

A COMPARATIVE ANALYSIS OF MEDIA LAWS IN UK AND IN INDIA

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INTRODUCTION

In its present diversified form, the idea of media has turned into a concept which cannot be ignored being a major part of everyone's lives in each and every part of the world.¹ This context of it has been visible from the time it got evolved in the global scenario. However, as the approach of everything depends upon the atmosphere in which the concept is existing, same is the case with the phenomenon of media and its legal approach, as in each part of the world the role of media is characteristically different.² Adding more to the significance of media law, the author wants to state that the idea of media law shares a very unique and exclusive relationship with the state and also with the society at large and it is a result of its attachment with politics, economics and culture at large.³

There are two limbs of information, one being communication and the other one being media.⁴ Communication is derived from the Latin word "*communicatus*" and is quite a simple procedure that involves exchange of information using varied methods between two parties. Media traces its origin to the Latin word "*medius*" which in literal terms means "middle". It is a form of medium or tool for storing and communicating the information.⁵

In this paper, the author will focus upon the concept of media as it exists in India and United Kingdom, and do a comparative analysis.

The importance of media in terms of law can be very easily articulated by remarking upon its ambit of applicability and approach as it clearly refers to the field of advertisement, broadcasting, censorship, confidentiality,

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¹ Paranjay Guha Thakurta, 'Curbing Media Monopolies' (2013) 48 Economic and Political Weekly 10.

² Peter Noorlander, 'Media and the Law: An Overview of Legal Issues and Challenges' (*International Media Assistance Center Report*, 20 July 2011) <<http://cima.ned.org/publications/media-and-law-overview-legal-issues-and-challenges>> accessed 10 October 2013.

³ Paranjay Guha Thakurta, (n 1) 11.

⁴ Anish Dayal, 'Inside Law: Regulating the Media' *The Wall Street Journal* (India, 5 May 2013) <<http://blogs.wsj.com/indiarealtime/2013/05/05/inside-law-regulating-the-media/>> accessed 22 October 2013.

⁵ Lynne Shafer Gross and Edward Fink, *Telecommunications: An Introduction to Electronic Media* (9th edn, McGraw-Hill 2000) 25.

contempt, copyright, internet, privacy, telecommunications and information technology.⁶

Media, as already mentioned above, is considered to be the fourth pillar of democracy and its role in the society is very important and influential in nature because of the grant of constitutional freedom to every ordinary citizen. On the other hand in United Kingdom, the concept of media revolves around the *prima facie* independent bodies which provide us with the codes in lieu of the wider public discussion. These codes of practices are developed in UK in two different manners in the context of its developers, as some codes are being developed by those bodies which are statutory in nature on one hand and on the other some codes are being developed by the media or journalistic bodies themselves. These codes of conduct in United Kingdom generally provide guidelines to the professionals who are working in the field of media and media law but does not vest with them the clear set of prohibitions as these concepts work on the principle of guidance and not on supervision.⁷

MEDIA LAW IN INDIA

Media Law in Indian scenario, i.e., in its parliamentary democracy setup provides the press (the signifier of media) with freedom but with certain reasonable restrictions as levied by the apex law of the land. In India there are basically two positions pre-globalization and post-globalization.⁸ In pre-globalization the situation is such that the media and its whereabouts are completely controlled by the regime of government i.e. the public can only witness that information which is approved by the Government but however all this changed when India entered the post-globalization period wherein came the impact of private players which in turn brought very significant and vast changes in the picture.⁹ This led to a surge in the Indian media which has now become a part in everyone's life, and because of the pace with which it is growing, it has become a necessity to impose a check over its functioning for its proper approach.¹⁰

HISTORICAL COUNTEANCE

The history of media could be traced back to the year 236 BC, (Ashoka's empire) which then existed in the form of rock edicts and involving

⁶ Saima Saeed, 'Negotiating power: Community Media, Democracy and the Public Sphere, Development in Practice' (2009) <<http://www.jstor.org/stable/27752087>> accessed 22 October 2013.

⁷ P. Eric Louw, *The Media and Political Process* (1st edn, Sage Publications 2005) 43.

⁸ Venkata Iyer, *Mass Media Laws And Regulations In India* (1st edn, India Research Press 2000) 33.

⁹ *ibid.*

¹⁰ Venkata Iyer (n 8) 34.

expression of his spoils of war, the condition of justice and law at that time, without any bar on such usage.¹¹ Then from Kautilya's Arthashastra to Akhbaar (Hindi for "newspaper") during the Mughal Era, to the Metcalfe Act during the British, and the Prasar Bharati Act today, media in India has developed in leaps and bounds. Print media came to India for the very first time during the year 1556.¹² This continued without any hindrance till the Battle of Plassey and the subsequent advent of British. The British, while during in India, passed various legislations which caused the curbing of the freedom which media enjoyed. Vernacular Press Act is a notable example here.

Again, in the year of 1947 the interim Government of India appointed the Press Laws Enquiry Committee to examine the press laws of the country which submitted its report the very next year based on which some very significant changes were made.¹³ These changes even include the interpretation made by the Apex Court that freedom of speech and expression imbibe in itself the freedom of press but with a certain set of reasonable restrictions.¹⁴ The period of 1975 witnessed a dark period for the Indian media¹⁵ and then again a revival was witnessed in the year 1997 with the passage of the Prasar Bharati Act.¹⁶

CONSTITUTIONAL VISAGE IN RECEPTION OF MEDIA LAWS IN INDIA

The media laws as existing in India, share a clear relation with the Constitution of India under the head of Freedom of Speech and Expression as defined under Art.19 of the Constitution. However this relation, as shared between these two, is indirect in nature. This sub-issue will be dealt upon by the author as the discussion proceeds.

The relation between the two can be said to bear a two faced structure. On *first* hand the Constitution ensures the indirect freedom as enjoyed by the media in the country.¹⁷ To explain it, the author would like to take recourse to Art.19 (1) (a) of the Constitution of India.¹⁸ This is the provi-

¹¹ M. Neelamalar, *Media Law and Ethics* (1st edn, PHI Learning Pvt Ltd 2010) 17.

¹² Kiran Prasad, *Media Law in India* (1st edn, Kluwer Law International 2011) 56.

¹³ B G Verghese, 'Independent Judiciary, Responsible Media: Twin Pillars of Democracy' (*Writings and Commentaries of B G Verghese*, 1 July 2012) <<http://www.bgverghese.com/HRKhanna.htm>> accessed 10 October 2013.

¹⁴ B G Verghese, 'The Media in a Free Society: Proposals for Restructuring' (1977) *Economic and Political Weekly* <<http://www.jstor.org/stable/4365545>> accessed 20 October 2013.

¹⁵ M. Neelamalar (n 11) 25.

¹⁶ B G Verghese (n 42).

¹⁷ Aprimita Basu, 'Media Laws - An Overview' (2010) *Legal Services* <<http://www.legalserviceindia.com/articles/media.htm>> accessed 9 October 2013.

¹⁸ Constitution of India 1950, art 19(1) (a).

sion which ensures the freedom enjoyed by the media in the country. In this regard the author would like to take into account the opinions given by some of the major authorities in this field. The first is from Dr B. R. Ambedkar¹⁹ and the second from the 1st Press Commission of India.

Thus the above discussion clearly establishes that the freedom virtue under the Constitution of India under Art.19 **indirectly** but **clearly includes freedom of press** as enjoyed by the media sector of the nation with certain reasonable restrictions.²⁰ From this limb comes the *second* side of the relationship that exists between the media laws and the Constitution of India. The second side of the relation talks about the issue that the Constitution also levies certain reasonable restrictions over the media sector in the exercise of their freedom blessed upon them by the Constitution.²¹ The Constitution in itself puts the restriction in the exercise of the freedom of press and that too from the same provision i.e. Art.19 of the Constitution of India.²² In this issue the author would like to give his own opinion by saying that as a student of law we can say that the Constitution may be criticised as on one hand it gives the freedom and on the other hand, it takes it away, which is not correct because there are certain aims and objectives under which the Constitution has been framed and which need to be fulfilled all the time. Therefore, this restriction is a way of uplifting the aims and endeavours by which the Constitution has been and also maintaining the public order without violating the freedom of the citizens and also of the media sector. In this regard the author would like to mention that in other sets of legislations the restrictions are left by the Legislature in the hands of Executive who handle it according to their whims and fancies but in this case, the Legislature has not left this loop hole therefore here, in imposing restrictions, one cannot exercise their inputs but would have to go by the principle laid down under the apex law of the land.²³ Therefore in the end of the discussion the author would like to put forth that the law under Art.19 of the Constitution definitely provides for the freedom but they also have to be abided by the reasonable restrictions as imposed under very rare situations under the Constitution by the exercise of power done by the judiciary.

¹⁹ N Ram, 'The Changing Role of the News Media in Contemporary India, 72nd session Indian History Congress' (2011) <http://www.thehindu.com/multimedia/.../Contemporary_India__863821a.pdf> accessed 10 October 2013.

²⁰ S. Kundra, 'Media Laws and Indian Constitution' (1st edn, Anmol Publications 2005) 79.

²¹ Manoj Dayal, 'Media Law: An Introduction' (Mass & Media Compendium, 19 March 2009) <<http://www.ddegjust.ac.in/studymaterial/mmc-2/mmc-204.pdf>> accessed 19 October 2013.

²² *ibid.*

²³ Kundra (n 20) 83; Madhavi Goradia Divan, *Facets of Media Law* (2nd edn, EBC, 2010) 19-20.

RIGHT TO PRIVACY IN THE FRAMEWORK OF MEDIA SETUP IN INDIA:

According to general understanding, the “privacy” of anyone is one of the most important aspects of his/her daily life which the person has a right to protect, as privacy in the most common sense can be defined as “*the condition or state of being free from public attention to intrusion into or interference with one’s acts or decisions*”.²⁴ Looking at the definition of privacy it can be very validly concluded that every human being has been vested with a right to protect their privacy and it is the duty of everyone present in the society to not violate this right, otherwise it can lead to penal consequences.²⁵ Even though this right which is equivalent to the set of fundamental rights enshrined under the Constitution is not mentioned in the Indian Constitution but yet this right comes under the ambit of human rights.²⁶ This can be very validly concluded from the definition of the phrase “right to privacy” which means that it is a “*right of a person and the person’s property by which both can live freely from unwarranted public scrutiny or exposure*”²⁷ or in other words it means the right of a person to protect his/her personal autonomy.²⁸ Similarly, the apex court of the country has defined the concept of privacy in a famous case of *Sharda v Dharampal*,²⁹ where they said that privacy means “*the state of being free from any kind of intrusion or disturbances in one’s private life or affairs*.”³⁰

As we all know, freedom of speech and expression is a very dominant feature of the media setup of the country, whereas we also know that freedom of speech and expression and right to privacy are the two edges of the same sword which can never meet but always go hand in hand.³¹ Therefore, on one hand where it is important to keep the citizens in the informed state, on the other it is also equally important to safeguard the private affairs of one’s life as far as it is does not find any connection with the public duty and morality.³²

In the most recent development of media setup at the global level, there was a hue and cry regarding the relation between privacy and freedom of speech and expression so as to provide equal importance to both the sectors, which are two sides of the same surface. Therefore, privacy laws were

²⁴ Brian A. Garner, *Black’s law Dictionary* (9th edn, Thomson Reuters, 2009) 1343.

²⁵ Sonal Makhija, ‘Privacy & Media Law’ (*The Centre for Internet and Society*, 19 July 2011) <<http://cis-india.org/internet-governance/front-page/blog/privacy/privacy-media-law>> accessed 23 October 2013.

²⁶ Sonal Makhija (n 68).

²⁷ Brian A. Garner (n 25) 1467.

²⁸ *ibid.*

²⁹ [2003] 4 SCC 493.

³⁰ *ibid.*

³¹ Sonal Makhija (n 25).

³² S. Kundra, *Media Laws and Indian Constitution* (1st edn, Anmol Publications 2005) 137.

introduced, which provided a counter-balance between the two set of opposite set of freedoms to be enjoyed at the same time by the same person.³³ In this regard the author would now like to take recourse to the standing of privacy in India where he would like to mention that privacy is a right which is not yet mentioned under the Indian Constitution (not even under art.19 (2) which provide reasonable set of restrictions for the freedom of speech and expression), but still the competent judiciary of the country has made this right apart of most important set of rights and granted it the constitutional recognition.³⁴ This happened in India by locating the base of this right under two heads i.e. firstly by establishing its link with common law and secondly under the constitution itself i.e. under Art.21 and Art.19(1)(d).³⁵

In explanation *by* looking into the aspect of common law, first of all as we all know that India is a common law country so putting this relation under the common law theory is just like another feather to the legal development of the country.³⁶ In common law there lies a clear cut action with the compensation which is to be paid for committing an unlawful invasion into the life of a person without his/her consent in order to intrude in to the privacy, which in consequence affects the private life and affairs of the person which normally includes marriage, parenthood, child-bearing etc.³⁷ However, this common law rule has two sets of exception which act like a regulator over the exercise of the right.³⁸ The first exception is that the right cannot be claimed if the private affair of a person becomes the part of public stats.³⁹ Secondly, the right cannot be claimed if the publication is made of a private life of a person by a public servant as a part of the public duty.⁴⁰ On the other hand in establishing its relation with the apex law of the land, the line of thought is focused on Art.21 where the right to privacy is made implicit as an offshoot of fundamental right to life and liberty as right to life which also includes right to be let alone.⁴¹ This provides a balance between the media to exercise freedom of speech and expression but this right also has a reasonable restriction as has been laid down by the apex court in the same case of *R. Rajagopal*, that this right needs to be balanced with the crucial factor of when media publishes any private affairs under the fate of public duty.⁴²

³³ N Ram (n 21).

³⁴ Madhavi Goradia Divan (n 24) 114.

³⁵ *ibid* 117.

³⁶ B. Manna, 'Mass Media And Related Laws In India' (1st edn, Academic Publishers 2010) 156.

³⁷ B. Manna (n 37) 156.

³⁸ *ibid* 157.

³⁹ *ibid*.

⁴⁰ *ibid*.

⁴¹ *R. Rajagopal v State of Tamil Nadu*, [1994] 6 SCC 632.

⁴² *ibid*.

The expression of privacy under the legal fraternity of the country has to face major hurdles in the face of judiciary. All this has happened because in India there was no set law for the protection of privacy, therefore in the starting when the set of cases came before the Apex Court, such as *Kharak Singh v State of U.P.*,⁴³ *Gobind v State of M.P.*⁴⁴ or *Malak Singh v State of Punjab & Haryana*,⁴⁵ the common thread of all the cases was that they had the same matter raised in all of them wherein the court had held that the secret surveillance of anyone by the police for the purpose of security is valid and that it should prevail over the violation of the privacy enjoyed by that person.⁴⁶ All this was the result of the fact that there was no law on privacy in the country. But in the next halt came the case of *R. Rajagopal v State of Tamil Nadu*⁴⁷ which turned out to be a turning point for the development of privacy laws in the country. Same legacy was followed by the court in the subsequent cases such as the famous *Phoolan Devi case*⁴⁸ and in *People's Union for Civil Liberties v. Union of India*⁴⁹ in which the court gave primacy to the protection of right to privacy to strongly establish its existence in the country.

MEDIA LAW IN UNITED KINGDOM

Media Law in United Kingdom (Hereinafter referred to as the UK) has been in existence since the period of 1600s which was quite early but has been not as free as it is now in the present where the press is enjoying the freedom that is the same as the citizens of the nation.⁵⁰ In UK the developmental and historical background of media is very much attached to the growth of the liberal democracy in the country with the side by side development of capitalistic economy.⁵¹ This in fact enhanced the sole motto of the media in UK, that for the proper functioning of liberal democracy as established in UK, the press and media need to be free from any form of uncalled-for restrictions.⁵²

The structure of media and its legal approach in UK is a bit different as compared to what is there in India. In UK the government has never shown consent to the private ownership of media sectors in the country but still the press i.e. the newspapers is used by the political parties to advertise the casual behaviour of the parties from the past two centuries as from this time

⁴³ [1963] AIR SC 1295.

⁴⁴ [1975] 2 SCC 148.

⁴⁵ [1981] 1 SCC 420.

⁴⁶ *Madhavi Goradia Divan* (n 24) 120.

⁴⁷ [1994] 6 SCC 632.

⁴⁸ *Kaleidoscope (India) Pvt Ltd v Phoolan Devi*, (1995) AIR 316 Del.

⁴⁹ [1997] 1 SCC 301.

⁵⁰ Tom Crone, *Law and the Media* (4th edn, Focal Press, 2002) 7.

⁵¹ *ibid.*

⁵² Tom Crone (n 51) 9.

the newspapers as present in clutches of private players.⁵³ However, at the same time the government has kept the television, broadcasting and radio under their wallet and have their own monopoly in their functioning without allowing them to get politically influenced.⁵⁴

The approach on this will get more concretized after taking a glance over the historical growth of structure of media in the country of United Kingdom.

CONSTITUTIONAL FACADE IN THE UPSURGE OF MEDIA LAWS IN UK

Though the UK has no written constitution, even then the political philosophies and its legal system have proven to be highly effective in enhancing the legal constitutional principles which are really effective in practice and application. The most important, and in practice constitutional principle of the country is that the parliament of UK is the most sovereign body of the country and it is the only law making body of the country which cannot tolerate any set of laws or legal principles which violate the significance of any set of fundamental rights of the citizens.⁵⁵

With respect to the media of the country, the United Kingdom became the signatory to the European Convention on Human Rights which came into existence in the year 1998 and this is the law under which the freedom of press is enshrined under Art.10 of the convention.⁵⁶ Art.10 of the act grants the freedom of expression under which it imparts the freedom to formulate the public opinions and can also impart the information.⁵⁷ Like India, even the freedom of press in UK is subjected to a certain set of reasonable restrictions in order to maintain its justified usage and also the public order. However, unlike the position in India where the set of laws which guarantee the freedom offers the pile of reasonable restrictions but in UK since there is no written constitution in place so these restrictions are put upon the media by the set of different laws in position keeping in mind the interest of democratic society and national security in mind.⁵⁸

⁵³ David Goldberg, Gavin Shutter and Ian Walden, *Media Law And Practice* (1st edn, OUP 2009) 2; Clay Jenkinson, 'From Milton to Media: 'Information Flow in a Free Society' (*Centre for Media Literacy*, 2009) <<http://www.medialit.org/reading-room/milton-media-information-flow-free-society>> accessed 24 October 2013.

⁵⁴ David Goldberg, Gavin Shutter and Ian Walden (n 53) 24.

⁵⁵ David Goldberg, Gavin Shutter and Ian Walden (n 54) 12.

⁵⁶ David Goldberg, Gavin Shutter and Ian Walden (n 54) 13.

⁵⁷ Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and The Law* (2nd edn, Edinburg UP, 2006) 21.

⁵⁸ Perry Keller, 'Media Law in Britain' (*China Society of Publications*, 2010) <<http://www.britishcouncil.org/china-society-publications-media.pdf>> accessed 10 October 2013.

However, on the whole UK has engrossed in itself the established principle of freedom of press, speech and expression of the democratic society which is liberal in nature.⁵⁹ The role of media gained a lot of importance in the matters of public importance and that too due to its freedom of press.⁶⁰ The media policy as existing in Britain has to be kept under a check from proper authorities for its proper functioning and to balance its interest with the individual interest.⁶¹

Carrying forward, the discussion from this place will be structured as per the designed scope of the research paper where the author will discuss the various facets of the media law as existed in UK in order to make it comparable to the same in India.

STATUS OF FREEDOM OF MEDIA IN UNITED KINGDOM:

As we all know that in the present global scenario, freedom is the most important aspect for everyone, because it is only then that one can look forward for better resolutions.⁶² So it is very clear from the above statement that freedom of expression is one of the most important human rights existing in the globe, pure in nature without any influence from any set of authorities and politics guaranteed by the apex laws of the nation which is inherently fundamental to the liberal democratic setup of the country. As it is clear that freedom of expression is important in democracy and in liberal democracy which includes the progressive open society where participation of all is much required and needed, it is very necessary that everyone should get the information about the, policies, structure of the polity and its prerogatives.⁶³

Therefore an open and free press is a pre-requisite of a liberal democratic setup as it helps the citizens to get informed and provide them with the medium to illustrate their viewpoints so that we can receive a more informed and participative democratic setup with active citizenry.⁶⁴ Adding to this, if the press works freely it will also be considered as a watchdog of the public affairs and at the same time can work as a sentinel of our

⁵⁹ *ibid.*

⁶⁰ Perry Keller (n 59).

⁶¹ *ibid.*

⁶² Catherine Courtney, Sue Oake and Santha Rasaiah, 'Freedom of Press' (*NS: The voice of Local Media*, 2009) <<http://www.newspapersoc.org.uk/press-freedom>> accessed 21 October 2013.

⁶³ *ibid.*

⁶⁴ Evan Ruth, 'Media Regulation in the United Kingdom' (*Article XIX*, 2010) <<http://www.article19.org/pdfs/publications/uk-media-regulation.pdf>> accessed 10 October 2013.

priorities while providing us with the platform where it acts as an educator as well as the entertainer.⁶⁵

The above discussion clearly establishes the importance of freedom of press in a liberal democratic setup; it's time now to move on the discussion from an ideal level on to a practical height by examining the status of freedom of media in UK. In UK the media through its representatives such as the journalists, enjoys the freedom of speech, expression and press by the virtue of Art.10 of European Convention on Human Rights Act.⁶⁶ Getting into the crux of the statement, the author wants to state that the UK media in the most general understanding enjoys the same freedom of press as enjoyed by the citizens of UK and in lieu of it the media focuses on the advertisement for greater availability of rights to the public by all the time through which they can enjoy enlarged version of the freedom of speech and expression.⁶⁷ But in these set of liberties the media sector has to face certain set of reasonable restrictions under the head of intimidation or censorship but on a more liberal level as compared to its counterparts who face a more crude set of legal limitations.⁶⁸ The restrictions faced by the UK media setup majorly include the limitations under the following:

- 1) Laws to protect Official secrecy.⁶⁹
- 2) Intellectual Property Laws.⁷⁰
- 3) Laws related to Obscenity.⁷¹
- 4) Libel and slander protection.⁷²
- 5) Data protection of information is done under the category of putting prior restraint.⁷³
- 6) Human Rights legislations and regulations for artistic and journalistic activities.⁷⁴

Apart from all the above set of regulations if we go into the genus of freedom of media in UK i.e. in the 1998 Act then we will find that it provides for the two sets of freedom which are freedom of speech and

⁶⁵ Perry Keller (n 59).

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ Catherine Courtney, Sue Oake and Santha Rasaiah (n 63).

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*

expression along with the privacy rights which act like a double faced sword.⁷⁵ In the reference of the newspapers and the establishment there is no check in the context of its ownership and their mergers but if any public issue arises then the government can definitely intervene in their private setup.⁷⁶

Therefore at last the author just wants to put forth that still the media representatives' go on for putting efforts for concretizing the valuable safety measures for the protection of their freedoms

RIGHT TO PRIVACY AND THE MEDIA LAW OF UNITED KINGDOM:

In the most general approach the concept of privacy in principle stands upon different footings as per the thinking of different persons. In the general parlance "privacy" in principle is a concept which can be determined as a right of a human being to control his/her personal affairs and able to protect his personal autonomy.⁷⁷ However, in the practical respect the approach is different in different arena as privacy for some is the protection of their way of living life which makes them unique compared to the general public, in some cases the person by exercising their right to privacy tries to keep out the intruders from interfering into their life whereas for some the right to privacy in practice is a tool to protect their personal affairs from the glance of outsiders.⁷⁸

With this approach the author looks toward for the concept of privacy as it exists in UK. In UK the concept of privacy exists as two -sides of a one single coin where on the other side is the freedom of speech and expression. In Britain the question related to the above discussion which gained importance is that who is the person who is to be allowed to collect process and publish the information of the private life of others?⁷⁹ Moreover, going by the way the position has been acquired in UK is that one is not allowed as a source of media to publish any information about anyone's private affairs without showing cogent reasons or public duty.⁸⁰ Therefore the approach which is present to handle the situation is of such a nature that it should counter-balance the two edges of the sword i.e. both the Right to Privacy and Right to Freedom of Speech and Expression, but in UK no such cogent step has been taken till now as the government has only shown attentiveness over this sensitive issue but did not come up with anything

⁷⁵ Evan Ruth (n 64).

⁷⁶ *ibid.*

⁷⁷ Brian A. Garner (n 4) 1343.

⁷⁸ Perry Keller (n 134).

⁷⁹ Perry Keller (n 59).

⁸⁰ Evan Ruth (n 76).

cogent and pertinent in nature and thus this position was continued and the job of striking the balance between the two was left vaguely in the hands of the judiciary.⁸¹ This continued until the legislation came into existence under the name of Human Rights Act, 1998 but previous to this the position in UK was not at all satisfactory and it is clearly visible from the decision given by the Court of Appeal in the case of *Kaye v Robertson*⁸² where the court has given a kind of remedy which fails to protect the rights of the plaintiff and due to which the court blamed the inefficiency of common law and legal provisions in providing sufficient protection to the rights of the plaintiff.⁸³ The above case was regarding the filing of a suit on behalf of an actor whose false interview was conducted without his knowledge when he was in a hospital while the interview said that the plaintiff has given the interview with his own consent.⁸⁴

Now under the raging effect of 1998 Act, the court has introduced a life-saving extension to the ambit of "breach of confidence" which is generally used to protect confidential information, for the purpose of providing safety measures to the information which stands under the ambit of private affair of the individual.⁸⁵ The British judiciary along with the British parliament has extended the scope of the confidentiality clause which is clearly visible from the decision made by the court in the famous "*Spycatcher*" case in which despite the restraint shown by the government, the court allowed the newspapers to publish the extracts of a book which contained certain secret information about the country because long before this publication, the content of the book had been available in different parts of the continent i.e. already made public.⁸⁶

Therefore in the end the author just wants to conclude by stating that the law for the protection of privacy in UK is now in the changing phase with much more to be added as it still has not received stability.

COMPARATIVE ANALYSIS OF MEDIA LAWS AS PRESENT IN UK AND INDIA

This chapter is nothing but the natural extension of the discussion which got concluded in both the above completed chapters. This chapter is moreover purely based upon two things, one is the scope of this research paper and the other is the discussion that has been placed in the above two studies.

⁸¹ Evan Ruth (n 76); Perry Keller (n 59).

⁸² *Kaye v Robertson* [1991] FSR 62.

⁸³ *ibid.*

⁸⁴ *Kaye v Robertson* (n 83).

⁸⁵ *ibid* (n 82).

⁸⁶ *ibid.*

The structure of this chapter will be a unique one as the final conclusion of this chapter will formulate the base of the final conclusion of this research paper. In this chapter the author would compare the models of the Media Law present in both the countries and this comparison would be strictly based upon the discussion concluded in the above two set of chapters.

In this chapter the author would look into five major areas in same parlance in both the countries. The five areas are as follows:

- 1) *Ownership of different sectors of Media, which are present in both the countries.*
- 2) *Dominant position of Media in both the state.*
- 3) *Status of freedom of media in both the nations.*
- 4) *The generation of relation between Right to privacy and freedom of speech & expression and the efficiency of maintaining counter-balance between them.*

COMPARATIVE STUDY

1. Ownership of different sectors of Media, which are present in both the countries.

In this head the sectors of media which are covered are some of the major sectors in the department. The list mainly includes the newspapers i.e. print media or press, television and radio.

Position in India:

In India the position in the ownership of these sectors got changed in the post-globalization period and now the dominance in the country is in the hands of the autonomous players.⁸⁷ In the post-globalization era the holdings of the ownership in the sector of print media and television is maintained by the private autonomous players and this is the prime reason because of which India as a nation received the title by the world community to be as one of the most liberal country.⁸⁸ The only sector which in which the mighty government has some say is the sector of radio under the parlance of Prasar Bharti and now slowly and steadily it has also started moving into the hands of private players.⁸⁹

⁸⁷ B G Verghese (n 13).

⁸⁸ *ibid.*

⁸⁹ *ibid.*

Therefore on the whole the major media sectors in India which are now in existence are present under the ownership of private autonomous players either completely or partially. The private autonomy over the media sectors critically increase the political influence and interference in the functioning of these sectors. There still stands a possibility of change in the present position and India as a whole nation is still under a developing phase.

Position in UK:

The position of UK is quite different from the position present in its counterpart in India. In UK the same major media sectors are being completely divided between the government and the private autonomous on the platform of ownership as UK has a much older background of development than its counterpart India. In UK the private holding is limited only up to the ownership of press i.e. print media (newspapers) and this ownership has somewhat been continuing from the past two centuries whereas on the other hand the television and radio broadcasting completely falls under the ambit of Government and there the government shows no leniency as it has monopoly over these two sectors Also, the government never allows any kind of political influence or motivation in these two sectors whereas on the other hand the print media i.e. newspapers are highly used for the purpose of making political influence and interference and mainly during the periods of elections.⁹⁰

This is the position which is altogether different from India even though they share the same political structure of liberal democracy and after critically examining the scenario the author can validly put forth that there is no chance of possibility of change in the present position as it is has remained fixed since centuries.

2. Dominant position of Media in both the state

In this head the author will examine and compare the position clutched by the media in the political setup of both the countries. In this feature one thing which is common right from the starting is the political setup of both the nations' i.e. both have liberal democracy structure.

Position in India:

The position of media as present in Indian liberal democracy is very inductive in nature as in India constitution the Indian democracy has three pillars i.e. legislature, judiciary and executive which has got constitutional backing but in the midst of all the media sector has been figured and projected in such a manner that its growing importance and dominance in the

⁹⁰ David Goldberg, Gavin Shutter and Ian Walden (n 54) 24; Clay Jenkinson (n 54).

present day arena has made it acquire the position of fourth pillar/estate of the democracy beside the already existing three pillars of the democracy.⁹¹ The position of media has become very dominant in the past few decades.

Position in UK:

In UK the position is same as it is in India, in Britain the role of media is very dominant and influencing in the liberal democracy as it is there in India.⁹² As compared to India the UK has much older history and in UK the media is enjoying the same dominant and influencing status as in India due to its growing importance the role played by it because of which in UK also the media is termed as fourth estate/pillar of the democracy and this itself happened i.e. media indirectly acquired this status of being the fourth estate after the renowned parliamentarian Edmund Burke mentioned about its importance in the parliament in the mid-1700.⁹³

3. Status of freedom of media in both the nations.

Media sector is a body which need to function independently without any interference and influence from any outside source, and therefore it is a body which is needed to be vested with certain set of freedoms and rights to perform its function efficiently.

Position in India:

Media in India holds the set position of freedom of speech and expression and right to press as its part and parcel from the virtue of Art.19(1)(a) which also holds freedom of practicing trade and profession under Art.19(1)(g).⁹⁴ But these are the freedoms and rights enjoyed by the citizens and there is no direct mentioning of media in this Article. Therefore the status of freedom of media is very uncertain in India as the freedoms it enjoys are in a way provided under the Constitution but since there is no mentioning of applicability of it on the media, so the freedom held by the media is altogether indirect in nature and even apart from that the media has to be governed under the ambit of reasonable restrictions levied by the constitution over the exercise of above mentioned freedoms under the same article of the constitution.⁹⁵

⁹¹ Madan Singh Choudhary, 'Freedom of Press' (*Legal Service India*, 9 Oct 2007) <<http://www.legalserviceindia.com/article/l46-Freedom-of-Press.html>> accessed 21 October 2013.

⁹² Tom Crone, *Law and the Media* (4th edn, Focal Press, 2002) 7.
⁹³ *ibid.*

⁹⁴ Santwan Chattopadhyaya, 'Media Freedom: Introspective Its Status' (2010) *Global Media Journal - Indian Edition Winter Issue* <https://www.caluniv.ac.in/Global%20mdia%20journal/past_issue1.html> accessed 10 October 2013.

⁹⁵ Santwan Chattopadhyaya (n 61).

Therefore one can say that as the country is under the developing phase so the freedom enjoyed by the media is a result of constitutional parlance on one hand and result of counterbalancing effects of the draconian legislations structured by the British.⁹⁶ In specificity if we go according to the sectors of media, there is a level of difference in the enjoyment of freedom which is not fixed due to its indirect nature. For better understanding, the reader can refer to the discussion of status of freedom of media in India in the first chapter. And in the end the author just wants to conclude by saying that the status of freedom of media is still not stable, and for better stability it is required that it should undergo a justified set of legal reforms

Position in UK:

Just like in India, in UK too media enjoys its freedom of speech and expression and since there is no Constitution in place so the freedom enjoyed by the media comes from the Human Rights Act, 1998 which provides for the principle of freedom of speech and expression for the common citizens.⁹⁷ The position of freedom enjoyed by media sector is more or less the same as it is in India as here also the media has to face certain set of restrictions on the exercise of freedom. For reference, the reader can refer to the discussion on the status of freedom of media in second chapter.

Therefore at last the author just wants to put forth that still the media representatives in UK go on putting efforts for concretizing the valuable safety measures for the protection of their freedoms

4. The generation of relation between Right to privacy and freedom of speech & expression and the efficiency of maintaining counter-balance between them.

Privacy is a concept which is related to the personal affairs of any person's life.⁹⁸ Privacy is related to personal autonomy of any person and as it holds so much of importance there has been an attachment of right with it for its protection and this right even though not under the direct purview of the Constitution, still has received constitutional recognition.⁹⁹ When it comes to establishing its relation with media there stands the irony, as in the presence of freedom of speech and expression, right to privacy acts as a second side of the same coin on whose first side is the freedom of speech and expression as like a double edged sword which can never meet but has to maintain of counterbalance between the two.¹⁰⁰ Here comes the role of

⁹⁶ N Ram (n 19).

⁹⁷ David Goldberg, Gavin Shutter and Ian Walden (n 105) 24; Clay Jenkinson (n 105).

⁹⁸ Brian A. Garner (n 67) 1467.

⁹⁹ B. Manna (n 79) 156.

¹⁰⁰ B. Manna (n 79) 156.

laws on privacy which as per the requirement of this research paper needed to be compared in both the countries.

Position in India:

In India where it is important to keep the citizens informed about the nation, at the same time on the other hand it is also equally important to protect the private life of the citizens from going public unless urgently required. In order to govern this, the judiciary has developed principles founding its base in two segments, one is common law and the other is the Constitution of India. In Common Law they developed the principle to protect the privacy of individual from the media by putting emphasis on the act that a journalist cannot invade into any one's personal life without their consent and if does it then it will amount to a punishable offence.¹⁰¹ Secondly, the judiciary has developed the protection on privacy in counter-balance to the exercise of freedom of speech and expression with developing it as a part and parcel of Art.21 of the Constitution of India.¹⁰² But in both the segment, the individual's exercise of right to privacy has to undergo certain set of restrictions under which the exercise of the right to privacy is restricted i.e. if the private affairs of any person has been made public for the purpose of public duty or national security.¹⁰³

In the end the author would like to put forth that the law on the protection of private autonomy which since starting has been struggling even to breathe, has almost acquired a very strong position by the vigilance of active judiciary of the country.

Position in UK:

Like the concept of media in India as that of one side of a coin on the other side of which exists the freedom of speech and expression, same is the position in UK where it is very crucially examined by the authorities that who is actually entitled to collect, process and publish the information related to the private autonomy of an individual.¹⁰⁴ In this Britain has a principle common with India that no media sector will publish any set of private information in public without the consent of the person or under the public duty.¹⁰⁵

But as like the vigilant steps taken in India to develop the law for the protection of privacy, no such act had been done in the UK for the protection of privacy rights of the individual till the mid 90's and the protection

¹⁰¹ N Ram (n 19).

¹⁰² Madhavi Goradia Divan (n 24) 119.

¹⁰³ *ibid* 120.

¹⁰⁴ Perry Keller (n 59).

¹⁰⁵ *ibid*.

of privacy and duty to provide counter-balance between the two was left vaguely in the hands of judiciary, but then came the 1998 act on Human Rights which provided a kind of extension to the principle of "breach of confidence" which is used for the purpose of protecting the private information of the individuals.¹⁰⁶

However, still in the end, the author would like to conclude that the law on for protecting the privacy rights of individuals is still not developed in the country properly and still struggling to achieve stability.

CONCLUSION

In comparing the models of media law as present in both India and UK, the author would like to conclude the research by giving a conclusive analysis which is only applicable keeping in mind the restricted and decided scope of the project. The author has taken five factors into consideration for comparing the legal model. These five factors are as follows:

- 1) Ownership of different sectors of Media, which are present in both the countries.
- 2) Dominant position of Media in both the state.
- 3) Status of freedom of media in both the nations.
- 4) The generation of relation between Right to privacy and freedom of speech & expression and the efficiency of maintaining counter-balance between them.

Now examining them one by one in the context of both the countries, the author reaches the score that the legal model of UK which is much older both in age and functioning than its counterpart (in the research paper) and that too in the post-independence stage still carries certain major legal lacunae in its structure because of which the law is still struggling and finding ways to develop. For instance in the field of providing protection to the right to privacy as a counter-balance to freedom of speech and expression, the law in UK is still struggling as still the privacy rights are not been properly protected in the country. This shows the inefficiency of such an old and so called developed legal system. Other factors in the laws of UK are much more alike to the law present in India which clearly shows that pace of development acquired by the Indian legal system. On the other hand in India who is just an infant as compared to the age of UK legal system, is still in the developing phase and in drawing a comparison the author has found that the Indian legal structure on media law is not much different from its counterpart. Like for instance in the factors number two and three

¹⁰⁶ *ibid.*

the law is same in both the nations, whereas the legal structure in the context of fifth factor is a matter which should be improved as soon as possible to provide protection to the sources of information in order to safeguard the threat of life and liberty. But at the same time in the fourth factor i.e. protection of privacy where the law of UK is until now appeared to be a failure, the law of India has got sufficiently developed to provide protection to the private autonomy of the individuals.