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## ROLE OF MEDIA AND INFRINGEMENT OF HUMAN RIGHTS

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### Introduction:

Human Rights are natural rights which are essential for human beings in society anywhere in the world. Fundamental rights which are incorporated in Part III of our Indian constitution are part of human rights. Whenever human rights are infringed or affected it is the duty of the press to place the actual facts before the public for necessary action. Press is considered as the custodian for the protection of human rights and eye and ear of the society. But unfortunately the journalists who are the back bone of press are involved in problems and their human rights are at stake for the publication of true facts in papers and their dealings with different people in the society. This paper also analyzes how the media and judiciary act in the interface between common man and the government. Media being the fourth estate of government impact the quality of democracy in any state and asserts its role by strong changing and intensifying the quality of democracy.

India today is in the midst of a “media revolution”. The formative phase of the digital revolution is a great time to be a journalist.

Freedom of speech and expression is a natural right which a human being acquires by birth. Therefore, it is a basic human right Article 19 of the universal declaration of Human Rights (1948) Proclaims, Everyone has the right to freedom of opinion without interference and seek and receive and impart information on any ideas through any media and regardless of frontiers. The freedom of speech and expression is heart and soul of democracy<sup>2</sup>. That “Democracy is

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2 Economic & Political Weekly, June 28, 2014 Vol XLIX nos. 26 & 27.



based essential on free debate and an open discussion, for that it is only corrective of Govt. action in a democratic setup. Justice Bhagwati in the notable case of **Menaka Gandhi v UOI**<sup>3</sup> has emphasized on the significance of the freeing to speech and expression in his classic words. Media is one way for existing any event and so is the same strong pillar for working as the correction issue. We are living in as media revolution. It is the biggest thing to hit humanity since the printing press. Thirty years ago, India fell in love with daily newspapers. The country went from 9 million dailies on the street each morning in 1976 to more than 160 millions on the street today. The rapid newspaper romance, however looks like a gentle courtship compared to what has happened with mobile phones and the potential they bring in 2003, India has 13 million mobile phones subscribers by 2013 it had 900 million- no increase of about 70 times in 10 years. India's digital journey is one of exuberance. The country had the world's second-largest internet population at over 483 million users in 2018. Of these, 390 million users accessed the internet via their mobile phones. Estimates suggest that this figure would reach over 500 million by 2023.<sup>4</sup>

The success and stability of democracy depends upon the free and impartial-press. It is the duty of the press to maintain public order<sup>5</sup>, public morality<sup>6</sup> and friendly relations with other countries. The standard of newspaper or any journal mainly depends upon its responsible, qualified and sincere journalists.

Once Jefferson<sup>7</sup> said "the basis of our governments being the opinion of the people, the very first object should be to keep that right, and were it left to me to decide whether we should

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<sup>3</sup> . 1978 AIR 597

<sup>4</sup> . <https://www.statista.com/statistics/558610/number-of-mobile-internet-user-inindia/#:~:text=India's%20digital%20journey%20is%20o>

<sup>5</sup> *Virendra vs. State of Punjab*, AIR 1957 S.C., 896-899.

<sup>6</sup> *Ranjit D'udeshi vs. State of Maharashtra*, AIR. 1965.

<sup>7</sup> President of United States of America from 1801 to 1819.



have a Government without newspapers or newspapers without Government<sup>8</sup>, I prefer the latter. But, I should mean that every man should receive their papers and be capable of reading them"

Freedom of speech and expression which includes freedom of press is a fundamental right which is available only in democratic form of countries but not in other forms of Governments such as religious, dictatorship and communistic countries. In India freedom of press is considered as one of the basic principles of Indian Constitution.

### **Judicious Analysis:**

India is a democratic republic country where freedom of speech and expression is guaranteed under Art.19(1)(a) of our constitution. Originally the word freedom of press was not included in Art.19(1)(a) but the phrase freedom of press was included as part of freedom of speech and expression by Supreme Court in *Ramesh Thapar vs. State of Madras*<sup>9</sup>. Even though freedom of press is recognised as a fundamental right in many instances true facts and fair comments in papers could not be accepted (digested) by powerful anti-social persons against whom the comments are published, and they harassed, threatened and ill-treated the journalists of that paper with inhuman actions (treatments). These powerful persons who were involved in anti-social and illegal activities not only attacked their family members who were innocent and not connected-with the publication of matter. This kind of infringement of human rights is highly effecting the morale of journalists and ultimately the freedom of press is suppressed by powerful anti-social elements for their personal motivations and selfish ends.

Like any other state in Odisha also there is no security for the press and journalists in Odisha. Freedom of press is curtailed to a large extent in Odisha. A number of illustrations and cases proved the interference with the freedom of press in Odisha.

<sup>8</sup> See Thomas Jefferson inaugural address, Washington, 4th March, 1801 cited in "Speeches that changed the world" Quercus Publishing plc. London (2008) pp. 42-43.

<sup>9</sup> AIR 1950, SC. 124.



There were many instances where sincere and honest journalists were attacked for publishing real facts and for exposing dishonest Public Servants and corrupt Government officials. Many a times Human Rights Commission warned the Government against the infringement of human rights in the field of freedom of press.

The constitution of India has given the at most preference to this freedom is no unmistakable terms. Therefore *“Printers Mysore Ltd and Another vs. Assistant Commercial Law officer<sup>10</sup>* the S.C. held

“Freedom of press has always been the cherished right in all democratic countries, the newspapers not only convey news but also ideas, opinions and ideological besides much else. They are supposed to guard public interest by bringing out misdeeds, failing and lapses of Govt. and other bodies exercising Govt. power. Rightly therefore it has been described as the further estate”.

Access to information is absolutely essential to the health of democracy. The rule of law may be institutionalized by support for an independent media and how the media has supported for its freedom and when it had exceeds its limit can be analysed from the cases like *Ramegh Thapper vs. St. of Madras<sup>11</sup>*, *Sakas Rupers (P) Ltd vs. UOI<sup>12</sup>*, *Bennelt, Coleman & Co. vs. UOI<sup>13</sup>*, *Indian express newspapers (Bomba) Pvt. Ltd. Vs. UOI<sup>14</sup>*, *Manek Gandhi vs. UOI<sup>15</sup>*, *Prakash Jha Production vs. UOI<sup>16</sup>*

Besides this how the media trial can sometime needs to establish an individuality reflects in *Tata Press Ltd v Mahanagar Telephone Nigam Ltd<sup>17</sup>*, a three Judge Bench (Kuldip Singh, B.L.Hansuria and S.B. Majumdar, JJ) has held that commercial speech (advertisement) is a part

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<sup>10</sup> AIR 1995 SCW 204  
<sup>11</sup> AIR 1950 SC 124  
<sup>12</sup> AIR 1960 SC 305  
<sup>13</sup> AIR 1973 SC 578  
<sup>14</sup> SCC (1) 1965, 6419  
<sup>15</sup> AIR 1978, SC 597  
<sup>16</sup> 2011(8) SCC 373.  
<sup>17</sup> 1995 (5) SCC 139



of the freedom of speech and expression granted under Article 19(1)(a) of the Constitution. It can only be restricted on the grounds specified in clause(2) of Article 19, such as, in the interest of the security of State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court' defamation or incitement to an offence. The Court, however, made it clear that the commercial advertisement which are deceptive, unfair, misleading and untruthful could be regulated by the Government in the case of Jassica Lal murder, Jehelka Dot com<sup>18</sup>

### **Examples of violation of human rights on press and journalists:**

- a) In another incident Sri Swaroop Jena, Journalist of "Amrit Bazar Patrika" was attacked by unknown goondas and caused severe injuries to him for publishing some real facts in the paper, in the interest of public at large.
- b) Sri Nager Behuria Editor "of one oriya Newspaper was attacked and his entire press was damaged for publishing real facts in his paper against some anti-social persons.
- c) The Editor of Prajatantra complained to press Council about the stoppage of advertisements to prajatantra paper by Government due to the vindictive attitude to Government officials. The matter was reported to press council. Immediately the press council directed the Orissa Government to restore the Advertisements to prajatantra paper. The directions was implemented by Government.
- d) In Bhubaneswar one journalist was ill-treated by Government officials for publishing corruptive activities of Government employees in some Government officers.
- e) In Khurda Road one Journalist was attacked by some goondas for publishing corruptive activities of some railways employees

<sup>18</sup> Dr. Madabhasridhar, The Law of Expression, I Edn. Aaia Law House, Hyd, 2007, p. 740



- f) During the recent super-cyclone which affected Orissa claimed thousands of lives and loss of property. But the Government published the toll at a number far below the actual loss. This affected the human rights of the cyclone victims because adequate relief could not be provided to all affected people. The journalists were restricted not to publish the actual figures of the loss.
- g) After the arrest of Dara Singh, the Journalists were not alloted by the people to meet the accused to know the actual facts behind the incident.
- h) Recently one conductor of a private bus, pradip Kumar patra and a rural press reporter Lakman Choudhury had been arrested by police for their link with a packet which contained some Maoist pamphlets. Some unidentified person had given this packet to Mr. Patra to be handed over to Mr. Choudhury, whose name was written on the packet.

The demonstrating bus workers said staff of passenger buses usually transport letters and packets in all remote areas of Orissa. People preferred them as it ensures speedy delivery.

“This system works on faith”, said Pramod Kumar Sahu, Adviser of the unions.; Recent arrest of the conductor would compel the staff of passenger buses to stop this practice and the losers would be the general public living in remote areas, he said. The bus workers said carrying a letter out of faith was no crime<sup>19</sup>.

### **Some Recent Examples:**

1. The NRHC notice to Odisha Govt. over Kalahandi issue i.e. taking *Suo moto* cognizance of media repots & the NHRC said that the incidents had raised serious questions of violation of human rights of the two deceased persons” i.e. how a man (Dara majhi) was forced to carry the body of his wife for 10 km from the district hospital<sup>20</sup>.

<sup>19</sup> The Hindu, Friday September 25th, 2009, Page 3 ( Orissa Edition ) .

<sup>20</sup> The Hindu 27/10/2016 p. 13.



2. The Govt. decision to ban Kashmir Reader evolved a sharp reaction from the media in the Kashmir Valley to maintain public tranquility. However the Kashmir editor guild says that it goes against the spirit of democracy and the freedom of press<sup>21</sup>.
3. A television journalist was allegedly harassed by four men who drove alongside her vehicle on the way to Noida office<sup>22</sup>.
4. “The Australism” report and the leak of key documents of the scorpene submarine project is an example of this context<sup>23</sup>.

The above incidents and attacks on journalists and their family members clearly show that there is no clean real freedom of press in India as expected in democratic country. Slowly the freedom of press and freedom of expression guaranteed under Art.19 (1) (a) is also lose its place from list of fundamental rights like the right to property (Art. 19(1) (f) was deleted by 44<sup>th</sup> Amendment of the constitution in the year of 1978. This is the right time to have a strong initiation in this democratic setup to think about protection of Journalist.

While the legislature, the executive and the judiciary from the three pillars of the democracy depress remain the fourth estate. It is an institution which wields immense power and influence and thus must be fixed with responsibility and accountability. But the important question is that why is media credibility being questioned? It is because the way facts are being presented. The media house is also are of the commercial ventures. The media has always been an active contributor to moral panics. But is seems that there is a new media environment that includes mobile phones, the internet and social networks at the present context. The Press shall not intrude or invade the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity. So, however, that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by the Press and the media, among others.

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<sup>21</sup> The Hindu, 4/10/2016 p. 12.

<sup>22</sup> The Hindu, 27/10/2016 p. 5.

<sup>23</sup> The Hindu, 25/10/2016 p. 13.





Press is a mirror where the Government can detect its faults and can rectify them in future course of actions. Government cannot think that whatever they have done or uttered is correct. A person cannot be a judge to decide his own actions or deeds.

Unless the press is giving a free hand in a democratic country. It is not possible for the Ruling Party to know reactions of the people towards their policies and activities in implementation. In 1975 suppression and imposition of press censorship is one of the reasons for the failure of emergency and down fall of Indira Gandhi Government. A healthy press is a good friend of the Ruling party in correcting their errors.

When Mahatma Gandhi led the temple entry movement for Harijans "British Press" show him as a "Seditious Faker". The Indian paper "Malayala Manorama" saw him as a 'saviour of India'. This small piece of expression shows how the same news can be published by press with different comments.. The quality-of paper, news and editorial depends upon the quality of journalists and Editorial Board, representing that paper.

The broadcast media was under complete monopoly of the Government of India. Private organizations were involved only in commercial advertising and sponsorships of programmes. However, in *Secretary, Ministry of I&B v. CAB*<sup>24</sup>, the Supreme Court clearly differed from the aforementioned monopolistic approach and emphasized that, every citizen has a right to telecast and broadcast to the viewers/listeners any important event through electronic media, television or radio and also provided that the Government had no monopoly over such electronic media as such monopolistic power of the Government was not mentioned anywhere in the Constitution or in any other law prevailing in the country.

This judgment, thus, brought about a great change in the position prevailing in the broadcast media, and such sector became open to the citizens.

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<sup>24</sup>. (1995) 2 SCC 161.





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## **Role of Media and Human Rights:**

It is also a fact that taking the advantage of Art.19 (1) (a) press is also violating human rights by publishing false and defamatory statements against political leaders Cini Actors, officials and business people. It has become a common affair for Press to publish rumo'urs for cheap popularity and large circulation of their papers and journals. In some instances Press even interfered with judicial proceedings. Recently judiciary warned the Press for its over enthusiasm and outspoken tendency without facts and figures. it is the duty of the press Council and judiciary to take action on such erred journalists. The Press has a duty, discretion and right to serve the public interest by drawing reader's attention to citizens of doubtful antecedents and of questionable character but as responsible journalists they should observe due restraint and caution in hazarding their own opinion or conclusion in branding these persons as 'cheats' or 'killers' etc. The cardinal principle being that the guilt of a person should be established by proof of facts alleged and not by proof of the bad character of the accused. In the zest to expose, the Press should not exceed the limits of ethical caution and fair comment.

Noted political analyst James Michael has pointed out in his pioneering book *The Politics of Secrecy*<sup>25</sup> that, “freedom of information” and “right to information” are two different concepts. “Freedom” implies the absence of restraint, particularly of legal penalties. Thus, “freedom of information” means a citizen is free to receive and impart information without fear of punishment. However, there is no obligation on the State to provide any information to the citizen. The right to information is indispensable for free flow of information. But there was a massive wall in the shape of the Official Secrets Act in India. The official Secrets Act was a hindrance to the flow of information.

The framers of the Indian constitution realised the crucial significance of the ‘Freedom of Press’ and therefore incorporated provisions in the constitution to safeguard this ‘Freedom of Press’ as a fundamental right. Although, the Indian Constitution does not expressly mention the liberty of the press, it is evident that the liberty of the press is included in the freedom

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<sup>25</sup>. Michael, James; *The politics of secrecy* (pelican) paperback (Penguin Books Ltd 1982)



of speech and expression under Article 19(1) (a).<sup>26</sup> The freedom of the Press including media is not absolute.<sup>27</sup> The media has to work within the framework of legal principles and statutes and is subject to the limitations under Article 19(2) in the interests of the public.

### **Media and Law:**

Media regulation is the control or guidance of mass media by governments and other bodies. Such regulation, via law, rules or procedures, can have various goals, such as intervention to protect a stated “public interest”, or encouraging competition and an effective media market, or establishing common technical standards.

There is a contradiction intrinsic to the notion of regulating what are supposed to be the free means of expression and information in a modern society. Regulation by its very nature sets limits to freedom, which is the most basic principle of democratic societies. The question whether media should be regulated continues to be a debatable topic, varying from country to country, depending upon the form and ideology of the government.

#### **Laws relating to media in India**

There are many laws that regulate the performance of media in India. Many of the laws were enacted during the British Raj. In the post-Independence time, the various Governments have enacted many more media related laws. Some of these media related laws are

#### **Contempt of Court Act 1971:**

Contempt of Court is one of the reasonable restrictions under Article 19(2) of the Indian Constitution. Contempt of Courts Act, 1971 relates to the wilful disobedience of judicial orders and the like, and to any publication, which interferes with or undermines the administration of justice.

This Act was enacted for the first time in the year 1952. Under the Contempt of Courts Acts of 1952, there was no specific definition of ‘civil’ or ‘criminal’ contempt. Further, the common law principles were applied to treat prejudicial publications made even before the

<sup>26</sup> . Ramesh Thaper v State of Madras, A.I.R. 1950 SC 124,

<sup>27</sup> . Harijai Singh v Bijoy Kumar (1996) 6 SCC 466.



‘arrest’ of a person as contempt. In fact, some Courts were treating as ‘criminal contempt’, prejudicial publications even if they were made after the filing of a First Information Report (FIR). The Supreme Court, in *Surendra Mohanty v. State of Orissa*<sup>28</sup> however, held that filing of an FIR could not be the starting point of pendency of a criminal case. Because of that judgments, a prejudicial publication made after the filing of the FIR gained immunity from law of contempt.

### **Young person's (harmful publications) Act, 1956**

The Young Persons (Harmful Publications) Act, 1956 prohibits advertisements relating to any harmful publication i.e., any publication that tends to corrupt a young person (person under the age of 18 years) by inciting or encouraging him or her to commit offenses or acts of violence or cruelty or in any other manner whatsoever.

"harmful publication "means any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly:-

- (i) The commission of offences; or
- (ii) Acts of violence or cruelty; or
- (iii) Incidents of a repulsive or horrible nature;

in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever;

### **National Security Act 1980**

This Act empowers the appropriate government to make an order of preventive detention to prevent any person from acting in any manner prejudicial to inter alia the security of India and the maintenance of public order (Section 3). Similarly to the Penal Code, this includes creating any kind of public insecurity.

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<sup>28</sup> . Cri. App. 107/56 dt.23/01/1961.



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### **Parliamentary Proceedings (Protection of Publication) Act, 1956**

This Act was enacted with a view to protecting the publications of reports of proceedings of Parliament except in newspapers. Section 3 of the Act states that no person shall be liable to any proceedings, civil or criminal in any court, in respect of the publication in a newspaper of substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have made with malice.

The opinion of the People Forms the basis of a democratic government. It is therefore of utmost importance that proceedings in Parliament should be communicated to the public. For this purpose newspapers and other mass publicity media must be afforded the privilege of publishing substantially true reports of proceedings in Parliament without being exposed to any civil or criminal action. The press and other publicity media were deprived of this privilege during the emergency when the Parliamentary Proceeding (Protection of Publication) Act 1956 was replaced. This provision gives protection to newspapers and broadcasting agencies only, provided that publication is made for public good and without malice.<sup>29</sup>

### **Police (Incitement to Disaffection) Act, 1972:**

This Act penalizes any act, which causes or is likely to cause disaffection toward the Government among the member of the police force or which induces or attempts to induce any member of the police force to withhold his services or to commit a breach of discipline.

### **The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994:**

This act prohibits advertisements relating to pre-natal determination of sex. Advertisements related to sexuality are allowed with the provision that there should not be any indecent representation of women under the Indecent Representation of Women (Prohibition)

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<sup>29</sup> . The Parliamentary Proceedings (Protection of Publication) Act, 1977, Universal's Legal Manual, Press, Media & Tele communication Laws, Universal Law Publishing Co, New Delhi, 2011, p.199.



Act 1986. Products must comply with the Drugs and Cosmetic Act 1940 and other certification rules under the Cable Television Network Rules 1994.

Under the **Cable Television Networks Rules 1994**, Advertising Codes of Doordarshan & All India Radio and Norms for Journalist Conduct issued by the Press Council of India, advertisement based on religion or to hurt religious sentiments are not allowed. Also, such advertisement may be punishable under Indian Penal Code 1860.

### **Juvenile Justice (Care and Protection of Children) Act, 2000:**

Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 33/2006 states that: “Prohibition of publication of name, addresses or schools or any other particulars etc., of juvenile or child in need of care and protection involved in any proceeding under the Act. Section 21(2) states that: Any person, who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees.

### **Right to Information Act 2005:**

Noted political analyst James Michael has pointed out in his pioneering book *The Politics of Secrecy*<sup>30</sup> that, “freedom of information” and “right to information” are two different concepts. “Freedom” implies the absence of restraint, particularly of legal penalties. Thus, “freedom of information” means a citizen is free to receive and impart information without fear of punishment. However, there is no obligation on the State to provide any information to the citizen. The right to information is indispensable for free flow of information. But there was a massive wall in the shape of the Official Secrets Act in India. The official Secrets Act was a hindrance to the flow of information.

In *Secretary General, Supreme Court of India v Subhash Chandra Agarwal*<sup>31</sup>, the High Court of Delhi held : “The source of right to information does not emanate from Right to

<sup>30</sup>. Michael, James; *The politics of secrecy* (pelican) paperback (Penguin Books Ltd 1982)

<sup>31</sup>. *A.I.R. 2010 Del 159(FB)*.



Information Act. It is a right that emerges from Constitutional guarantee under Article 19(1)(a) as held by the Supreme Court in a catena of decisions. The Right to Information Act is not the repository of the right to information. It is repository is the Constitution Right guaranteed under Article 19(1)(a).

### **Personal Laws and the media:**

Publicity of proceedings is not an absolute rule. A number of statutes restrict, empower or require the Court to restrict admission to certain court proceedings and the publication of such proceedings. For instance:

- i. **The Indian Divorce Act, 1869** which pertains to matrimonial cases between persons professing the Christian faith, provides that the whole or any part of the proceedings under the Act may be heard behind closed doors in certain circumstances.
- ii. **Section 33 of the Special Marriages Act, 1954** provides that proceedings under the Act shall be conducted in camera, if either party desires or if the district court so thinks fit to direct.
- iii. **Section 43 of the Parsi Marriage and Divorce Act, 1936** provides that a suit preferred under the Act shall be tried within closed doors should either of the parties so desire.
- iv. **Section 22 of the Hindu Marriage Act, 1955** provides that a proceeding under the Act shall be conducted in camera if either party so desire or if the court thinks fit, and prohibits the printing or publication of any matter relating to such a proceedings without the previous permission of the court.

### **CONCLUSION:**

To improve the standards of Press and dignity of journalists only qualified Journalists should be appointed in Press and human rights should be honoured for the publication of important and correct news. Restrictions and attacks on Press Cannot be tolerated by public in a democratic country. One should remember that C.B.I. and vigilance Departments lodged many corruption cases on political leaders and on Government officers only with the help of the Press.



It is the primary duty of the Press and the Government to protect the human rights in a democratic country. It is the duty of the Government and political parties to protect the human rights of journalists. Media has an important role to play in a democratic society. The job is to keep the society informed about the happenings which have a direct or indirect impact on it and draw conclusions. Without media democracy cannot function effectively. To make a accountable to the people an independent autonomous pubic institution like the media councils is therefore a constitutional need. Besides this the seven basic principles of public life namely, selflessness integrity objectivity, accountability, openness honesty and leadership need to be observed by the media in the interest of public at large. Ultimately it must be made possible to promote human rights and eliminate inequalities. Media also does not exist for its own sake. If we do not make efforts for preventing occurrence of different incidents as discussed in this paper, it may lead to destruction of values of democracy.