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Media Laws in India: An Ominous and Restrictive Power through a Facade of Freedom

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ABSTRACT

This article is in order to discuss the freedom of media in India, with relevance to case laws that have showcased the same. This paper scrutinizes the powers which have been vested to the Press Council of India and private bodies that are self-regulatory in nature while looking into the history of press in India and as well as the history of known journalists in this field. It also takes into consideration the power of social media in the recent past and current scenario in disseminating information to the public. Further, it evaluates the reliability of free flow of information and authenticity of a news item in the existing proliferation of news media. This paper aims to assess the necessity for standards to resolve every issue pertaining to the regulation of news media, particularly the part of self-regulation, and provides some insights towards developing these protocols. Moreover, it looks through the need to have a better system for redressal of complaints from the public. In brief, this paper seeks to verify the effectiveness of the present self-regulation by the media and also the control of the government over the same. Competition in the market has led the media to be a lot more focused on gaining popularity than giving correct news keeping in mind the public interest. The author is also opined that complete control of the media to the government, and also completely self-regulatory system of the media can be harmful in the dissemination of information.

Keywords: News, Media, Government, Self-Regulation, Public.

I. INTRODUCTION

Communication can be considered as a fundamental human requirement throughout the ages and is the main reason of all human dealings since it is the ideal mode through which humans exchange their ideals. There is a complete free exchange of ideas and knowledge that takes place when there is unrestricted and full-fledged communication. It is guaranteed through our Constitution, with the “freedom of speech and expression”, which is the most cherished and well-known fundamental right, has been envisaged under various international covenants and

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most of the constitutions including the Indian Constitution. There is the right to freedom of expression which has a wide ambit and which includes the freedom of holding opinions, and there is also the freedom to impart information, there is also the freedom to receive information and it also provides the freedom to dissent against the democratically elected governments of the day. It is also related to free thinking, imagination and discourse which are necessities for a human being's self-realization. Moreover, it is a significant right to create a good democratic government where citizens are well informed about political happenings.

Speech, according to many scholars, serves as a self-fulfillment factor. This theory describes that satisfaction that arises out of speech is related to the individual's ability to think, visualize, and also generate ideas. Many philosophers have placed the right to free speech and expression at a higher pedestal. To Joseph Raz, communication, *'oral, pictorial, or musical communication of speech - is an essential right involving people to contribute in civic activities.'* Professor Edwin C Baker stated that *'speech is the realization of an individual's earnest desires and competence. The potentiality of each human being is very exclusive and differs from person to person.'* The jurist Wellington states that *'the freedom of speech is not a self-defining phrase - what cannot be abridged is what is protected.'* The development of one's self-determination is possible with application of speech and expression and demonstrating it onto the world.

There is also the philosopher John Stuart Mill's free speech theory is grounded on three reasons: firstly, it helps to evolve the truth, secondly it helps to mould good governance and democracy, and thirdly it promotes individual autonomy.

Mill made the liberal tradition of ideas and the same were commenced by Milton and Locke in the course of a broader notion of freedom of the press. Philosopher Mill got influenced by utilitarian beliefs stated that *'only free speech can inspire a society to challenge the traditional beliefs and notions so as to reveal the truth.'* The freedom of the press or media was integrated from his concept of individual liberty as explained in his free speech theory. From a democratic society's point of view, the media always plays a pertinent role by providing ideas and information which is indispensable for certain reasons. Firstly, it ensures that citizens who formulate proper and updated views by analyzing the authentic and genuine facts as provided by media. Secondly, it also provides information as a "checking function" and this guarantees that the chosen government and its representatives act upon electoral choices and achieve the wishes of those who chose them. Media hence, plays a pivotal role since it is the ideal mean through which public opinion is headed.

The stability of a country is examined by the way the media report the news of the country. Thus, it becomes the main job of the media to circulate only applicable and valid facts locally and globally. In some societies, there exists a different relationship between press and administration and the same might persuade media to put out negative influences in the society. Many jurists have severely condemned this as negative media reporting to the public, and often self-regulatory bodies might produce media which incite crime and violence, but sugar-coating of information by government regulated bodies is also harmful to the media. Therefore, media activities are to be observed particularly in a way that the information circulated would not have any negative effect but also produce relevant information that the public must know of.

(A) Research Method

The research used for this paper was qualitative research. Qualitative research refers to the non-numerical elements in the research. When there is the presence of information or data that cannot be grasped in terms of numbers, qualitative research is used. Though not reliable as much as quantitative, qualitative research helps to form a better summary in terms of theories.

(B) Hypothesis

The press and print media are not free from the absolute control of the government.

II. HISTORY OF MEDIA LAWS IN INDIA

There is no certain Act that exemplifies on media laws in India, and there are various Acts which are taken into consideration when media laws are concerned in this scenario. The Indian press has had a significance and major role in this country since the British rule. The earliest regulatory measures are always traced back to 1799 when Lord Wellesley brought forth the Press Regulations, which had the effect of imposing pre-censorship on an extremely novel newspaper publishing industry. The onset of 1835 saw the emergence of the Press Act, which was to undo most of the repressive features that the earlier legislations on this subject matter had imposed.²

Thereafter on 18th June 1857, the government passed the ‘Gagging Act’, which among various other things, introduced compulsory licensing for the owning or running of printing presses; empowered the government to prohibit the publication or circulation of any newspaper, book or other printed material and banned the publication or dissemination of statements or news stories which had a tendency to cause a furore against the government, thereby weakening its

² Rajkumar S. Adukia, *Media Laws of India*, CAAA, Aug. 14, 2011, http://www.caaa.in/image/media_laws.pdf

authority.³

Post this what came into effect was the 'Press and Registration of Books Act' in 1867 and this continues to remain in force till date. Governor General Lord Lytton proclaimed the 'Vernacular Press Act' of 1878 which allowed the government to damp down on the publication of writings that were thought of as seditious and this would impose certain sanctions on printers and publishers who had failed to conform to certain rules. In 1908, Lord Minto had promulgated the 'Newspapers (Incitement to Offences) Act, 1908 which essentially authorized local authorities to take action against the editor of any newspaper who would publish matter was to incite towards a rebellion.⁴

However, the most relevant day in the history of Media Regulations was the 26th of January 1950, which was the day on which the Constitution of India was brought into force. The colonial experience that the Indians went through made them realise the utmost significance of the 'Freedom of Press'. This freedom was therefore provided in the Constitution; mainly to empower the Press to publicize knowledge to the masses and the Constituent Assembly hence, decided to protect this 'Freedom of Press' as a fundamental right. However, the Indian Constitution does not entirely mention the freedom of the press, it is evident that the liberty of the press has been included in the freedom of speech and expression under Article 19(1)(a). It is nevertheless pertinent to mention that, such freedom is not absolute in nature but is qualified by certain clearly defined limitations under Article 19(2) in the interests of the public.⁵

It is important to mention here that, this freedom under Article 19(1)(a) is not only cut out, cabined and confined towards newspapers and periodicals but this also includes pamphlets, leaflets, handbills, circulars and any sort of publication which affords a concoction of information and opinion, hence, however the freedom of the press is guaranteed as a fundamental right, it is relevant for the citizens to go ahead with the various laws governing the different areas of media so as to appreciate the vast spread of media laws.

III. FREEDOM OF PRESS IN INDIA

The freedom of Press in India cannot be considered absolute, and neither can it be held that the government holds a major part in regulating the press. With the emergence of social media

³ Aparimita Basu, *Media Laws-An Overview*, LEGAL SERVICE INDIA, Sept. 9, 2007, <http://www.legalserviceindia.com/articles/media.htm>

⁴ J.P. Josephine Baba, *History of Media Laws in India*, JOURNALISM AND COMMUNICATION, Sept. 18, 2014, <https://wecommunication.blogspot.com/2014/09/history-of-indian-press-and-press-acts.html>

⁵ Dr. Archana, Dr. Rahul Tripathi, *Media Laws in India: Origin, Analysis, and Relevance in Present Scenario*, INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCE INVENTION, Feb. 12, 2018, [http://www.ijhssi.org/papers/vol7\(2\)/Version-1/C0702011315.pdf](http://www.ijhssi.org/papers/vol7(2)/Version-1/C0702011315.pdf)

over the years as an independent platform, several self-regulatory media houses have established themselves in order to put out the truth to the citizens. However, there still remains a bias and doubt between what is true and untrue in the same lines as social media platforms are not regulated until it is derogatory on the lines of violating a community's ideals and leads to harassment of any kind towards any individual. The media regulated by the government on the other hand ends up getting less coverage on issues that might be revealing the fallacies of the government to the people, and on certain instances, journalists have had to face dire and lethal consequences of putting out substance in the news media available to the wider public which went against the government by any means. A balance between the self-regulation and the regulation by the government does not seem to prevail in society, and this is one of the most important factors to rectify and is a necessity at the moment.⁶

(A) Self-Regulatory Media Houses in India

With the emergence of social media applications like that of Instagram and Facebook, there are several online platforms with journalists who are from distinguished backgrounds putting out information for the public. The Wire and The Quint are two of the most prominent self-regulatory media platforms that have their base on the internet, and not on broadcast like that of other media houses which are accessed by the common masses through television or newspapers. Videos and articles by these two bodies are usually available on social media platforms, and juxtaposing to these media houses are also known journalists such as Rana Ayyub and Faye D'Souza who are two of the most prominent journalists who put forth information ideally on Instagram, which is one of the biggest social media platform, mainly used by the youth of this country. There are also other platforms such as The Tatva that focus on providing news to the country through social media, however at times the news often becomes biased in these modes wherein favour towards any specific political body is presented subtly, and this is an occurrence which can be observed through many social media news reporting platforms.⁷

The Telegraph, Hindustan Times, etc., are also bodies which are free from government regulation as they come in the form of print media, and the Press Council of India is responsible in tackling the print media, and can put them under charge only if the information provided in the media is objectionable to the point where it can incite violence. One of Acts which restricts

⁶ Seth Dua and Associates, *In Brief: Media Law and Regulation in India*, LEXOLOGY, June. 14, 2019, <https://www.lexology.com/library/detail.aspx?g=4975586a-c15b-4c0c-9103-cc4020265dcd>

⁷ Simran Tibrewal, *Regulation of Media in India- A Brief Overview*, PRS INDIA, Nov. 16, 2011, <https://www.prsindia.org/theprsblog/regulation-media-india-brief-overview>

print media from printing any objectional matters is The Press (Objectional Matters) Act, 1951 and this enactment provides provisions which goes against posts which might be inciting crime and violence among the readers. The Newspaper (Prices and Pages) Act, 1956 is a statute which empowers the Central Government to regulate the price of newspapers in relation to the number of pages and size and it also regulates the allocation of space to be allowed for advertising matter. When dealing through this statute, it will be worthwhile to mention about the case of *Sakal Papers v/s Union of India*.⁸ In this case, the Daily Newspapers (Price and Control) Order, 1960, which had fixed a minimum price and number of pages, was a newspaper that was entitled to publish, was challenged as unconstitutional. The State justified the law as a reasonable restriction on a business activity of a citizen. The Supreme Court in this case struck down the Order rejecting the State's argument. The Court opined that the right of freedom of speech and expression cannot 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.

(B) The Government's Regulation on the Media

The government's function comes into play with the mere existence of the Press Council of India and also the News Broadcasting Standards Authority, the Central Board of Film Certification and the Cable Television Networks (Regulation) Act, 1995. The government has also urged television and movies content to come under Press Council of India. However, most of the bodies are independent bodies and are free from direct intervention of that of the government, but the bodies consist of members elected from the government, hence to say that absolute self-regulations of these media houses do not exist. In 2006 the government had also prepared a Draft Broadcasting Services Regulation Bill, 2006. The Bill made it mandatory to seek license for broadcasting any television or radio channel or program. It also provides standards for the regulation of content. It is the duty of the body to ensure compliance with guidelines issued under the Bill.⁹

IV. Freedom of Speech and Expression of the Media: A Facade of Amnesty

The simplest example of the fact that there the absence absolute freedom for the press and the media in India from the government intervention lies in the fact that certain significant information happens to be withheld from being broadcasted on television or on the newspapers. Certain print houses and media houses take it upon themselves to speak out against the

⁸ Sakal Papers (P) Ltd. Others vs. Union of India, 1962 AIR 305, 1962 SCR (3) 842

⁹ Vaibhavi Pandey & Komal Chauhan, *India: Media Law: The Dire Needs of The Day*, MONDAQ, Oct. 22, 2014, <https://www.mondaq.com/india/social-media/348626/media-law-the-dire-needs-of-the-day>

governments and any conduct on their part which leads to a devastation towards the well-being of the citizens. The most recent and jarring example would be of the second wave of the pandemic in India, where there were innumerable people subjected to poor treatment and thus succumbed to covid-19, and most of the actual numbers of deaths were being withheld from being shown in the media as that would tarnish the image of the government by showing the mismanagement on their part in handling the increase in the pandemic. Yet another example would be that of posts disappearing from the feeds of people on social media platforms if it was putting out information about an incapacity of the government in dealing with an issue. Hence, the government holds a primary hold over the functioning of the media houses, and press media as well, and there is essentially a façade of freedom of speech and expression when it comes to press and media. Even though broadcastings on news channels have open debates wherein people are invited to put in their opposing ideas for the public to view, a lot of relevant information stays withheld from the masses. The entire population of our country still lacks complete access to the internet, and hence often resort to television in order to obtain their resources, and the television broadcasts are usually in favour of the government.¹⁰

Journalists have also had to suffer difficult circumstances due their deliverance of news in the media, which might have been against the government, and one of the most gruesome incidents is the murder of journalist Gauri Lankesh.¹¹ India has ranked 142 out of 180 countries on the World Freedom of Press Index, and the causes are essentially the way in which people who are protesting are attacked and also journalists are taken into custody.¹² Caravan is one of the most prominent examples which show that the self-regulation of media houses are not free of government control either. Ten sedition cases have been brought against the most senior staff members of the Caravan, the publisher, the editor, and the executive editor, with reference to a news about the death of a protestor. One of the Caravan magazine's editors had also been arrested from the site of the protest on the grounds that they were causing 'obstruction'. The magazine's Twitter account had also been suspended for a few hours in response to a legal notice by the government, which had cited objections based on public order.

¹⁰ Debabrata Roy, *Freedom of Press and Media and its Role in a Democratic Country*, RESEARCH GATE, July.10, 2019,

https://www.researchgate.net/publication/334415362_Freedom_of_Press_Media_and_Its_Role_in_a_Democratic_Country

¹¹ Siddhartha Deb, *The Killing of Gauri Lankesh*, COLUMBIA JOURNALISM REVIEW, Dec. 22, 2018, https://www.cjr.org/special_report/gauri-lankesh-killing.php

¹² Krishn Kaushik, *World Press Freedom Index: India Retains 142 of 180 Spot, Remains 'One of the Most Dangerous Countries' For Journalists*, THE INDIAN EXPRESS, Apr. 21, 2021, <https://indianexpress.com/article/india/world-press-freedom-index-india-remains-one-of-the-worlds-most-dangerous-countries-for-journalists-7281362/>

In 2020, four of Caravan's journalists had been attacked in two separate incidents while reporting on the aftermath of religious riots and a protest which was concerning the alleged rape and murder of a teenager in Delhi. *"There is a narrative here which is very dangerous. We live in polarised times where critics of the government are branded as anti-nationals. It is the job of journalists to ask questions to people in power,"* Vinod Jose, executive editor of Caravan, had explicitly mentioned in an interview with the BBC. A lot of people believe that India is becoming an unsafe place for journalists. Sixty-seven journalists have been arrested and nearly 200 have been physically attacked in 2020, according to a study by Geeta Seshu for the Free Speech Collective. According to a report, a journalist, who was on his way to cover the gang rape of a girl in Uttar Pradesh state, had been in jail for five months.¹³

In the case of journalists, especially women critical who are critical of the government, face fierce online trolling and threats. A Delhi-based freelance journalist says she has been *"stalked, openly threatened with rape and murder, viciously trolled"*, and an attempts have been made to break into her apartment. On February, 2021, the police arrested a law student for allegedly sending death and rape threats to Rohini Singh, another freelance journalist.

V. Conclusion

Through time, the government has claimed that journalists and media houses that are self-regulatory are not targeted, but are merely being arrested for being a part of an 'orchestrated propaganda' against the government. This paper opines the fact that the media houses and the press are not free from absolute control from that of the government. Even though these media houses and freelance journalists hold the right to publish and broadcast news of any sort, under their right under Article 19 of the Constitution, they however often face the aftermath of their publications. There is no ideal solution to this other than forming an enactment that specifically provides protection to journalism in general and does not put them under any situation which might be harassing towards them, unless what they publish are on the grounds of crime and is inciting violence against any community. Social media and internet based sources of news are still playing a majoritarian role in order to provide information to the citizens without sugar coating their words and hence happen to be one of the few reliable sources for news at the moment, however, checks must be made by the citizens with bigger media houses that also print and publish their news for the authenticity of the information by the social media bodies. Dissemination of mere news cannot always be considered as slander or libel, and an enactment

¹³ Ismat Ara, *How Caravan Journalists were Attacked While Reporting in North East Delhi*, THE WIRE, Aug.12, 2020, <https://thewire.in/media/caravan-reporters-attacked-north-east-delhi>

specifying the same in consonance with that of Article 19 of the Constitution must be made.
