

MEDIA AND LAW: ISSUES AND CHALLENGES

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Introduction

“Media is a type of communication channels through which news, entertainment, education, and promotional messages are disseminated. Media includes every broadcasting and narrowcasting medium such as newspapers\magazines, TV, radio, billboards, direct mail, telephones, fax and internet. Media is the plural or singular verb, depending on the sense intended.”¹

The media has a vital role to play in uncovering the truth and rousing public opinion, especially in the face of wrongdoing and corruption. And the right to do so has been given a concrete backing under the freedom of press, which is folded into the constitutional fundamental right of the freedom of speech and expression. What freedom of the press does is that it serves a greater purpose of the right of the people to be informed of rays of facts, views and opinions. It acts as the medium through which people gain access to information that is must for the people if democracy is to be achieved. In this case, the importance of freedom of the press has a massive impact and owes a great deal by the Indian democracy.

In fact, media has been the key weapon to be used in order to bring light to the people about the on goings in the functioning of a democracy. So, we have every right to be grateful of having the freedom of press. However, as society develops and evolves, we have to anticipate new challenges which constantly arise that need to be sorted and curbed. Technology has been an essential element, which not only helped built our nations into greatness, but also brought new concerns posing set of anxieties. As Lord Justice Leveson wrote in his path-breaking report on ‘Culture, Practice and Ethics of the Press’ in Great Britain,

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¹ <http://www.businessdictionary.com/definition/media.html> (last accessed on March 27, 2015).

“With these rights (of press freedoms) come responsibilities to the public interest: to respect the truth, to obey the law and to uphold the rights and liberties of individuals.”²

So, keeping in mind the importance of freedom of press, this essay will examine the various issues and challenges of the media law that exists in the Indian jurisdiction. This essay will draw upon the Indian experience to suggest that greater measures are to be needed in the times to come.

Historical Context of Media Laws

Since the 1940s, the US, Canada, and countries in Western Europe have emphasized the social responsibility shouldered by the media. In 1942, Henry Luce, founder of TIME magazine, asked his former classmate from the University of Yale, Robert Hutchins, to head a panel at a time when there was growing concern in the US that irresponsible journalism might lead to governmental intervention. The seminal report of the Hutchins Commission entitled *A Free and Responsible Press* argued that the media should act like a public trust—that is, owned by the people. In this way, the media may serve democracy. The report asked the press to improve itself in the name of morality, democracy and self-preservation.

In India, the right to freedom and expression is provided in Article 19 of the Constitution and freedom of the press is inferred from the same, as there is no explicit mention of freedom in the Constitution. Freedom of media can be understood as the right to source and report news and other information which can be reasonably said to be in public interest.

The mass media has a vital role to play in the implementation of the fundamental objectives in the Indian Constitution, namely democracy, secularism, national unity and integrity, and the rule of law. The underlying purpose of the media is to assist in the process of resolving social, political, economic and other problems by presenting all the evidence and opinions to enable the public to arrive at conclusion or even take decisions. To fulfill this important role in democracy, the media needs to be free and independent from the control of government bodies, corporate entities, advertisers and political parties. It is the media's duty to keep the government and other powerful sections of the society from abusing their discretionary powers. India first Prime Minister Jawaharlal Nehru, declared: “I

² Lord Justice Leveson, 'An Inquiry into the Culture, Practices and Ethics of the Press' (Leveson Inquiry Report, London: November 2012).

would rather have a completely free press with all dangers involved in the wrong use of that freedom, than a suppressed or regulated press”.

Duty and Influence of Media

Mahatma Gandhi said: “The newspaper press is a great power, but just as an unchained torrent of water submerges the whole countryside and devastates crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want of control. It can be profitable only when it is exercised from within”.

Mahatma Gandhi’s apprehension about an unregulated media is based on the influence it possesses. There is a wide acceptance of the idea that the media is responsible to its constituents like readers, listeners and viewers, that is, to citizens at large. As professionals, journalists are supposed to embody the roles of watchdogs and educators. To fulfill these roles, journalists need to:

- Ensure accuracy while reporting a story.
- Remain free from bias as far as possible.
- Resist censorship and marginalization of public interest.
- Include minority and dissenting viewpoints.

The mass media exercises power and influence in three crucial ways. First it has the freedom to decide what to report and how to report it. Second, the very existence of the media implies that centers of powers, like the government, are being watched and monitored and will be accountable to the people. Third, in presenting conflicting opinions, the media creates a forum of open debate and discussion that helps individuals make up their minds, resolve issues and to arrive at conclusions on issues of social importance.

Journalists and other media personnel are obliged to act in accordance with the law and are assigned responsibilities that are derived from the law (not to be libelous, defame or plagiarize, and so on) and with the policies of their news organizations. Contracted responsibilities or individual responsibility to the news organizations are explicitly and formally defined. However, the responsibility of a journalist to his/her constituents’ readers or audience is less explicit and the onus lies with the individual journalists to inform the public accurately. There are certain standards of journalism that are universally recognized and by these help journalist regulate their professional conduct. These include:

- Fairness
- Sobriety
- Decency
- Accuracy and truthfulness
- Objectivity

Press Council of India (PCI) and Code of Conduct

The PCI was established to preserve the freedom of the press and to maintain and improve the standards of newspapers and news agencies in India. The PCI help newspapers and news agencies maintain their independence while having a general code of conduct for journalists. The aim of this code is to ensure high professional standards and foster a sense of the rights and responsibilities of journalists as well as ordinary citizens. The PCI has, over the years, framed a code of ethics for journalists and governs their conduct. Some of the codes of conduct for journalists are:

- Accuracy
- Avoiding error
- Truthfulness
- Maintaining truthfulness
- Ensuring fairness
- Remaining impartial
- Keeping confidentiality
- Sobriety and decency

Issues in Today's Date in Media and Its Recommendations

One of the main issues with regard to media regulation has been the question of the nature of regulatory authorities. This has led to proposals for a Broadcasting Regulatory Authority of India. In 2007, a Consultation Paper by the Ministry of Information and Broadcasting sought views from stakeholders on the proposed draft of the Broadcasting Services Regulation Bill. The PCI, in 2012 also recommended that electronic and social media be brought within its regulatory framework and the institution renamed Media Council.

Another issue that has received a great deal of attention from various sources is that of paid news. By definition, 'news' must be what the reporter has assessed to be correct or has got from a reasonably honest source, backed by reliable written or verbal communication or even by photographs. On the other hand, paid news clearly does not fall into such a category of information. Yet the phenomenon of paid news has become so rampant that unions of journalists, senior media

commentators, the Press Council of India (PCI), and even the Indian Parliament have discussed the matter in great detail, while media companies have sought to justify the phenomenon, some even insisting that they are not guilty of practicing such fraud.

When 'news' is published in favour of a particular politician or a political party through sale of editorial space, the 'paid news' phenomenon becomes even more pernicious. Innumerable complementary 'news' reports and feature articles on representatives of political parties, including candidates who have been contesting elections, appeared in newspapers and were broadcasted on television channels across the country in the run-up to the 2009 Lok Sabha elections and the state legislative assembly elections.³ No disclosure was made that money had been exchanged between the concerned candidate or political party to which she or he belonged and the owners or representatives of media organizations before such 'news' was printed or broadcasted. Such malpractice enables candidates contesting elections not to disclose their true expenditures on campaigning or else, would violate the code of conduct like for example, the Conduct of Election Rules, 1961. Now the question is about measures that can effectively check corrupt practices in the media that compromise democratic processes. Despite its quasi-judicial status, the PCI has limited powers. The Council has the power to admonish, reprimand, and pass strictures but cannot penalize the errant or those found guilty of malpractices. So, appointing ombudsman in media organizations and better self-regulation are options to check the 'paid-news' phenomenon. However, self-regulation only offers partial solutions to the problem.

The third issue is the 'cross-media holdings', which has been examined in detail earlier by the Telecom Regulatory Authority of India (TRAI). A recommendation has been made that there should be necessary safeguards in place to ensure that diversity is maintained across the 3 media segments, which are – print, television and radio.

The fourth issue deals with the Contempt of Courts Act, 1971 which are less stringent in nature than is required to be. This Act should include more stringent provisions for prejudicial reporting by the media and one major concern is the question of sting operation's legality under the said act. Sting operations⁴ can be classified into positive and negative sting operations based on their purpose.

³ Media Ethics (Truth, Fairness, and Objectivity), 2nd Expanded Edition – page no. 221.

⁴ Sting operation is a deceptive operation designed to catch a person committing a crime.

Positive sting operation takes place in the interest of the society, which helps to lift the 'purdah'⁵ of the working of the government. On the other hand, negative sting operation harms the society and its individuals. It unnecessarily violates privacy of the citizens without any benefit to the society. A sting operation may be an expression of right under freedom of speech and expression but it also comes with a duty to respect the privacy of others. At times, sting operation becomes a stage managed operation, for example, in that case in the year 2007, where Live India, a news channel conducted a sting operation on a Delhi government school teacher forcing a girl student into prostitution. Subsequent to the media expose, the teacher Uma Khurana⁶ was attacked by a mob and was suspended by the Directorate of Education, Government of Delhi. Later investigation and reports by the media exposed that there was no truth to the sting operation. The girl student who was allegedly being forced into prostitution was a journalist. The sting operation was a stage managed operation, and police found no evidence against the teacher to support allegations made by the sting operation of child prostitution. This is a complete impersonation, criminal conspiracy and a creation of false evidence, and it is for the laws and law enforcers to make sure such acts do not occur again.

The 200th Law Commission Report has made recommendations with regard to enacting a law to prevent the media from interfering with the privacy of individuals, which is recognized under right to life and personal liberty. The Press Council of India provides guidelines for reporting a sting operation. And a journalist should adhere to the guidelines laid down by the Press Council of India to avoid liability as the law affords him no protection. Still, he can be subject to defamation suit later on by the victim on the sting operation. A line has to be drawn between sting operations that invade privacy and those which exposes corruption and like others in order to protect the very essence of the Constitution of India.

Methods of Regulation

A brief overview of the existing legal framework governing the media is essential before attention is turned to methods of regulation. There are distinct systems of regulation for broadcast media, print media and social media. At present, the law applicable to broadcast media is the Cable TV Networks (Regulation) Act 1995. The Act brought into force the Programme Code and the Advertising Code, which prohibit

⁵ The practice in certain Muslim and Hindu societies of screening women from men or strangers, especially by means of a curtain.

⁶ WP(Crl.) No.1175/2007.

transmission of any programme or advertisement not in compliance with the code. There is no regulatory authority set up under the Act. Instead, the broadcasting sector is regulated by the Telecom Regulatory Authority of India (TRAI), which notifies rules from time to time on matters such as streamlining of the distribution of television channels to platform operators. Additionally, the Electronic Media Monitoring Centre established by the Ministry of Information & Broadcasting monitors the content of all TV channels up linking and down linking in India to check the violation of the Programme and Advertisement Code. It also monitors content of Private FM Radio Channels. Many guidelines and regulations are issued from time to time by these regulatory authorities. The Ministry of Information & Broadcasting, for example has issued Policy Guidelines for up linking of Television Channels from India, the latest in 2011, which include mandatory compliance of the Cable TV Networks (Regulation) Act 1995. The Guidelines introduce the three-strikes and five-strikes rules, whereby permission to broadcast, and renewal of such permission, is revoked upon three or five violations of the Guidelines respectively. Self-regulation of content in the broadcast media is conducted through a two-tier mechanism of self-regulation by individual broadcasters as well as industry level regulatory bodies. Regulation of content is divided into news and non-news sectors. For the non-news sector, industry level regulation is enforced by the Broadcasting Content Complaints Council (BCCC) within the Indian Broadcasting Foundation (IBF) that oversees channels other than the news and current affairs channels.

The BCCC is an independent council comprising a thirteen member body consisting of a Chairperson being a retired Judge of the Supreme Court or High Court and 12 other members including broadcaster and eminent non-broadcaster members. The BCCC hears complaints and may issue directions to the channel to modify or withdraw the objectionable content, and can further fine the channel up to Rs.30 lakhs. If the direction is defied, the matter may be referred to the Ministry of Information and Broadcasting for further action, including revocation of permission to broadcast. The self-regulatory body for news and current affairs channels is the News Broadcasters Association (NBA) which has set up the News Broadcasting Standards Authority (NBSA) to adjudicate complaints in relation to broadcast content on news channels. The NBA consists only of organizations that are members and submit themselves to regulation by the NBA. Therefore, the jurisdiction of the NBSA is restricted only to members. The NBA has in place a Code of Ethics to regulate television content. The NBSA is empowered to warn,

admonish, censure, express disapproval and fine any broadcaster in violation of the Code a sum upto Rs.1 lakh.

Print media in India is governed by The Press Council Act, 1978 that establishes the Press Council of India (PCI). The Council comprises a Chairman and 28 other members. The Chairman is to be nominated by a Committee constituting of the Chairman of the Council of States (Rajya Sabha), the Speaker of the House of the People (Lok Sabha) and a person elected by the members of the Council. The PCI is statutorily empowered to take *suo motu* cognizance or entertain complaints against newspapers and journalists accused of violating standards of journalistic ethics or offending public taste and censure. It may summon witnesses and take evidence under oath, and issue warnings and admonish the newspaper, news agency, editor or journalist. However the PCI does not have the power to penalize any entity for violation of its guidelines.

With the advancement of Internet technology, the Information Technology Act, 2000 was introduced as the first Act to govern cyber law provisions. Section 66A was inserted in the Act by an amendment in 2008 under which sending offensive or false messages through a computer device is a punishable offence. However, no guidelines have been laid down for identification of offensive messages. The Information Technology (Intermediary Guidelines) Rules, which direct intermediaries to identify and remove objectionable content, were introduced in 2011. Section 66A is currently under challenge⁷ as being violative of free speech as it has often been said to have been invoked arbitrarily or with political motive to block access to content allegedly objectionable.

Media regulation in India is therefore not unified, and has a multiplicity of regulatory bodies. Further there are issues surrounding the enforceability of decisions of such bodies. An independent broadcasting media authority along the lines of TRAI was first suggested by the Supreme Court in *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*.⁸ Thereafter, the Ministry of Information & Broadcasting has made various attempts, the latest in 2007, to draft a Broadcasting Services Regulation Bill in order to set up a Broadcasting Regulatory Authority of India (BRAI).

⁷ Shreya Singhal v. Union of India, W/P (Civil) No. 167 of 2012.

⁸ AIR1995 SC 1236.

In *Indraprastha People v. Union of India*⁹, the Delhi High Court recommended that an independent statutory body be set up under the Cable Television Networks (Regulation) Act, “consisting of men and women of eminence.” Further they said, “Security of tenure of a kind should be provided for the Members of the Board so that they are free from Government interference.” Till this comes into force, the BCCC, according to the Court should be recognized by the Government of India as competent to decide complaints on violation of the law by broadcasters. Its decisions shall be treated by the Union of India as the foundation to take appropriate action against the offender.

Recently, the Supreme Court of India, in Writ Petition (Civil) No. 1024/2013, agreed to hear a Public Interest Litigation praying for an independent regulatory authority to govern broadcast media alleging that the Information & Broadcasting Ministry had failed to constitute sufficient infrastructure to ensure quick decision-making against offending channels and in not imposing deterrent penalties as provided by law. The Court tagged the case with another pending matter, Writ Petition (Civil) No. 963/2013, seeking guidelines to regulate the content of television channels.

In 2012, the PCI passed a resolution urging the government to bring electronic and social media within the PCI’s regulatory framework and to rename it the Media Council – a resolution that met with much opposition. Though the Print and Electronic Media Standards and Regulation Bill, 2012 proposed the establishment of an overall media regulatory authority, the Bill did not get introduced. This was especially as statutory regulation of this nature led to widely expressed fears of censorship and state suppression of free media. Thus the PCI continues to be the regulatory institution for print media, albeit without adequate powers of enforcement.

Similar concerns have been voiced and addressed in other jurisdictions, most notably in the United Kingdom where, following a series of media scandals, a committee headed by Lord Justice Brian Leveson was set up to inquire the ‘culture, practice and ethics’ of the press, including the media’s relations with politicians and the police. The report recommended a strong and independent regulator be set up to replace the existing Press Complaints Commission.

Whether media accountability is better served by such self-regulatory institutions which are diverse and widely viewed as lacking powers of

⁹ WP (C) No.1200/2011, (Del. HC).

enforcement or replaced by statutory regulations enforced by one or multiple regulators has been a vexed question in recent debates surrounding media reform. Even for social media which currently does not have a dedicated regulator, the key question is whether to regulate and if so, which model of regulatory institution to adopt. In this context, the following questions arise:

1. Do the existing self-regulation mechanisms require strengthening? If so, how can they be strengthened?
2. In the alternative should a statutory regulator be contemplated? If so, how can the independence of such regulator be guaranteed? Specifically:
 - a. How should members of such regulator be appointed?
 - b. What should the eligibility conditions of such members be?
 - c. What should their terms of service be?
 - d. How should they be removed?
 - e. What should their powers be?
 - f. What consequences will ensue if their decisions are not complied with?

Should any such change be uniform across all types of media or should regulators be medium-specific?

Recent Case Laws in Media Law in India

The Supreme Court of India redefined the boundaries of freedom of speech on the internet. With the Court's decision in *Shreya Singhal & Ors. v. Union of India*¹⁰, Section 66A of the Information Technology Act, 2000, has been struck down in entirety and is no longer a good law¹¹. Through a structured, well-reasoned and heartening judgment, the court talks us through the nuances of free speech and valid restrictions. While previously, intermediaries were required to take down content upon *suo moto* determination of lawfulness, Section 79(3)(b) of the Act -- the intermediary liability provision -- has been read down to require actual knowledge of a court order or a government notification to take down content. Section 69A of the Act and its corresponding Rules, the provisions enabling the blocking of web content, have been left intact by the court, though infirmities persist.

¹⁰ Writ Petition (Criminal) No.167 of 2012.

¹¹ http://www.huffingtonpost.in/geetha-hariharan/what-66a-judgment-means-f_b_6938110.html (last accessed on 28th March at 20:18 hours).

The Supreme Court's decision comes at a critical moment for freedom of speech in India. In recent years, the freedom guaranteed under Article 19(1)(a) of the Constitution has suffered unmitigated misery: Wendy Doniger's "*The Hindus: An Alternative History*" was banned for hurting religious sentiments, publisher Orient Blackswan fearing legal action stayed its release of an academic work on sexual violence in Ahmedabad, the author Perumal Murugan faced harsh criticism for his novel *One Part Woman* and chose to slay his authorial identity¹².

The tale of free speech on the Internet is similar. In response to takedown requests, intermediaries prefer to tread a safe path, taking down even legitimate content for fear of triggering penalties under Section 79 of the IT Act. The government has blocked websites in ways that transgress the bounds of 'reasonable restrictions' on speech. Section 66A alone has gathered astounding arrests and controversy. In 2012, Shaheen Dhada and her friend were arrested in Maharashtra for observing that Bal Thackeray's funeral shut down Mumbai, Devu Chodankar in Goa and Syed Waqar in Karnataka were arrested in 2014 for making posts about PM Narendra Modi, and a Puducherry man was arrested for criticizing P. Chidambaram's son. The misuse of Section 66A, and the inadequacy of other provisions of the IT Act, were well-documented.

Conclusion

In this age of media explosion, one cannot simply remain confined to the boundaries of the traditional media. The media world has expanded its dimensions by encompassing within its orbit, the widening vistas of cyber media etc. As a consequence, the laws governing them are also numerous. It is not within the scope of this essay to deal with the whole subject of the media laws, but this essay makes a person well aware of the various important legislations affecting the various branches of the media communication, making him aware of his rights and facilitating him to exercise them within the framework of the law existing in India and in the end furthering the cause of "Freedom Of Speech and Expression" and dissemination of knowledge. Like the famous quote from Voltaire, "I do not agree with what you have to say, but I'll defend to the death your right to say it", Indian Constitution too has an eminent role to play on defending the citizens of India's right to share their views through various means for it is a fundamental right.

¹² <http://indianexpress.com/article/india/india-others/its-batra-again-book-on-sexual-violence-in-ahmedabad-riots-is-set-aside-by-publisher/> (Last accessed on 29th March, 2015 20:00 hours).

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