

Governance of Media

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Abstract: Media is the fourth pillar of the democracy and it plays an important role outside the government as an additional check on three branches – Legislative, executive and Judiciary. It is the prime function of the press to provide comprehensive and objective information on all aspects of the country's Social, economical and political life. According to the U.S Supreme Court, freedom of press includes more than merely serving as a “neutral conduit of information between the people and their elected leaders or as a neutral form of debate”. Therefore, in U.S.A., The First Amendment specifically protects a free press.

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But in India Right to freedom of the press is not specifically mentioned in article 19(1) (a) of the Constitution, what is mentioned is only freedom of speech and expression. Which relates to utterances in writing or in printing or manifestation or representation of feelings, intention of thoughts in writings by an individual, but not includes freedom of the press, It was made clear by the Dr. Ambedkar, Chairman of the Drafting Committee, during the Constituent Assembly debates that no special mention of the freedom of the press was necessary at all as the press and an individual or a citizens were the same so far as their right of expression was concerned.ⁱⁱ Therefore under Indian Constitution the law of England was followed where it is recognized that the law of the press was merely a part of the law of libel.ⁱⁱⁱ In *Romesh Thappar vs. State of Madras*,^{iv} and *Brij Bhushan v. State of Delhi*,^v the Supreme Court took it for granted that the freedom of the press was an essential part of the right to freedom of speech and expression. It was observed by Justice Patanjali Sastri in *Romesh Thappar* that the freedom of speech and expression included propagation of ideas, and that freedom was ensured by the freedom of circulation.^{vi} It is thus clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and other views with complete freedom and by resorting to all available means of publication. This view was reiterated in *Sakal Papers (P) Ltd. v. Union of Indian*,^{vii} and regarded as settled in *Bennett Coleman & Co. v. Union of India*,^{viii} as the right to freedom of speech and expression is guaranteed to a citizen, and not to a person, a non-citizen running a newspaper, is not entitled to the benefit of freedom of the press. Moreover, freedom of the press in India stands on no higher footing than the freedom of speech and expression of a citizen and no privilege attaches to the press as such as distinct from the freedom of the citizen.^{ix}

1.1 The Press Council of India

The Press Council of India was constituted in 1966 under the Press Council Act 1965. This was made to preserve the freedom of the press and to maintain and improve the standards thereof. This Act was repealed with the promulgation of the publication of ‘objectionable matter ordinance of 1975. Then it became the prevention of Publication of Objectionable Matter Act in 1976. Simultaneously was passed the Press Council (Repeal) Act 1976 and the Parliamentary Proceedings (Protection of Publication) Repeal Act 1976. The Prevention of Publication of Objectionable Matter Act was repealed in 1977 and the Parliamentary Proceeding (Protection of Publication) Act 1977 was passed. This was supported by the 44th Amendment 1978, which inserted Article 361A into the constitution. The Press Council Act 1978 was enacted reestablishing the Press Council. The Press Council Act 1965 that was repealed got replaced by the above said Act. The object of this enactment is to preserve the freedom of the Press, to maintain and improve the standards of newspaper and news agencies in the country.¹ The Act has laid down various responsibilities and duties of the Council. In order to maintain independence of press, as categorically stated in the Act. In pursuance of this, the PCI has evolved a code of ethics to ensure the maintenance of high standards of public taste and to have a due sense of freedom and to encourage the growth of a sense of responsibility and public service.² Section 14 gives the PCI power to warn, admonish and censure the press. These are the only weapons available with the PCI for enforcement purposes. Therefore, the PCI Act limits the PCI from taking stringent actions. It is supposed to be only a self-regulatory organ as the government always felt that freedom of press should be protected. For performing its functions, under section 14, the Council has been given the same powers as vested in a Civil Court while trying a case under the CPC.³ Along with this the PCI (Procedure for

¹ Section 13 of The Press Council of India Act, 1978

² Press Council of India, “Norms of Journalistic Conduct”, 101 (New Delhi, 2010)

³ Section 15, The Press Council of India Act, 1978

enquiry) Regulations, 1979 deal with the procedure for conducting enquiry. Any complaint under section 14 (1) and section 13 or the complaint taken up by the PCI Chairman suo - motu have to follow the procedures stated in the above rules. Under the rules an enquiry committee is to be constituted by the Council under section 8 (1) of the Act.

1.2 Journalist Conduct & its Norms

The word Journalist, Journal and Journalism is derived from the French Journal, which in turn comes from the Latin term "Diurnalis" or "Daily".⁴ In India one cannot find that hardships are undertaken by the journalists because most of the material is gained by the journalists sitting in their chair and through local agents. Also there is no pressure on the media to follow the code of ethics as formulated by the Press Council of India in 2010.⁵ The code of ethics in Britain is strictly adhered to by the media. But in India there are no strong methods or agencies to make them comply with the norms. As a result of this media is given unrestricted freedom to use any method whatsoever to get news. This could be in the form of sting operations using phone tapping, prostitutes, trespass and similar methods. It somehow gives a feeling to the public that the press is above the law, and their offences are only to be neglected while a private person has to face the music.

In 2010, the Press Council of India came up with its norms of Journalistic conduct. The Code of Ethics elaborates upon right to privacy and privacy of public figures⁶. It talks about taking caution against defamatory writings. The press is not allowed to intrude into the privacy unless outweighed by genuine overriding public interest not being a prurient or morbid curiosity. Special caution is essential in reports likely to stigmatize women. Matters concerning a person's home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of privacy except where any of these impinges upon the public or public interest. Caution is required to be taken against revealing the identity of victims while reporting crime involving rape, abduction or kidnapping of females or sexual assault on children and raising questions touching their chastity, privacy, names and publication of photographs of the victims. It is the duty of Press that when it concerns privacy of public figures that it should be confirmed that it is of public interests through fair means, verified and then reported. The families of public figures are generally not journalistic subjects. There are certain restrictions regarding

recording of interviews and phone conversations.⁷ In cases of criticizing judicial acts, except in camera or if the Court directs otherwise, the Court proceedings are open to Press. Caution is to be taken to ensure that the publication in any form does not obstruct, impede or prejudice seriously the administration of justice or the personal character of the accused standing trial.⁸

Newspapers shall not publish or comment on evidence collected as a result of investigative journalism, when after the accused is arrested and charged the Court becomes seized of the case.⁹ Under the rules, obscenity and vulgarity is to be eschewed even if it serves any social or public purpose in relation to art, painting, medicine or reform of sex because the press is not the appropriate place for it.¹⁰ The Indian reader is mature and to copy the west by promoting the so called popular permissiveness may defeat the very aim of the press, to create awareness rather than to boost circulation. The rules also state the basic elements of investigative journalism. It states that it has to be the work of the reporter and that public importance should be served through it and the reporter should prove that an attempt has been made to hide the truth from the people which the reporter has brought to public notice. The reporter in such cases must not act as a prosecutor; the principle that a person is innocent unless the offence is proved should not be forgotten.¹¹ The Court came heavily on the media in a writ petition, CMP 52/2008 filed by the National Network of Positive People in the juvenile Court Thiruvananthapuram; for visually screening of two children, Bency and Benson, who were children of HIV parents. As a result the PCI framed rules prohibiting reporting of HIV/Aids connected children.¹²

1.3 The Readers Choice

The PCI does not contain any strong provision to ensure compliance to the ethics and guidelines formulated by it. The reason being, the Parliament expected that the code of ethics framed by the PCI will be followed in letter and spirit by the media. The danger of free media is still enhanced with the broadcasting through electronic media. There is no regulatory mechanism to supervise its working, except the one under the Cable Television Networks (Regulation) Act of 1995. The ministry of Information and Broadcasting was keen to bring a Broadcast Services Regulation Bill. But the Editor's Guild of India stated in September 2007, that it did not accept the proposed bill, the reason being that this would give immense power to government over news and current affair channels. As a result the Bill did not become an Act. The Bill was to be introduced during the monsoon session of Parliament in

⁴ Dr.N. Padmanabhan, History of Journalism, 5 (University of Calicut, Kerala, 2011)

⁵ Press Council of India, Norm of Journalist Conduct, 6, (New Delhi, 2010)

⁶ Norms 6 and 7, The Press Council of India

⁷ Norm 8, Press Council of India

⁸ Norms 12 and 41, Press Council of India

⁹ Norms 26 and 41, Press Council of India

¹⁰ Norm 17, Press Council of India

¹¹ Norm 26, Press Council of India

¹² C.M.P. 52/2008, Press Council of India, 10 (Annual Report, April 2008 – March 2009).

2007. It was withheld following protests by media who accused the government of trying to curb its freedom of expression.¹³ Later the Ministry issued guidelines to build up a local mechanism that would enforce the programme code of the Cable Television Networks (Regulation) Act.¹⁴ Just like Film certification¹⁵ the programmes will have to be certified as Universal (U), which can be shown anytime, universally Adult (U/A), that can be telecast only between 8 PM and 4 PM and Adult (A) to be shown only between 11 PM to 4 AM. To honor the views of the readers, the PCI has stated that the newspapers should appoint a Readers' Editor. In the present scenario, Readers' Editors are termed also as Ombudsman. Following the practice in, the Guardian, The Hindu has a Readers' Editor. It is operational since March 2006. Ian Mayes, Readers' Editor of the Guardian said in his January 2006 lecture that it made the paper more responsive to their complaints. The data available at the office of The Hindu's reveal that between March 2006 and Feb 2016 as many as 70,519 communications (by email, telephone, regular mail and fax) were received from readers. During the same period, 8,236 corrections and clarifications were published in a prominent demarcated space – the opinion page opposite the main editorial page¹⁶

There have been many instances of media reporting which has resulted into nothing positive except cause pain and hardship to the media focused person. Statement was made by the media regarding lawyer Ram Jethmalani when he decided to defend Manu Sharma, a prime accused in a murder case. He was subjected to severe criticism for defending the accused. A senior editor of the television channel, CNN-IBN called that decision of Jethmalani, an attempt to "defend the indefensible". The press complained that it was not fair that a prominent lawyer like Jethmalani should appear for the accused and that only an average lawyer should argue for the state. Again this is bypassing the private right of an advocate, as to, for whom he should argue.¹⁷ Also, in Mohammed Afzal, (the Parliament attack case of December 2001), the media started its own trial shortly after his arrest. The opinion of the media was already fixed, that he is a terrorist and needs death sentence. This sort of discussions shown on the small screen can definitely prejudice the mind of an ordinary person. Along with Mohammed Afsal his co-defendant S.A.R. Geelani was also sentenced to death despite lack of evidence and the media portrayed him as a dangerous and trained terrorist. But later

the Delhi High Court overturned his conviction, which was a blow to the impression given by media

In *Parshuram Babaram Sawant v. Times Global Broadcasting Co. Ltd.*,¹⁸ Retd. Justice P.B.Sawant's photograph was flashed as Justice P.K.Samantha, Retd. Justice of Calcutta High Court, who was alleged to be involved in the famous Provident Fund scam of 2008, it gave a false impression among viewers that the plaintiff was involved in the scam. Though the said channel stopped publishing the photograph, when the mistake was brought to their notice, no corrective or remedial steps to undo the damage were taken by the channel on their own. The plaintiff by his letter dated 15/9/2008 called the defendant to apologize publicly with damages of Rs 50 crores. By its reply the defendant apologized but no mention of damages was there. It was a belated action hence plaintiff demanded Rs 100 crores. The Court held that the defendant was entitled to pay Rs 100 crores to the plaintiff. The Bombay High Court ordered the Times to deposit 20 crores in cash and 80 crores in bank guarantee, before taking up its appeal against the Pune trial Court in the defamation case. This was upheld by the Supreme Court. In another instance T.P. Nandakumar, chief editor of Crime magazine was arrested on charges of defamation, for publishing a defamatory article in the online edition of the magazine. It was stated that Nandakumar demanded money for not publishing the article.¹⁹ In another instance three photo journalists were summoned by the police for taking photographs of President Pratibha Patil on a Goa beach. The media had been asked to keep away from her. This was countered by the president of the Photo Journalists Association Goa, who stated that beach is a 'public place' and they have every right to be there.²⁰ Further the documentary "India's Daughter" featuring "Mukesh Singh", one of the six rapists convicted in the 2012 for raping a girl; screened on BBC, was later on banned by government of India, arguing that it could provoke "public disorder", shows his comment in which he say that "a decent girl won't roam around 9 o'clock at night"; housework and housekeeping is for girls, if women are not good men have a right to "teach them a lesson" by raping them. And if that happens women being raped has a responsibility to silently accept the assault. "When being raped, she shouldn't fight back. She should just be silent and allow the rape." In the documentary, Singh, who was sentenced to death for his role in the crime, shows no

¹³ Press Council of India, (Annual Report, 2007 – 2008)

¹⁴ Press Council of India, (Annual Report, 2005 – 2006)

¹⁵ Press Council of India, 29 (Annual Report, 2007 – 2008)

¹⁶N. Ram, "Holding the Newspaper to Account" (The Hindu, Feb 29, 2016) available at: <http://www.thehindu.com/todays-paper/tp-opinion/holding-the-newspaper-to-account/article8293590.ece>

¹⁷ Human Rights Features, Trial by Media, (New Delhi, HRF/164/07 April, 27, 2007).

¹⁸ District Court Pune, Special Suit No: 1984/2008.

¹⁹ Shaju Philip, Kerala magazine editor held for report against NRI, (The Indian Express, July 4, 2010).

²⁰ INAS, Photo Journalist Summoned over snapping president on Goa Beach, (Tahindian News, May 5, 2011).

remorse. He explains that the victim's death was her own fault. Such a comment reflects the degree of attitudes that are disturbingly common in India and are central to its Climate of hostility towards women.²¹

All such incident gave a very clear idea of the preconceived notion that the media projects the people in our country long before the process of law in Court is over. Therefore when the decision comes in contradiction of the view given by the media, public tends to think that judges are corrupt and biased.

1.3 Conclusion

No doubt that press in form media of plays an important role in the society; even it played a major role in India's freedom struggle. It was the press in written form that made people aware of their surroundings. In today's digital era when the press and media became digital by electronic means and reaches to every single individual through broadcasting mode not only all over the country but also outside the territorial borders but at the same time the system of having a Content Auditor in broadcasting and Readers' Editor in written press is limited to its object. Because it only to pacify the complainants by rectifying the errors and straightening the relationship. In cases of grave errors, this should not be the course of action. Pacifying grave mistakes on the part of journalist and press, especially if it is done purposefully is a wrong practice and cannot be not compensated even by the Ombudsman of the Paper, i.e. the Readers' Editor or by the PCI (The Chief Ombudsman for all papers) The bruises made and the agony caused is left untreated by one and all.

The continuous act of defiance by the media is bound to cause deterioration of faith in the Press and can cause negative emotions to boil up. Any bruise left untreated will cause further harm if left unattended for long. Going through the bare provisions of Press council of India, it is clear that the Chairman does not have much of discretion. Even in the case of decisions, it is the majority's opinion that forms the judgment. And as the majority of the enquiry committee consists of members of the media itself, the decision of the committee is bound to be dominated by them. This shifts the balance towards the press rather than forming

any independent view. Therefore, it can be stated that PCI was never intended to control the press rather it is only a form of self regulatory system. Therefore, the PCI procedures are more of an advisory rather than a judicial proceeding, though the Act states under section 15 (3) that every enquiry held by the Council shall be deemed to be a judicial proceeding. More over the PCI Act clearly states in section 15 (2) that no newspaper, news agency, editor or journalist shall be deemed to be compelled to disclose the source of any news. Which itself raise question mark about the credibility. Therefore, due to the lack of this transparency it became difficult for reader and the viewer to know that whatever is presented before them in shape of news is authenticated or not. Many a time it has been found that journalist poured fake news or paid news upon which can endangers the public peace and tranquility.

It was also found that some media houses and channels were acting under the wishes of ruling government, the opposition or of the big business houses and many a time they breach the law in order to earn TRPS for their channels. In 2016 a Hindi news channel NDTV was barred from broadcasting for breaching laws pertaining to national security. The action was taken against the channel because it had revealed sensitive details, such as the location of the ammunition depot, school and residential areas in its coverage of the Pathankot attack. It also appeared to disclose the location of the attackers.²² This was the 1st instance when a news channel has been barred from broadcasting for breaching national security but the Editors Guild of India has condemned it as a violation of freedom of media. This was the first time ever that a news channel has been barred from broadcasting for breaching national security laws in the country. While the government has banning in the interest of national security, the Editors Guild of India has condemned it a violation of the freedom of media. Live reporting of armed forces actions and of sensitive issue in the country, derogatory and defamatory speeches of politicians during elections, interviews of terrorist by media persons in the name of freedom of media, not only interrupts sovereign functions but also create unreasonable fear and terror in the mind of general public. Which is urgently needed to be regularized?

ⁱ New York Times v. Sullivan, 376 U.S. 254

ⁱⁱ Vasant Moon (ed), "Dr. Babasaheb Ambedkar : Writings and Speeches", 403 (Vol 13, Dr. Ambedkar Foundation, Ministry of Social Justice & Empowerment, Govt. of India, 1994, Reprinted 2014 , New Delhi)

ⁱⁱⁱ Dimming Arnold vs Emperor, AIR 1914 PC 116

^{iv} AIR 1950 SC 124

^v AIR 1950 SC 129

^{vi} AIR 1950 SC 124, 127

^{vii} AIR 1962 SC 305

^{viii} AIR 1973 SC 106

^{ix} Sharma v. Sri Krishna Sinha, AIR 1959 SC 395, 402

²¹Amanda Tabu, *She Should Just be Silent: The Real Roots of Indian Rape Culture*, (5TH March, The VOX, 2015)

²² Hindustan Times , e- Paper, 05 Nov 2016