



THE FOURTH ESTATE: WHO WILL GUARD THE GUARDS?

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Abstract--The present research paper has been written to explain how far various forms of media, namely the print media, social and electronic media are affected by the freedom of speech and expression as guaranteed under Article 19(1)(a) of the Constitution of India. Article 19(2) provides the reasonable restrictions on the said freedom of speech and expression and hence media has to work without overstepping the said restrictions in any manner. Since decades, Supreme Court has been deciding cases involving the extent of freedom of speech and expression available to print and electronic media but now, with rise of social media, which is far more advanced in communicating than the print and electronic media, the challenge lies as to whether freedom of speech and expression is available to social media to the same extent as in print and electronic media. In order to overlook the healthy functioning of media, several regulatory authorities have been also established but despite all the measures taken, today we find several instances wherein media indulges in media trials, paid news and other vices. Hence, considering the freedom of speech and expression on one hand and reasonable restrictions on the other hand, how far media can function successfully builds the crux of this research paper.

Keywords: *Freedom of speech and expression, social media, electronic media, Article 19(1)(a), Article 19(2), reasonable restrictions, media law*

I. INTRODUCTION

Much has been said and written about media being the fourth pillar of democracy of any nation. Today, not only the legislature, executive and judiciary which were traditionally considered to be the pillars of a democracy play a pivotal role in developing a nation but even its media, which has been considered equally important in the recent past has found its place in keeping the democracy alive. And truly so, considering that in its absence, communication of current affairs, political events, national and international issues, etc. to a common man will not be possible. Man relies on media alone for getting all the news.

Earlier, it was the print media alone that was responsible for giving the news but today, electronic and even social media have taken over for communicating any news across the world at a speed much faster than the print media. For this reason, print media need not had those levels of strict regulation required as are necessary for electronic and social media. Print media could only deliver the photographs and news stories of events that had occurred usually a day ago. On the other hand, electronic and social media are famous for broadcasting live coverages of sports, political events, scandals, debates, controversies, etc. as they happen. For this reason, the regulation of electronic and social media is even more necessary than the print media.

Even though freedom of press has been often considered to be a part of freedom of speech and expression by the judiciary, the question as to how far freedom of speech and expression is available to the media houses is something that needs to be confirmed time and again. Even more important is to determine how the media exercises this freedom considering the ways in which it has over-indulged in its utilization during past decade despite Article 19(2) providing for reasonable restrictions on exercise of freedom of press.

II. THE CHANGING FACE OF MEDIA

Unlike ages ago, when newspaper or print media was the foremost source of information for citizens, today's common man receives news information from various other sources. Television, internet, mobile apps, etc. help in communicating the news events even faster than before. Man has not to wait for a newspaper to be received each morning in order to find out what is happening across the nation and in the world. Due to continuous technological upgradation, social and electronic media have developed modern methods of communicating not only news, but various other events, occurrences, etc. There are 24 hour news channels, live debates, opinion polls, interviews, etc. which help in making a common man's voice heard and spread to millions of others.



However, to what extent are the modern media channels subject to freedom of speech and expression is something that needs to be scrutinized closely.

Due to the paradigm shift in basic values held by media, many changes have been observed in modern sources of information and communication. Previously, newspapers carried in-depth news stories and the advertisements were printed in a limited space. Today, instead of detailed news reports, we often find newspaper pages dedicated to full-page advertisements of multinational corporations and national companies, etc. Likewise, in electronic media, when Doordarshan was the only channel available, there used to be a 1 hour news slot everyday. It aimed at providing all the news stories in the least possible time with complete accuracy. There were no vices except the limited time available to it. In comparison, today we have more than a dozen 24x7 news channels but unfortunately the targets it aims at are higher profit levels and eagerness to give “breaking news” everyday before other competing news channels. In the light of these developments, it would not be wrong to say that there has been a drastic change in the objects carried by today’s media houses.

III. FREEDOM OF SPEECH AND EXPRESSION AND RESTRICTIONS THEREUPON

The extent of freedom of Speech and Expression as enshrined under article 19(1)(a) has been tested time and again in recent past. The very absence of it would cripple the entire nation. Without it, man may resort to incidents of violence, chaos and angry outbursts. Likewise, extending the same possibility to media houses, lack of this freedom will lead to inability in freely reporting the news stories as and when they happen. The democracy will come to a standstill in absence of free information and independent news reports as provided by media houses.

Article 19(1)(a) provides that all citizens shall have the right to freedom of speech and expression. It encompasses within itself the freedom of press but also at the same time, lays down the following reasonable restrictions under article 19(2) to which the said freedom is subjected:

- (i) Security of the State;
- (ii) Friendly relations with foreign States;
- (iii) Public order;
- (iv) Decency and morality;
- (v) Contempt of court;
- (vi) Defamation;
- (vii) Incitement to an offence;
- (viii) Sovereignty and integrity of India.

Jawaharlal Nehru, First P.M. of India, thought of constitutional rules as guiding principles rather than binding constraints and the same was reflected in his following words on freedom of press: “To my mind the freedom of the press is not just a slogan from the larger point of view, but it is an essential attribute of the democratic process. I have no doubt that even if the Government dislikes the liberties taken by the press and considers them dangerous, it is wrong to interfere with the freedom of the press. I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or a regulated press.”¹ Thus, in opinion of Nehru, a completely free and unregulated press was a more acceptable proposal rather than setting up regulations to overlook it. However, in today’s scenario with media including not just press media but also social and electronic media, and considering how often media plays roles of not just imparting news but even creating news through media trials, sensational stories, etc. perhaps even Nehru might have given a second thought to his own words.

The freedom of speech and expression has been subjected to reasonable restrictions considering that dignity of fellow citizens and national harmony are just as important as giving each person a right to express himself. It would be a futility if man lived in a society without right to free speech and expression. Communication would

¹K.S. Padhy and R.N. Sahu, *The Press in India: Perspective in Development and Relevance* 110 (Oscar Publications, Delhi, 2005)



not serve any purpose because communicating in itself requires a prior right to free speech. Likewise, giving extreme freedom without any restriction may also lead to anarchy. Man would be free to behave, speak and express whatever he wishes to. As there would be no limitations on man's speech and expressions, he may indulge in defamation or even resort to immorality and indecency while dealing with his fellow colleagues or may also negatively harm security of the state or integrity of the nation.

Hence any person or authority exercising freedom of speech and expression has to take care that either of these restrictions are not violated. The exercise of freedom of speech and expression becomes an offence once it oversteps any of these restrictions and the person or authority indulging therein become subject to prosecution.

IV. NEED FOR MEDIA REGULATION

Article 19(1) and (2) govern both, the citizen as well as the media houses. The Constitution of India nowhere specifically mentions freedom of press but it has time and again through its various judgments, found a need for free press and thus provided for an unwritten right of freedom of press. While a citizen's freedom of speech and expression is governed by laws like Indian Penal Code and police authorities, media houses are taken care of by authorities established for this very purpose. Everyday, millions of viewers across the nation watch various kinds of programs relating to current affairs, entertainment, science and technology, nature, etc. It therefore become necessary that these programs are not churned out in a technical manner but should adhere to some specific norms and codes that regulate their final broadcast.

The media in India is mostly self-regulated. The existing bodies for regulation of media such as the Press Council of India which is a statutory body and the News Broadcasting Standards Authority, a self-regulatory organization, issue standards which are more in the nature of guidelines.²

In case of *People's Union for Civil Liberties vs. Union of India*³ it was held that there is no separate guarantee of the freedom of press but it is an integral part of freedom of expression.

(a) Regulatory bodies:

Following regulatory bodies are currently existing for keeping a check on the contents and broadcast of print and electronic media:

(i) Press Council of India

Initially, when press and print media were the only major form of media, the Press Council of India was established under the PCI Act, 1978 for the purpose of preserving freedom of press and of maintaining and improving the standards of newspaper and news agencies in India.

Section 13 of the Act mentions objects and functions of the Council. Some of them are:

- (a) To preserve the freedom of Press and to maintain and improve the standards of newspapers and news agencies in India;
- (b) To help newspapers and news agencies to maintain their independence;
- (c) To build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards;
- (d) To ensure maintenance of high standards of public taste on part of newspapers, news agencies and journalists and foster a due sense of rights and responsibilities of citizenship;

It can well be said that Press Council of India has embodied the vital functions that need to be performed by any regulatory authority. No newspaper can blindly publish a news report without sufficient evidence of it.

In 2012, Justice Markandey Katju – then Chairman, asked newspapers not to damage the reputations of people

² Available on <http://m.rediff.com/news/slide-show-1-faq-how-media-in-india-is-regulated/20111110.htm>

(Last modified Nov. 10, 2011)

³ AIR 2004 SC 1442



and warned them of serious legal action in case of violations.⁴

In 2015, the Press Council of India intended to amend the Press Council Act to bring electronic media under its jurisdiction. It was recommended that there should be a statutory body like a Media Council having eminent persons as its members to look into all media contents both from print and electronic media.⁵

In 2016, strongly condemning the killing of two journalists in Bihar and Jharkhand, the Press Council of India demanded enactment of a special law to ensure safety of scribes even as it set up two fact-finding committees to probe the incidents. PCI Chairperson C K Prasad noted that 96% of the cases of killing of journalists have not been taken to logical conclusion and are either languishing in the courts or in some cases, investigation reached dead-end in the last two decades.⁶

(ii) Indian Broadcasting Foundation

Just like the Press Council Act mainly regulates the print media, Indian Broadcasting Foundation (IBF) performs the task of framing a set of self-regulating content Guidelines and establishing an independent complaint redressal mechanism for General Entertainment Channels (GECs). The objective was to provide certain guiding principles to entertainment channels for programme content, redressal mechanism for viewer complaints and ensuring that programming creativity flourishes in a free-speech environment without adhoc interventions.⁷

(iii) Broadcasting Content Complaints Council

IBF has accomplished the goal of formulating and implementing self-regulatory Guidelines and the complaint redressal system with establishment of Broadcasting Content Complaints Council (BCCC) in June 2011. BCCC is an independent self-regulatory body which examines content-related complaints against GECs. Any person who is aggrieved with broadcast of content which is in extreme nature of violence, obscenity, horror, harmful habits, religious harmony, national interest may make a complaint to BCCC.

(iv) News Broadcasting Standards Authority:

News Broadcasting Standards Authority is an independent body set up by the News Broadcasters Association – an association representing private television news and current affairs broadcasters in India. The main function of this Authority is to consider and adjudicate upon complaints about broadcasts. The major object of Authority is to lay down and foster high standards, ethics and practice in news broadcasting including entertaining and deciding complaints against or in respect of broadcasters in so far as they relate to the content of any broadcast.⁸ It is vital to note that even though there are several media regulating authorities, it is only voluntary on part of a media house to become a member to any of them. The rules as laid down and actions to be implemented by such body shall be binding only to a media house who is registered as a member with them and not otherwise.

(b) Supreme Court on Article 19(1)(a):

Time and again, Supreme Court of India has emphasized the significance of freedom of speech and expression as available to media houses. It has exercised its judicial activism and recognized the rights of media, be it print or electronic. Some of the major judgments highlighting the relevance are discussed below:

(i) RomeshThappar vs. State of Madras⁹:

⁴ Available on <http://m.thehindubusinessline.com/news/press-council-chairman-justice-katju-warns-newspapers-against-tarnishing-reputations/article3994287.ece> (Last modified on October 13, 2012)

⁵ Available on <http://www.indianexpress.com/article/india/india-others/electronic-media-may-soon-come-under-press-council-act/> (Last modified on March 13, 2015)

⁶ Available on <http://www.indianexpress.com/article/india/india-news-india/bihar-rajdeo-ranjan-press-council-seeks-special-law-to-protect-scribes-2800866/> (Last modified on May 14 2016)

⁷ Available at <http://www.ibfindia.com/history-vision> (Last visited on May 20, 2017)

⁸ Available at <http://www.ibfindia.com/nbsa> (Last visited on May 20, 2017)

⁹ AIR 1950 SC 214



In this case, Government of Madras had banned the printing and circulation of English journal “Cross Road”. The Supreme Court held that “freedom of speech and the press lay at the foundation of all democratic organization, for without free political discussion, no public education so essential for the proper functioning of the process of popular government, is possible.” The said ban was held to be violative of the freedom of speech and expression as without liberty of circulation, publication would be of little value.”¹⁰

Thus, Supreme Court connected three major areas, i.e. political discussion, public education and functioning of government in order to emphasize the vitality of freedom of press. Political debates and discussions are an important mode of communicating the political events to citizens of the nation. In other words, public education as to political events will not be possible in absence of media. Again, in the absence of public education as to political discussions, government will remain uninformed as to public views and opinions regarding the decisions taken by government thus resulting in election of poor candidates or taking wrong decisions.

(ii) Indian Express Newspapers vs. Union of India¹¹

It was held that the press plays a very significant role in the democratic machinery. The Supreme Court also stated that two basic principles must be borne in mind:

- (a) Newspapers enjoy the benefits of government services like all other industries and must accordingly contribute a reasonable share of government revenue through taxation;
- (b) The burden of taxation on media must not be excessive.

Thus, Supreme Court tried to balance between duty of press media to pay taxes regularly and simultaneously the duty of taxing authorities not to tax press media heavily because inflicting heavier tax burden will have an adverse effect on costs and circulation of the newspaper. Increasing the price of newspaper will reduce its circulation thus curbing the freedom of expression.

It was also held that the courts have a duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements, i.e.

- Freedom of access to all sources of information,
- Freedom of publication and
- Freedom of circulation

(iii) Sakal Newspapers vs. Union of India¹²

In this case, the validity of an Act namely the Daily Newspaper (Price and Control) Order 1960 whose object was to fix a minimum price and number of pages which a newspaper was entitled to publish was challenged as unconstitutional because it restricted freedom of press. If price of newspaper was increased without increasing the number of its pages, it would result in reducing its circulation. However, if price was kept low and number of pages were reduced as per printing cost, it would reduce the space for news. The Court struck down the said Order and held that:

- (a) Newspapers have two aspects – dissemination of news and views and commercial aspect. But both the aspects are different as the former falls under article 19(1)(a) read with article 19(2) while the latter falls under article 19(1)(g) and can be regulated under article 19(6). The State cannot seek to place restrictions on business by “directly and immediately” curtailing any other freedom of the citizen guaranteed by the Constitution.
- (b) Freedom of speech and expression cannot be taken away with the object of placing restriction on business activity of a citizen. It can only be restricted on the grounds mentioned in article 19(2).
- (c) Freedom of speech cannot be restricted for the purpose of regulating commercial aspects of the activities of a newspaper.
- (d) State cannot make a law which directly restricts one freedom even for securing the better enjoyment of

¹⁰ AIR 1950 SC 124

¹¹ AIR 1986 SC 515

¹² AIR 1962 SC 305



another freedom.

(iv) Bennett Coleman and Co. vs. Union of India¹³

In this case, the validity of News Print Control Order was challenged as violative of article 19(1)(a) and article 14 of the Constitution of India because the said order fixed an upper limit on the maximum number of pages which any newspaper could print and publish everyday.

It was held that:

- (a) Freedom of press means right of citizens to speak, publish and express their views as well as the right of people to read.
- (b) The fundamental rights of shareholders are not lost when they associate form the company. The shareholder's rights are equally and necessarily affected when rights of the company are affected.
- (c) Power to impose 'restriction' on fundamental rights is essentially a power to 'regulate', the exercise of these rights. "Regulation" and not extinction of that which is to be regulated is generally speaking, the extent to which permissible restriction may go in order to satisfy the test of reasonableness.
- (d) A citizen is entitled to each and every one of the freedoms guaranteed by Cl. (1) together and the Constitution does not prefer one of these freedoms to another.
- (e) Advertisement is outside the pale of freedom of expression except when it affects circulation of a newspaper.

(v) Shreya Singhal vs. Union of India¹⁴

In a landmark judgment given in March 2015, the Supreme Court struck down section 66(A) of the Information Technology Act. The said section empowered the police authorities to arrest any person who posted offensive content on social media sites. Justice Chelameswar in the said case gave the following vital observations in this regard:

- (i) "Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net."¹⁵
- (ii) "Our Constitution provides for liberty of thought, expression and belief. In a democracy, these values have to be provided within constitutional scheme."¹⁶
- (iii) "Section 66A is not only vague and arbitrary, but it also disproportionately invades the right of free speech."

According to ArunJaitley¹⁷, the said law was so badly formulated and vaguely worded that even the apex court could not save it. He further added that the court could've pierced the Act and saved the constitutional bit of it but that would have meant rewriting the law. It clearly violated freedom of speech and expression of an individual considering the fact that today internet has given the biggest platform to any citizen to make his voice heard by the manner of tweeting, posting comments and giving remarks on any publicly open website. If section 66A is implemented, public's right to know is directly affected. Also, what may be offensive to a person may not be offensive to others, hence resulting in striking down the said provision.¹⁸

V. PAID NEWS AND MEDIA TRIALS

It has been observed that the 24x7 news channels have resorted to extreme means of (ab)using the freedom of

¹³ AIR 1973 SC 1368

¹⁴ AIR 2015 SC 1523

¹⁵ Available at <http://www.livemint.com/Politics/Supreme-Court-strikes-down-controversial-Section-66A-of-IT-A.html> (Last modified March 26 2015)

¹⁶ Available at <http://www.tribuneindia.com/mobi/news/nation/no-arrests-under-sec-66-a-for-social-media-posts-rules-sc/57893.htm> (Last modified March 24,2015)

¹⁷ Available on www.firstpost.com/india/no-ban-on-media-but-social-media-needs-regulations-says-jaitley-how-will-the-govt-strike-that-balance-2484234.html (Last modified Oct. 27 2015)

¹⁸ Available at <http://m.indiatoday.in/story/66a-it-act-freedom-of-speech-supreme-court-constitution/1/425447.html> (Last modified March 24 2015)



speech and expression as provided to them in one way or the other. With regular emergence of cases of paid news, media trials and sting operations, news channels are almost re-shaping the freedom of speech and expression in such a way that media has become a consistent victim of several vices.

(a) Paid news

“Paid news” refers to political parties and business tycoons indulging in financial transactions with media houses for getting more airtime or coverage in newspapers in order to create their positive image in minds of the readers and viewers. Often advertisements highlighting the activities of a political party come disguised as a news story and are passed off to the readers/viewers.

Press Council of India defines “paid news” as any news or analysis appearing in any media (print or electronic) for a price in cash or kind as consideration.

Highest cases of paid news are found mainly during the election phase in a country because political parties need to campaign for their contesting candidates. An advertisement simply speaking of the laurels of a political party instead of giving a fair picture is given the form of a news report and presented to the audience. In 2014, as many as 694 cases of paid news were detected by the Election Commission of India. Later when all the poll phases had ended, this number reached 3053 and nearly 700 cases out of these were found to be genuine cases of paid news. It was noted that media gives airtime and newspaper space for paid news from both classes of politicians – those who want to create a positive image on the minds of people and also those who want to prevent their negative image being created. Thus, paid news included broadcasting positive aspects and creating rosy picture of a political party so that its negative activities do not come to light of the day.¹⁹

In an article, Justice Katju²⁰ gave his opinions on how media had a responsibility towards audience of presenting a true, fair and correct picture of actual events rather than creating a second image of it which may seem visually appealing but poor in facts. Likewise, today the media frequently indulges in vices like paid news and media trials for personal motives rather than adopting the motive of giving a fair and impartial picture of news stories happening across the world. According to Justice Katju, one of the basic tasks of media is to provide truthful and objective information to the people that will enable them to form rational opinions, which is a sine qua non in a democracy.

(b) Media Trials:

Indulging in media trials by giving conclusions to pending hi-profile legal cases when in actuality, no such thing may have occurred is another recently observed trend in media. It acts as a judge by taking up a news story involving crime or litigation, makes its own investigation on whatever facts are available with it and then broadcasts its decision to the public at large even though judgment has not actually been delivered and trial is yet to conclude in the courtroom. During the period when Aarushi Talwar murder case trial was on, media went to the extent of summoning witnesses and suspects.²¹ It wouldn't be wrong to say that media houses themselves became the courtrooms and news anchors under the garb of judges, delivered judgment without justice being done.

Again, recently in the infamous Sheena Bora murder case, media gave it such a huge proportion that a breaking news was broadcast every half an hour on every news channel. Conclusions were drawn now and then with whatever facts were available or just discovered. The age-old principle of “innocent until proven guilty” was discarded in favor of providing sensational gossip and endless possibilities of a hi-profile murder case even before justice was actually done in the courtroom. It would not be wrong to say that media convicted

¹⁹ Available at <http://www.dnaindia.com/india/report-almost-700-paid-news-cases-detected-in-2014-lok-sabha-elections-1989485> (Last modified on May 18, 2014)

²⁰ Available at www.thehindu.com/opinion/lead/media-and-issues-of-responsibility/article13059658.ece (Last modified October 21, 2011)

²¹ Available at www.dnaindia.com/analysis/standpoint-julio-ribeiro-column-from-sheena-bora-to-aarushi-talwar-how-media-trials-have-turned-primetime-news-into-a-soap-opera-2126477 (Last modified September 19, 2015)



Indrani Mukerjee even before courts heard the trial completely.²²

In fact, it was also observed that media trials have such a strong impact on minds of viewers that even judges tend to get influenced by them while giving decisions. They build a pressure on the minds of judges in such a way that judges tend to believe the media trial as the most accurate version of legal process and end up giving a judgment as predicted in the media trial.

This was observed by the Delhi High Court in case of airing of a documentary in Nirbhaya Case wherein it was held that documentary maybe shown on air but only after final decision has been given by the Supreme Court.²³

VI. SUGGESTIONS AND CONCLUSIONS

Considering the several flaws in today's media, it will not be wrong to say that mere self-regulation by media will create a situation in the nature of "who will guard the guards?" Without an external regulatory body, news channels will continue to "break" the news without any checks or restrictions simply with the objects of staying ahead in the race of TRPs and increasing their net worth.

Some of the suggestions as made by regulatory authorities to control the evils posed by media are as under:

(i) Telecom Regulatory Authority of India (TRAI):

The Telecom Regulatory Authority of India (TRAI) has also made strict remarks on this activity of media houses and made following suggestions:

- (a) Newspapers cannot keep passing ads as news and whenever such a case is found, penal action should be taken against the political party as well as the media house.
- (b) Paid news should be comprehensively defined and a framework should be established for examining complaints and taking punitive action against the defaulting media entities.²⁴
- (c) It also suggested that there should be a ban on private treaties between newspapers and private firms wherein newspapers promise advertising in exchange for equity in the company.
- (d) Press Council of India must be fully empowered to adjudicate the complaints of 'paid news' and give final judgments in the matter.²⁵

(ii) Law Commission of India – "Trial by Media: Free Speech and Fair Trial under Criminal Procedure Code 1973" (200th Report)

The Law Commission of India in its 200th report, released in August 2006 under the title "Trial by Media: Free Speech and Fair Trial under Criminal Procedure Code 1973" deals with several aspects of the rights relating to freedom of speech, freedom of the press and freedom of fair trial. The Report expresses concern over the fact that there is very little restraint in the media insofar as administration of criminal justice is concerned. The media houses should keep in mind that while freedom of speech and expression is an important right to which they are entitled, it is still not an absolute one as the Constitution itself has placed 'reasonable restrictions' on it. According to its chairman Justice M. Jagannadha Rao, the whole pattern of news publication has changed due to extensive use of television and cable networks. Some of these publications are likely to have prejudicial impact on the suspects, witnesses and even Judges and in general, on the administration of justice.²⁶ In light of studies done in the report, it was suggested that:

- (a) The Contempt of Courts Act 1971 should be amended and definition of "publication" should be added to include publication in print and electronic media, radio broadcast and cable television and the worldwide web. Thus, meaning and scope of the word "publication" should be enlarged to cover not

²² Available at www.dnaindia.com/india/comment-indrani-mukerja-guilty-by-media-trial-in-the-sheena-bora-murder-case-2119805 (Last modified August 29, 2015)

²³ Available at www.firstpost.com/india/media-trials-tend-influence-judges-delhi-hc-indias-daughter-documentary-2149773.html (Last modified March 12, 2015)

²⁴ Para 7.33.4 Law Commission of India 255th Report on Electoral Reforms (March 2015)

²⁵ Para 7.33.5 Law Commission of India 255th Report on Electoral Reforms (March 2015)

²⁶ Available at www.thehindu.com/opinion/Readers-Editor/Freedom-of-the-press-and-fair-trial/article16301300.ece (Last modified May 17 2010)

only print media but also other forms of media.

(b) It is necessary to create a just balance between the freedom of speech and expression guaranteed in article 19(1)(a) and the due process of criminal justice required for a fair criminal trial, as part of administration of justice. Though article 19(2) does not refer to the imposition of reasonable restrictions for the purpose of administration of justice, the reference in article 19(2) that restrictions can be imposed for purpose of Contempt of Courts Act indicates that the Contempt of Courts Act takes care of protection of the administration and due course of justice.²⁷

(iii) Law Commission of India – “Election Reforms” (255th Report)

The Law Commission of India has proposed wide ranging reforms in respect of elections through Report no. 255 to Union Law and Justice Ministry. The said report was drafted to deal amidst other electoral reforms, with increasing number of cases of paid media during the phase of election. It proposed several amendments in the Representation of People Act which governs the electoral process in India and suggested the following changes:

- (a) The definitions for “paying for news”, “receiving payment for news” and “political advertisement” should be inserted in section 2 of the Act²⁸;
- (b) The consequences attached to those indulging in such practices should be delineated by creating:
 - (i) an electoral offence of “paying for news” or “receiving payment for news” in a newly inserted Sec. 127B of the Representation of People Act. Incorporating this electoral offence will make paying for news/receiving payment for news a penal offence. Further, stringent punishment for the offence will ensure that if the candidate themselves are found guilty then in all likelihood they will be disqualified pursuant to Sec. 8(3) of the Act;²⁹
 - (ii) a corrupt practice of paying for news under newly inserted Sec. 123(2)(a)(iii) of RPA Act³⁰
- (c) In order to curb the practice of disguised political advertisement, disclosure provisions should be made mandatory for all forms of media. The purpose of disclosure is two fold; first, to help the public identify the nature of content (paid content or editorial content); and second, to keep the tract of transactions between the candidates and the media. Thus, a new section 127C should be inserted in the RPA to deal with the non-disclosure of interests in political advertising. The ECI can regulate the specifics of the disclosure required.³¹

According to a sub-committee of Press Council of India, Representation of People Act must be amended to provide meaning, ingredients, explanation, exceptions and punishment for cases of paid news.

Rather than focusing on everything that is sensational, negative and abnormal, media as a powerful and highly influential vehicle of mass communication, ought to play a constructive role in helping shape that future that mankind desires. This is possible if media gives up the focus on negativity and highlights what is positive, extraordinary, inspiring and insightful.³²

(iv) Standing Committee on Information Technology (2012-13)

- (a) The Parliamentary Standing Committee acknowledged that the issue of paid news is a product of foul play between the electoral candidates and the media houses. The Committee has, inter alia, found the existing regulatory setup dealing with paid news inadequate. Describing the voluntary self-regulatory bodies like the News Broadcasting Standards Authority and Broadcasting Content Complaints Council as an ‘eye-wash’, the Committee also found the punitive powers of statutory regulators like the PCI and Electronic Media Monitoring Centre to be inadequate. Expressing concern that the lack of restriction on

²⁷ Chapter X Law Commission of India 200th Report on Trial by Media Free Speech and Fair Trial under Criminal Procedure Code, 1973 (August 2006)

²⁸ Para 6.19, 6.20 Law Commission of India 255th Report on Electoral Reforms (March 2015)

²⁹ Para 7.49.1 Law Commission of India 255th Report on Electoral Reforms (March 2015)

³⁰ Para 7.50 Law Commission of India 255th Report on Electoral Reforms (March 2015)

³¹ Para 7.51.2 Law Commission of India 255th Report on Electoral Reforms (March 2015)

³² Available on www.firstpost.com/india/sheena-bora-murder-case-media-needs-to-stop-stone-age-reportage-for-the-sake-of-trps-2419652.htm (Last modified September 3, 2015)



ownership across media segments (print, radio, TV or internet) or between content and distribution could give rise to monopolistic practices, the Committee has urged the Authority to present its recommendations and the Ministry to take conclusive action on those recommendations on a priority basis.³³

- (b) Unlike in print media, in case of electronic media, there is no regulatory body. The Committee suggested coordination with News Broadcaster Association to develop a mechanism to keep a check on Paid News in electronic media. The committee also affirmed some of the suggestions already made by the PCI report.³⁴

Considering how media frequently indulges in creating sensational stories, breaking news, broadcast of lewd advertisements and other methods of generating audience to stick to their channel amidst the dozen news channels available today, it becomes necessary that it should be strictly regulated to adhere certain norms and principles before presenting a story to the public at large or even broadcasting of any advertisement.

However, it is difficult to say whether internal regulation will work more beneficially than external regulation or otherwise because both have their own pros and cons. If media goes for self-regulation or without any external regulation, there are all chances that it shall work on its own whim and fancy. If external regulation is applied, media might oppose the same considering the heavy set of regulations which are imposed on it. It may also affect the level of reporting resulting in overall downfall of quality of reporting.

In either case, media should atleast try at letting go of its current vices. Some of the suggestions in this regard are:

- (a) It should not present distorted news that contains half-baked truth or facts which have been twisted and re-molded to create a more interesting and presentable news story.
- (b) It should refrain from repeating the same news stories over and over in order to fill the empty time slots. Such acts result in over-hyping of the story broadcasted even though it may have no relevancy in the long run. Whether it be a major national issue or simply a local minor one, media should see that the story is broadcast only with relevant facts without frequent repetition throughout the day.
- (c) It should present only actual news stories having relevance to a common man rather than glamorously dressing up any irrelevant issue and presenting it as a news story.
It should carefully investigate any news report before publishing or broadcasting it.³⁵
- (d) Media trials should be stopped completely as they interfere the normal administration of justice. News channels must broadcast news stories of trials only to the extent of facts available with them and should be banned from predicting future outcomes or trying to report subjudice matters.
- (e) Any news report which is in the nature of glorification of a single party must compulsorily carry the words "Promotional Feature" while being broadcast on news channels and should not be given the garb of a news story.
- (f) News channels should not use words like "breaking news" for each and every news story everyday simply to lure audience. True, the world is large and simultaneously several events are happening across the globe each and every minute, but that is not a license for media houses to falsely create eagerness and anxiety amongst its viewers.
- (g) Views should be taken from media houses regarding how they view the freedom of speech and expression and whether in their opinion cases of media trials, paid news, etc. should be encouraged while news reporting.
- (h) A 24 hour news channel should aim at covering each and every social, political, environmental issue that is posing a problem to the public at large and finding ways in which it can be resolved atleast at the media level, if not beyond. Otherwise it may often be felt that the age-old Doordarshan with its mere 1

³³ Para 7.33.2 Law Commission of India 255th Report on Electoral Reforms (March 2015)

³⁴ Para 7.33.3 Law Commission of India 255th Report on Electoral Reforms (March 2015)

³⁵ Available at www.thehindu.com/opinion/lead/freedom-of-the-press-and-journalistic-ethics/article2071551.ece (Last modified June 2,2011)



hour of daily slot of news or shows like The World This Week anchored by Prannoy Roy remained more successful in reporting the news stories as compared to all 24 hour news channels combined together today.

To conclude, if media has to act as a watchdog, it must not feed on the negative possibilities of a news story but on the positive actual outcome of it. It must function with the motive of “serving the nation” rather than “serving personal motives” or as is commonly found these days, “serving breaking news once every hour”. Just like a self-disciplined man will perform his work better than a man who has been disciplined by others, a self-disciplined media will create a stronger impact on the society rather than one that is regulated from an external body. The only care that needs to be taken is that an internally disciplined media house should not create space for handling its own mischiefs internally too. To avoid this lacunae, perhaps a partial regulation on both the sides – internal and external is the need for the day. Once it begins working in the said manner, it will shine out with its unique image.
