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Regulation of Media and Freedom of Expression

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ABSTRACT

Media, the fourth estate, is a vital part of the Indian democracy. The role of media is not restricted to just traditional reporting and publishing. It has now spread its wings and grown into a mechanism that generates public opinion, or rather, manipulates it. The focus of this paper is on tracing the path treaded by the media in India over the years and delivering a theoretical understanding of the same with reference to its underlying jurisprudence and other myriad aspects. It covers the development, nature, impact and influence of media over the life of common man. The part that the government ought to play in balancing the rights and duties is also discussed herein. Another aspect that has been incorporated in this study is that of the varying standards of morality in the light of the development of media. Also included in this study, is the importance of having a more stringent system of laws regarding right to privacy, given the increasing interference of the media in the personal and private matters of persons, which has urged the need for more effective privacy laws. The crux of this paper is that attached with the powers bestowed on the media, is a tremendous load of responsibility. Striking a balance between the limits acceptable to the society and bringing out the right matter at the right time is indeed the need of the hour.

I. INTRODUCTION

"Democracy is the government of the people, by the people, for the people", said Abraham Lincoln. India is one of the largest democracies in the world. Needless to say, the three pillars of the State, i.e. the legislature, the executive and the judiciary are set up with the object of realising this in the true letter and spirit. In recent times however, due to changing circumstances in the light of globalization and liberalization, this traditional governmental set up has acquired a new fourth limb - 'the media'.

Like the other branches of the government, the media too ought to be an institution working for the best interests of the people. However, it would not be wrong to state that the present scenario in this regard reflects the need for a properly defined system of law regulating the media, given the increasing incidence of infringement of one's privacy and misuse of the

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media's "Right to freedom of speech and expression". The socio - political impact of the media on the society is apparent since the pre independence era, wherein the media served the nation loyally by effectively mobilizing the entire Indian polity against the mighty colonial power. But today the media seems to have derailed from its tracks, thus causing an undesirable imbalance in the society. In a country like India, which is an exquisite blend of diverse interests, cultures, races and values, it becomes the responsibility of this fourth estate to ensure that this beautiful *potpourri* is not at the risk of being hampered in the wake of them exercising their rights.

Media is an institution of considerable power and the exercise of power in a democratic context brings with it proportionate responsibility for the consequences of choice to do so. Moreover, where power is exercised purportedly in the public interest, then there is a particularly acute responsibility to account for the exercise of that power to the public in whose name it is exercised. In order to understand the responsibilities incumbent on the media, it is necessary to consider the nature of media power and the potential to impact society. In India, the increasingly complex media industry has thrown fresh challenges to an unsettled ecosystem of media policy.

The Supreme Court of India (SC) & other High Courts have come down heavily on TV news channels for broadcasting hate-fuelled or unethical programmes. These judgments & observations highlight the need for laying down clear guidelines and their effective implementation for TV channels or broadcast media. Let's take a look at these observations and the current situation of TV channels' regulation in India.

II. JUDGMENTS HIGHLIGHTING THE NEED FOR EFFECTIVE REGULATION OF TV CHANNELS

In the case of *Konan Jodio Ganstone, et al. vs the State of Maharashtra*², the Aurangabad bench of the Bombay High Court quashed FIRs against 29 foreign nationals of Tablighi Jamaat who were booked under various sections of IPC, Epidemic Diseases Act, etc. for alleged violations of visa norms. The court strongly criticized the Indian media by noting that "*There was big propaganda in print and electronic media against the foreigners who have come to Markaz Delhi and an attempt was made to create a picture that these foreigners were responsible for spreading COVID-19 virus in India. There was virtually persecution against these foreigners.*" Apart from foreign nationals, six Indian nationals and trustees of the Masjid were also booked under various abovementioned provisions.

² Live law, [[pdf_upload-380282.pdf \(livelaw.in\)](#)], (last visited February 12, 2021)

27) There was big propaganda in print media and electronic media against the foreigners who had come to Markaz Delhi and an attempt was made to create a picture that these foreigners were responsible for spreading covid-19 virus in India. There was virtually persecution against these foreigners. A political Government tries to find the scapegoat when there is pandemic or calamity and the circumstances show that there is probability that these foreigners were chosen to make them scapegoats. The aforesaid circumstances and the latest figures of infection in India show that such action against present petitioners should not have been taken. It is now high time for the concerned to repent about this action taken against the foreigners and to take some positive steps to repair the damage done by such action.

The court was hearing petitions filed by foreign attendees of Tablighi Jamaat from Ivory Coast, Ghana, Tanzania, Djibouti, Benin, and Indonesia. The judgment examines the visa guidelines, health department notifications, and successive events of lockdown to conclude that the foreign nationals did not violate any visa norms and the other criminal charges against them were unfounded.

be prevented to enter and stay in Masjid. This is what updated guidelines of visa say. Thus, before taking any action by police or by the State they ought to have given thought to the rights of these foreigners. Article 20 of Constitution of India shows that the acts which were not prohibited at the time when they were committed cannot be treated as offence and violation of law subsequently. In view of the record which is already discussed, it was not possible to go with the presumption that there was a violation of visa conditions. Due to all these circumstances, this Court holds that the material is not sufficient to make out prima facie case for the offence punishable under section 14 (b) of the Foreigners Act.

In the on-going case against Sudarshan TV, Firoz Iqbal Khan vs Union of India & Ors.³, the Supreme Court made important remarks in open court against content that promotes hatred. The news channel ‘Sudarshan TV’ broadcasted a program that claimed Muslim youth qualifying for recruitment to Indian Civil Services was another form of ‘jihad’. The judgment noted that it cannot allow such insidious comments in the name of freedom of the press that is used to vilify a particular community and disturb the harmony in the country. A three-judge bench headed by Justice D.Y. Chandrachud asked the government to file an affidavit seeking its response on the need to regulate electronic media.

In the backdrop of this, the News Broadcasters Association (NBA) filed an affidavit and requested the Supreme Court to make its Code of Ethics against broadcasting malicious, biased, and regressive content, be made applicable to all TV news channels by including it in the Programme Code of Cable TV Act. This would mandate all news channels, whether they are members of the NBA or not, to follow the Programme Code with proposed amendments. This was in response to an order by the apex court on 18 September 2020 to suggest measures to strengthen self-regulatory mechanisms in electronic media so that communal or derogatory content can be penalised and prevented.

In hearing Rakul Preet Singh’s plea⁴ against maligning a media campaign against her, the Delhi High Court directed the media channels to exercise restraint in their reports and follow the Programme Code of Cable TV Act and other guidelines, both statutory and self-regulatory. The Single Bench passed an interim order directing the News Broadcasters Association (NBA) to consider the present plea as a representation and expedite the process of redressal. Following this, in October, the News Broadcasting Standards Authority (NBSA) has found the news channels Zee News, Zee 24 Taas, Zee Hindustani, TimesNow, India Today, AajTak, India TV, News Nation, and ABP News at fault for their vilifying and slanderous reports linking film actor Rakul Preet Singh to drugs. The NBSA issued directives to the above-mentioned TV channels to remove the offensive content, whenever available. In a similar case of the events following the death by suicide case of Sushant Singh Rajput, the NBA directed three channels – Aaj Tak, Zee News, India TV, and News 24 – to observe restraint in reporting and apologise for insensitive reporting.

³ [Sci.gov.in \[18235_2020_33_12_25045_Order_09-Dec-2020.pdf \(sci.gov.in\) \]](https://www.sci.gov.in/18235_2020_33_12_25045_Order_09-Dec-2020.pdf) (last visited February 13, 2021)

⁴ [Delhihighcourt.nic.in \[Welcome to High Court of Delhi \(delhihighcourt.nic.in\) \]](https://www.delhihighcourt.nic.in/Welcome-to-High-Court-of-Delhi-(delhihighcourt.nic.in)) (last visited February 13, 2021)

III. REGULATIONS IN PRINT AND BROADCAST MEDIA

Existing legislations and their implications

In the past, the government has made a few attempts at regulating the media. The print media is regulated by the Press Council of India Act of 1978⁵, which in turn established the Press Council of India (PCI) with the objective of “preserving the freedom of the press and to maintain and improve the standards of newspapers and news agencies”. PCI has the power to censure newspapers or news agencies for violations of standards of journalistic ethics or public taste, etc. It has the power to censure or admonish the offender after an inquiry. For the purpose of such inquiry, the PCI is empowered to summon and examine people and receive evidence and such an inquiry would be deemed to be a judicial proceeding, similar to a Civil Court under the Code of Civil Procedure 1908.

Other forms of news outlets, either electronic or digital do not come under the purview of PCI. The Cable TV Networks (Regulation) Act of 1995⁶ was enacted to regulate the operation of cable television networks. According to the Act, all broadcasters have to comply with the ‘Programme Code’. As per the Programme Code, no programme should be broadcasted on television which offends against decency, contains an attack on religions or communities, or contains obscene, defamatory, deliberately false and suggestive innuendos and half-truths. The Act was amended in 2011 to bring all television channels under its purview. In the backdrop of this Act, in 2005, the Government of India established an Inter-Ministerial Committee (IMC) to investigate and adjudicate complaints about programmes in violation of Programme Code. The IMC can also take suo moto cognizance of any such violations.

After noting that this redressal mechanism already existed, the Supreme Court directed the government to raise awareness and formalise the process by creating a statutory framework under section 22 of the Cable TV Act, which lays down the provision that the government is empowered to make rules pertaining to the Programme Code for all kinds of broadcasting channels. However, this recommendation is yet to be implemented. Hence, currently, the statutory regulatory framework under the Cable TV Act is not sufficient.

Attempts at self-regulation among broadcasters

There have been some attempts at self-regulation in this sector. For non-news channels, the

⁵ PressCouncil.nic.in [[Microsoft Word - 1. India Press Council of India Act.doc](#)] (last visited February, 13, 2021)

⁶ Indiacode.nic.in [[A1995-07.pdf \(indiacode.nic.in\)](#)], (February 13, 2021)

Indian Broadcasting Foundation was formed, which in turn established Broadcasting Content Complaints Council (BCCC), an independent self-regulatory body in 2011. All non-news channels including entertainment, children's channels, and others adhere to the suggestions of BCCC, despite some complaints, making it an over-arching self-regulatory body for all non-news channels.

Self-regulation scenario for News Channels

The self-regulation scenario for news channels is complex. The News Broadcasters Association (NBA)⁷ was established in 2008 as a private association of news broadcasters (comprising 26 broadcasters i.e. 77 news and current affairs channels) formed with the objective of “fostering high standards, ethics, and practices in need broadcasting”. NBA step up the National Broadcasting Standards Authority (NBSA) with the iconic former Chief Justice of India, Justice J S Verma, as its chairman and also issued a ‘Code of Ethics and Broadcasting Standards’ as a model for self-regulation to avoid content that is “malicious, biased, regressive, knowingly inaccurate, hurtful, misleading or aimed at willfully concealing a conflict of interest”.

The NBSA, however, only has jurisdiction over broadcasters that are members of the association. The NBSA does not have any statutory rights as it is a private association. Hence, its writ extends only to its members and the membership is voluntary. In case of complaints against members, the NBSA can warn, censure, or express its disapproval against the broadcaster and in some cases prescribe a fine up to one lakh rupees. A large number of national news channels have been members of the NBA since its inception in 2008. However, a few national channels and many regional channels are not members of the association and hence they are not governed by the Code of NBA.

Many such news channels formed a parallel body called the National Broadcasters' Federation⁸ (NBF), with Arnab Goswami as its president. This association comprises three national channels as its members – Republic TV, Republic Bharat, and TV9 Bharatvarsh – along with over 45 regional channels.

OfCom model

In the context of TV channel regulations, United Kingdom (UK) offers a case in point – the Office of Communications (OfCom). It is a government-approved regulatory and competition authority for broadcasting, telecommunications, and postal industries. Like NBA, OfCom

⁷ NBA [[News Broadcasters Association - NBA New Delhi](#)]

⁸ Newsfederation, [[NewsBroadcasterFederation | NewsBroadcasterFederation \(newsbroadcastersfederation.com\)](#)]

operates with fees from the industry itself but, unlike NBA, it was created by an Act of Parliament. Recently, OfCom has imposed a fine of 20,000 pounds on World Media Network Limited in relation to its service Republic Bharat (Hindi arm of Republic TV) for failing to comply with its broadcasting rules and ethics standards. World Media Network Limited is a UK licensee for the channel Republic Bharat. The decision outlines that a programme named ‘Puchta hai Bharat’ broadcasted on the channel on 06 September 2020 contained “uncontextualized hate speech”. The order noted that the comments made during the show promoted “hatred based on intolerance of Pakistani people based on their nationality alone”. Besides the fine, the regulatory body has directed the licensee to broadcast a statement or findings and issue an apology.

IV. CONCLUSION

It is a fact that no human activity is feasible without some form of control. No institution can work progressively if it is self-regulated. Primary to self-regulation is the theory of intended conformity. The self-regulatory bodies cannot function unless it is free from bureaucracy, industrial and particular interests; unless a random check is done within the institution; unless it has the authority to oblige moral permit, for instance the publication of a rectification or an asking for forgiveness. In the light of these, it needs to be scrutinized as to how far self-regulation for media is justified. Therefore, the assumption is that just leaving the regulation to the media itself would create the possibility that it may subvert regulatory goals to its own business goals. It is the need of the hour that our government nudge owners to invest in training for media journalists. For the reason of the importance of media freedom, currently western governments have offer workshops to train journalists. It is true that a number of prominent governmental and nongovernmental organisations have brought forth guides of press freedoms. This needs to be judged neutrally to gauge effectively how they have contributed to media reform. It is witnessed that in countries where government hinders the media, individuals know lesser about essential political issues and are less politically involved. Politically uninformed and unconcerned individuals do not know adequately about political activities or partake enough politically to observe efficiently the activities of self-centred politicians. Essentially, media accountability through self-regulation can be achieved when reporters and management unite to frame norms of journalistic conduct thereby assuring that these rules are complied with. As part of this, there should be mechanism developed to offer a means by which aggrieved persons due to any news or information item can approach a fair tribunal. A voluntary accord of media professionals, journalists and management or broadcasting group should thus devote to craft excellent journalistic

standards to avoid any sort of inconvenience to public for whom they disseminate news. It is just like following the proverb, Prevention is better than cure.
