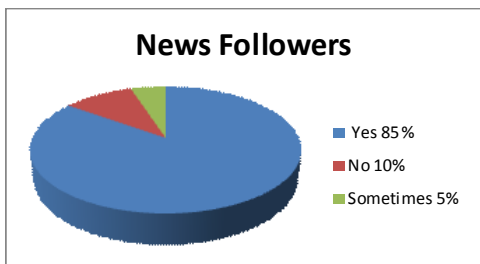
²⁷ Look if one can violate your privacy (unpublished manuscript) by Charu Modi

²⁸ *Sherman vs. United States* 356 U.S. 369 (1958).

²⁹ Om Prakash on *Right to Privacy in Sting Operations of Media* Odisha review 56- 60 (2013).

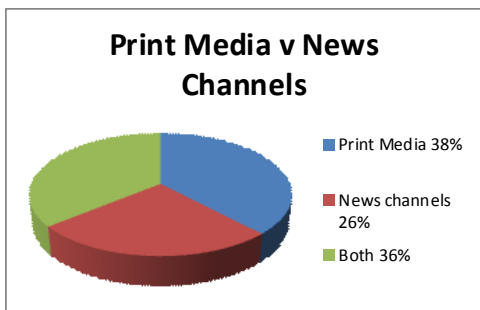
Survey

We conducted a survey amongst approximately 100-120 people to get an idea about how they are influenced by the day-to-day activities and issues of the media. The responses that were gathered were mostly in favour of the media however, there were some observations raised by the people which if incorporated could lead to better impact. The charts are as follows:



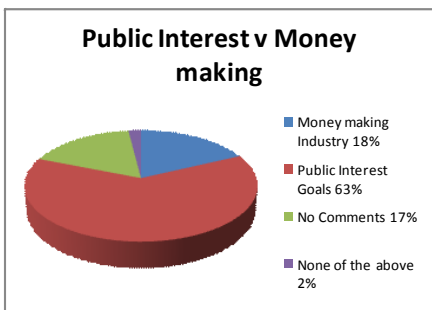
We found out that the number of people following news and about the happenings around the globe were considerably high as compared to the ones that did not. This simply shows that the media serves as a great platform to disseminate information

which is widely being received by the people.

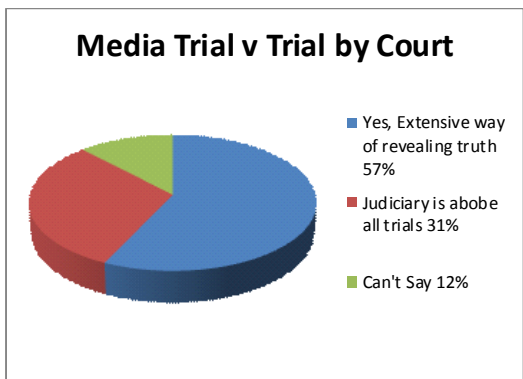


This pie chart shows that 38% of the people prefer watching news on television as compared to the 26%. While there are 36% of the people who follow the print media as well as the news channels suggesting that every information that is dispatched from the originator could be useful. It depends upon the

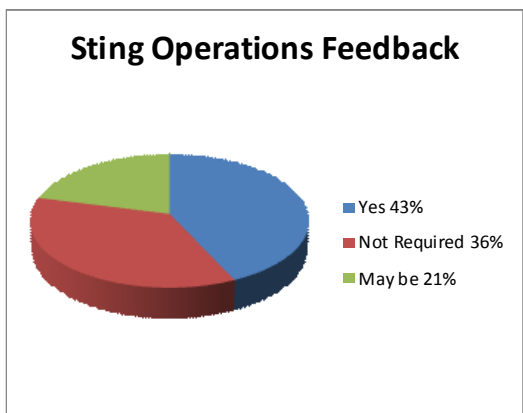
individual to clearly select the correct subject matter.



63% of the people believe that media is a source of information and awareness and related to public interest goals rather than a money making industry. People also accept the fact that there may be exaggeration of issues that are being dealt with but the audience has to be intelligent enough to not be fooled.

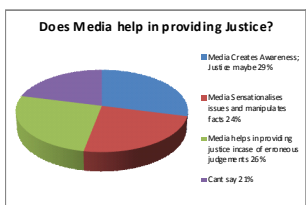


Having experienced certain media trials in the past 57% of the people believe that media trials are an extensive way of revealing truth in cases where the trials conducted by courts turn out to be erroneous due to manipulation of facts or witnesses or any other reason.



There was little dispute in regard to the question related to the question of sting operations. Some people said that it is a violation of privacy whereas some people said that such operations if conducted with a valid and genuine reason being lack of evidence or erroneous judgments, shall be conducted. Most people were in favour of a statute

in this regard due to various incidents which have taken place in the past e.g. Havala case, Jessica Lal's case.



The response to this question more or less remained constant through the options given to the people. Some said that since media creates awareness regarding a lot of issues it widens the scope of

thinking of the people. Some said it is just another means to spice up

issues to generate revenues. Others said that media plays a very vital role in this regard where judgments given have turned out to be erroneous.

Conclusion

Sensationalizing, dramatizing and exaggeration are no doubt in existence in the Indian media, but does that mean that all that is put in front of the public is fake? No! Responsible journalism is expected of the media personals but we cannot blame them for their laxes every time. Maybe sometimes we have to be intelligent receivers and assimilators. We cannot disregard the fact that media has had a very great role to play in changing the perception and attitude of the people. The various campaigns that had been undertaken by the famous newspapers weren't in vain. The youth forms approximately 55%-60% of India's population and we can see that their orientation is towards a crime free, developed country. How did they get to know that America is one of the most developed countries? How did they get to know about the ongoing war in Palestine? How do they get to know about the various universities and their elaborate researches? The answer to these and many more latent questions is The Media. Even our survey shows that people regard Media as the sole awareness providing forum.

Freedom of speech and expression made a way for itself in the mainstream only when questions regarding to what extent we can criticize arose. Beyond just reporting news, media plays a very important role in uplifting the standards of living of people. It brings about a revolution in the minds of the people who have been deprived of their basic rights and privileges.

Through this research paper we have tried to focus on the positive side of the media rather than criticizing it because we particularly believe that positivism breeds hope for improvement whereas negativity only makes the situation worse.

