

REGULATING THE MEDIA IN INDIA: AN URGENT POLICY PRIORITY

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Introduction

The role and necessity of a thriving media for success of democracy needs no elaboration. Media¹ is referred to as the fourth estate and is as integral a part of the government as the legislature, executive and judiciary. It is the media which is responsible for molding people's perception and public opinion, public image makes or mars things in today's digital world. Theoretically speaking we can say this is both the best and worst of times in the media landscape. It is the best of time because media is on a boom. Long are gone the days of state regulation and a lone Doordarshan and All India Radio. We have more than 250 news channels and an equally boisterous number of FM Stations. The Print media is also witnessing an unprecedented growth with the youth population on the country being equally active on social media platforms such as Facebook, Twitter etc. People are outspoken, impatient and unconventional. Attitudes and practices previously accepted as being destiny are being immediately challenged and our political leaders are under scrutiny like never before. So the Indian media is truly living up to its role as a fourth estate having a pertinent say in designing and channeling the Indian social, political and economic milieu.

Rights Available to Media under the Indian Constitution

Constitution does not set freedom for media on a higher pedestal than those given to protection of fundamental rights of a citizen. Article 19(1) (a) of the Indian Constitution guarantees the right to freedom of speech and expression which is subject to reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public decency or morality or in relation to contempt of court, defamation or incitement to offence. This is in contrast to what has been provided under the US Constitution which under the First Amendment provides that "Congress shall make no law... abridging the freedom of

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¹ The broad term 'media' includes radio, television, films, press, publications, dance and drama and advertisement.

speech or of the press..."². However, this does not mean that freedom of press is not a cherished ideal under our Constitution. The difference is relevant only to mark that media like other organs of government can falter too and might need corrections. The Indian Supreme Court has time and again upheld the honour, integrity of the Indian media. In *Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer*³, the Supreme Court has reiterated that freedom of press in the cherished right in all democratic countries and the democratic credentials of a state are judged by the extent of freedom the press enjoys in that State. In *Sakal Papers Ltd. v. Union of India*⁴, Daily Newspapers (Price and Control) Order, 1960, fixed a minimum price and number of pages, which a newspaper was entitled to publish. The Supreme Court while striking down the order held that the right of freedom of speech and expression couldn't be taken away with the object of placing restrictions on the business activity of the citizens. Freedom of speech can be restricted only on the grounds mentioned in clause (2) of Article 19.

Press Council of India - A Toothless Regulator

The Press Council of India is an autonomous, statutory, quasi-judicial body which was first constituted on 4th July, 1966. The Press Council Act, 1965 enumerates the powers and functions of the Council. Its chief functions are to help newspapers and news agencies to maintain their independence⁵; to build up a code of conduct for newspapers and journalists in accordance with high professional standards⁶; to ensure on the part of newspapers and journalists the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship⁷; to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism⁸; to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance⁹; to keep under review such cases of assistance received by any newspaper or news agency in India from foreign sources, as are referred to it by the Central

² Absence of regulation under the First Amendment only denotes that it is upon the US Supreme Court to lay down the regulations and restrictions on media as and when required. The traditional view that media is an unbridled horse subject to no regulation has lost favour. In *Konigsberg v. State Bar of California* (366 U.S. 36, 61 (1961)), Justice Hugo Black held that "No law' means no law".

³ (1994) 2SCC 434.

⁴ MANU/SC/0090/1961/: [1962] 3SCR 842.

⁵ Section 12(2) (a) of the Press Council Act, 1965.

⁶ *Id.* Section 12(2)(b).

⁷ *Id.* Section 12(2)(c).

⁸ *Id.* Section 12(2)(d).

⁹ *Id.* Section 12(2)(e).

Government¹⁰. The Council set up under the Act of 1965 functioned till December 1975. The Press Council of India Act, 1979 was enacted which provided for a similar institution. Section 14 of the Act provides for the power to censure. The Council has the power to censure if it believes that a newspaper or a news agency has violated the standards of journalistic ethics or public taste. The power of censure can also be exercised in case of professional misconduct by an editor or a working journalist. The power has to be exercised only after giving the newspaper, news agency, editor or the journalists as the case may be an opportunity of being heard. The Council is required to hold an inquiry in conformity with the procedure provided under the Act. The Council however, does not have any power to hold inquiry in any matter pending before any court of law. The Council has no punitive power.

Besides the Press Council we also have the Ministry of Information & Broadcasting acting as the apex body for formulation and enactment of laws pertaining to media. Information on government policies and programmes are disseminated to the media through the Press Information Bureau. Directorate of Advertising and Visual Publicity (DAVP) is the nodal advertising agency of the Government of India. We also have the Registrar of Newspapers of India responsible for maintenance of a register of newspapers and issue of certificate of registration to the newspapers published. The Directorate of Field Publicity is entrusted with the task of educating people, especially at the grass-roots, about the different development programmes implemented by the Government. It is also tasked with the job of collecting people's view on the different policies and programs introduced by the Government. The Film Certification Appellate Tribunal, a statutory body, under the Ministry of Information and Broadcasting, Government of India hears appeals against orders of the Central Board of Film Certification (CBFC) while the Central Board of Film Certification certifies films for public exhibition. The Advertising Standards Council of India (ASCI), a voluntary organization of the advertising industry receives complaints against false and misleading advertisements. We also have the Copyright Board which adjudicates disputes related to copyright registration, infringement, assignment etc. Lastly, we have the Telecom Regulatory Authority of India established under the Telecom Regulatory Authority of India Act, 1997 responsible for regulating telecom services.

¹⁰ Id. Section 12(2) (f)

Other Regulatory Enactments

Besides the Press Council of India, we have a number of legislations regulating different aspects of the media landscape. Some of the important legislations are the Press and Registration of Books Act, 1867¹¹, the Press (Objectionable Matters) Act, 1951, The Newspaper (Prices and Pages) Act, 1956¹², Delivery of Books and Newspapers (Public Libraries) Act 1954¹³, guidelines for publication of Indian editions of foreign magazines dealing with news and current affairs¹⁴, Cable Television Networks Regulation Act, 1995¹⁵, The Cable Television Networks (Regulation) Amendment Act, 2011¹⁶, Cinematograph Act 1952¹⁷, Cinematograph (Certification) Rules, 1983, The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955¹⁸, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957, Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 and the Cine-workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984¹⁹, Copyright²⁰ Act of 1957, Copyright Rules, 1958, International Copyright Order 1999, Indian Telegraph Act and Wireless Telegraphy

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- ¹¹ The Act provides for the regulation of printing presses and newspapers, preservation of copies of books and newspapers and registration of such books and newspapers.
- ¹² Under this Statute the Central Government can regulate the price of newspapers keeping in mind the number and size of pages. Space allocation for advertising can also be regulated under this enactment.
- ¹³ The Act regulates delivery of books to the National Library, Calcutta and other public libraries.
- ¹⁴ Issued in 2008 the guidelines regulate publication of Indian editions of foreign magazines publishing news and comments on public news. Any Indian entity, with or without foreign investment, is permitted to publish an Indian edition of a foreign magazine falling in the news and current affairs sector.
- ¹⁵ The Act regulates the cable market bringing uniformity in its operations. The Cable Television Networks Rules, 1994 has been enacted under the Cable Television Networks (Regulation) Ordinance, 1994 and prohibits broadcasting of programmes which offends good taste or decency, criticism of friendly countries, attack on religions or communities, obscenity, programs likely to incite violence or threaten law and order, contempt of court, slanderous programs etc.
- ¹⁶ The Act provides for digitalization of cable TV services.
- ¹⁷ The Act contains provisions for certification of cinematographed films for exhibition. The Board of Film Censor examines films for the purpose of sanctioning it for exhibition.
- ¹⁸ The Act regulates conditions of service of working journalists and other persons employed in newspaper establishments.
- ¹⁹ The Act regulates the conditions of employment of cine-workers and cinema theatre workers and related matters.
- ²⁰ Copyright is the exclusive right made available to the author or creator of an original work and includes the right to copy, distribute and adapt work.

Act 1933²¹ etc. The Press (Objectionable Matters) Act 1951 printing and publications of news which can lead to incitement to crime and other objectionable matters²².

Problems plaguing the Indian Media

With greater access, recognition, role and acceptance comes greater responsibility and it is here that we are witnessing our media to be continuously faltering. Paid news, corruption, tabloidization, dubious funding of news channels and partisan coverage, obscenity and political defamation are just few of the phenomena setting a strong foothold shaking up people's confidence on a regular basis throwing open and giving vigor to the debate surrounding regulation of Indian media. The debate between 'balancing' and 'absolutism' is not new but its revival at this moment in light of the changed circumstances deserves discussion.

News is no longer restricted to being informative. It has to have entertainment value. Even a serious and heinous crime like rape has to be presented in a titillating manner to ensure viewership. Innocent programs advocating a drug, goods or other product which might prima facie appear to be based on a neutral and objective analysis could be backed by a source of funding which quite conspicuously finds no mention. As mentioned earlier these are the best of times for media, a young pulsating beat capable of inculcating a real say in the democratic decision making process but when the same process is the result of structured and engineered process rather than a voluntary path pursued by viewers, it is time to take the wake-up call. While sting operations have been successful in exposing the real ugly face of many corrupt politicians, it is also being used as a means of threatening opponents. Of course, we have the fundamental right to speech and expression, a cherished ideal which was gagged by the

²¹ Indian Telegraph Act 1885 gives the Government of India exclusive rights for establishment and working of telegraphy.

²² There are a number of laws regulating broadcasting. These include Cable Television Networks Regulation Act, 1995, Cable Television Networks Rules, 1994, Prasar Bharati (Broadcasting Corporation of India) Act, 1990, Prasar Bharati Investment of Money Rules, 2007, Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007, Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Rules, 2007, Internet Protocol Television (IPTV) Guidelines, Direct to Home (DTH) Service Guidelines, CRS (Community Radio Stations) Guidelines, Up linking guidelines, Policy guidelines for Down linking of TV Channels, Code of advertising Practice of the Advertising Standards Council of India, Policy Guidelines for setting up Community Radio Stations in India, Guidelines to regulate child participation in TV Serials, reality shows and advertisements, Protection of identity of Children in Need of Care and Protection and juveniles in conflict with Law etc.

British to thwart our struggle for independence²³ and hence held immensely sacrosanct by our judiciary but it is time that we list down all the creeping negative developments vehemently pollution the media landscape. The Press Council of India as previously discussed as only moral persuasive force. This power is vastly inadequate to tame in the willful delinquents. We need a powerful and strong deterrent to plug in the loopholes but we need to be cautious that any steps towards regulation must be the product of media and judicial innovation. It cannot be the government laying down the borders for area of regulation for such a step if made justified by the rogue elements in the sector will do more harm than good but it is high time that the media stops living in self denial and takes stock of the situation as it is. Only then can we expect a through, comprehensive and result evoking step.

The Way Ahead

Presently discussions are on for creation of an independent, self regulatory body on the lines of “essay in persuasion, not regulation”.²⁴ We have a plethora of laws as previously discussed, what is missing is proper implementation of the same and an effective body having punitive power to punish those who stray beyond the mandated code of conduct. Voluntary guidelines act as half hearted measures having no real effect. We need to learn from the recent Royal Charter²⁵ approved by the Privy Council in UK to regulate the press. Firstly, steps should be taken to redeem the situation before the government finds a legitimate basis to become the model the regulatory code citing grave inadequacies in the media as seen in UK were the newspapers attempt to come up with their own version of a royal charter lost to official acceptance of the government’s version and secondly, we need a similar watchdog to oversee a new and powerful press regulator²⁶ as created under the Royal Charter. There

²³ Adam’s Press Ordinance was the first statutory regulation of the press brought by the then Governor General, John Adam. The Ordinance was aimed at taming newspapers published in Indian languages and edited by the Indians.

²⁴ Available at <http://www.thehindu.com/news/national/statutory-mandatory-selfregulation-emerging-as-consensus-model-for-media/article4996150.ece>, accessed on 05.02.15.

²⁵ The adoption of the charter was a result of the Leveson Inquiry in 2012 called in the back drop of the phone hacking scandal in UK in 2010 and 2011.

²⁶ Under the Royal Charter, the Press Complaints Commission will be replaced by a new regulator. The Charter also provides for a watch dog i.e., the recognition panel entrusted with the task of ensuring the independence of the new regulator. Besides, the regulator will be empowered to impose fines up to 1m Pound and can also provide for arbitration for speedy dispersal of complaints. While signing up under the new system is voluntary, those choosing to opt out of the system risk

is dire need to come up with immediate reform taking lessons from our fellow jurisdictions.



exposing themselves to payment of exemplary damages in case of losing in any libel case.