

## **REGULATORY MECHANISM FOR ELECTRONIC MEDIA: PROTECTING FREEDOM OF SPEECH FROM THE ONSLAUGHT OF UNCONTROLLED MEDIA**

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### ***Abstract***

*In the evening of April 2, 2018, the office of I & B Minister issued a notification to curb fake news, but within few hours it was revoked by the Prime Minister Office. This event has renewed an old debate on the role of media in a democracy. Positive role of media in modern democratic systems is very important and has been widely discussed in scholarly writings all over the world.<sup>1</sup> Today with the advent of electronic media, press and journalism has become a real power, which can shape public opinion and helps in democratic process. With this influx of power, now media has become an entity, which cannot be easily challenged. This paper focusses on some fundamental questions; whether goodwill earned by media power is being used for the benefit of common man or it has also become an oppressor due to more focus on the 'business needs'. Whether media is also capable of infringing fundamental rights and whether fundamental rights can be enforced against media houses? Whether print and electronic media are at the same page, in following professional ethics? Generally, print media has a time of some hours, or even sometimes some days in non-daily print issues, to refine the news; it goes through several editorial hands before reaching to the people. On the other hand, electronic media due to its competitive compulsion for going on-air ahead of others has a very minimal response time. Whether this pressure of "breaking news" has affected the professional ethics of electronic media? As power of media has come from the concept of freedom of speech, it is all the more important to analyze whether media itself is today curtailing freedom of speech by misquoting the statements? Whether media trials are violation of people's right to dignity?*

### **I. Introduction**

### **II. Media as a Positive Force**

### **III. Negative Facet of Media**

### **IV. Uncontrolled Media as an Oppressor of Fundamental Rights**

### **V. Comparison of Print Media to Electronic Media**

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<sup>1</sup> Philip B. Kurland, "The Irrelevance of the Constitution: The First Amendment's Freedom of Speech and Freedom of Press Clauses", *Chicago Unbound - Chicago Law Faculty Scholarship* (1979 -1980).

## VI. Regulatory Framework for Media

## VII. Conclusion and Suggestions

### I. Introduction

Freedom of speech and expression is very sacrosanct right for a vibrant democracy.<sup>2</sup>The free press is a necessary derivative of freedom of speech and expression. All over the world journalism has played a very important role in preserving democracies.<sup>3</sup> It is a tool for keeping the government on its toes, through a constructive criticism.<sup>4</sup>In early modern history press was used by philanthropists and socio-political activists to spread their own views on the problems of society. During the freedom struggle in India, almost all famous freedom fighters were related to English or vernacular newspapers.<sup>5</sup> That was an era of ethical reporting, since the press was seen as a tool for service of nation and not as mode of earning money. But in twentieth century press has turned itself into a commercial industry. Modern day media houses, primarily thriving on advertisements, have to increase their circulation, as the advertisement is directly proportional to circulation, or viewership in case of electronic media.

The free press, which is addressed as a fourth pillar of democracy, is one important aspect of freedom of speech. By continuous vigil media keeps pointing out lacunae in government working at the policy level as well as at implementation level. Criticism by the media not only strengthens the hands of the opposition but also provides an opportunity for government for course correction. Most of the time ministers and people in power are surrounded by many selfish individuals who keep on doing false praise of every activity of government and dare not do a much-required critical analysis of governmental policies. In such scenario, criticism by media works as a real friend of government. Pandit Jawaharlal

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<sup>2</sup> David A. Anderson, "The Press and Democratic Dialogue", 127 *Harvard Law Review*. F. 331 (2014)

To be sure, the press often adds value - for example, by making the information more easily digestible, or by adding historical or comparative perspective. Journalists often provide expertise, skepticism, and institutional memory. Some of the news-gathering done by others occurs because the press is there to give it an outlet: an agency generates a report because it seeks the publicity the report will attract or a prosecutor collects information about the suspect's background because the press seeks it. Of course, in addition to reporting information gathered by others, the press reports news that enterprising journalists uncover through their own efforts. This is one of the ways the press serves as a check. Investigative journalism exposes venality, waste, or inattention in government, business, education, health care, sports, and other human endeavors. Our history is full of instances in which enterprising journalists have performed valuable public service.

<sup>3</sup> Jennings, W.I., *Cabinet Government*, 13, (Cambridge University Press; First American edition 1936).

It follows that freedom of speech and freedom of association are essential to the Constitution. Without free elections the people cannot make a choice of policies. Without freedom of speech the appeal to reason which is the basis of democracy cannot be made. Without freedom of association, electors and elected representatives cannot band themselves into parties for the formulation of common policies and the attainment of common ends. The extension of the franchise, the attainment of a large measure of freedom of speech, and the organization of parties, have created the modern Constitution. The House of Commons and the Cabinet are the instruments of democracy. The prerogative of the Crown and, to a less degree, the powers of the aristocracy, have been subordinated to public opinion.

<sup>4</sup> The Constitution of India, Art 19 (1)(a).

<sup>5</sup> Charles H. Heimsath, *Indian Nationalism and Hindu Social Reform* (Oxford University Press, 1964).

Nehru used to read criticism of his policies in the media and he was especially fond of his own cartoons drawn by R. K. Laxman in Times of India. Through his cartoon character ‘the common man’ and daily cartoon strip “You Said it” Laxman used to make a constructive criticism of government policies in a satirical manner; and Pandit Nehru acknowledged that sometimes cartoonists also show a path for course correction.<sup>6</sup> Until, journalism was dominated by print media, it remained a positive force, but with the advent of electronic media negative facets of journalism has also appeared. This is because Indian legal system lacks special laws to regulate broadcasting media. Even Honorable Supreme Court has agreed that laws passed for print media are not sufficient to regulate print media.<sup>7</sup> This paper is an effort to show how erroneous and lackadaisical reporting may be dangerous even for the fundamental rights of citizens.

## II. Media as a Positive Force

In the initial decades after independence media remained largely a positive force; as many media houses were in the hands of those people who had seen the freedom struggle, probably they respected newly got liberty and refrained from misusing it. The constructive role of media has been acknowledged by the Supreme Court in many cases.

In the case of *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*,<sup>8</sup> Supreme Court, through Justice E. Vekataramaiyah has very beautifully chalked out the importance of media in a democracy as under:<sup>9</sup>

Freedom of press is the heart of social and political intercourse.

The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale, particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society.

The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspapers are

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<sup>6</sup> Shashi Tharoor, “When Nehru was Caricatured by RK Laxman”, *NDTV Opinion*, Apr. 20, 2014. Available at: <https://www.ndtv.com/opinion/when-nehru-was-caricatured-by-rk-laxman-558107> (last visited on August 12, 2018).

<sup>7</sup> *Ministry of Information and Broadcasting v. Bengal Cricket Association*, AIR 1995 SC 1235. The Court held that “The Indian Telegraph Act, 1885 is totally inadequate to govern an important medium like the radio and television, i.e., broadcasting media. The Act was intended for an altogether different purpose when it was enacted. This is the result of the law in this country not keeping pace with the technological advances in the field of information and communications. While all the leading democratic countries have enacted laws specifically governing the broadcasting media, the law in this country has stood still, rooted in the Telegraph Act of 1885. Except Section 4(1) and the definition of telegraph, no other provision of the Act is shown to have any relevance to broadcasting media. It is, therefore, imperative that the parliament makes a law placing the broadcasting media in the hands of a public/statutory corporate or the corporations, as the case may be. This is necessary to safeguard the interests of public and the interests of law as also to avoid uncertainty, confusion and consequent litigation.”

<sup>8</sup> *Indian Express Newspaper v. Union of India*, 1985 SCR (2) 287.

<sup>9</sup> *Ibid.*

purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to governments and other authorities. With a view to checking malpractices which interfere with the free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression laying down the limits of interference with it.

In the last two decades, India has witnessed positive as well negative impacts of electronic media. Electronic media is now reaching even to illiterate people, through its audio-visual mode of contact; those who cannot read newspapers are now listening to news debates. It has played an important role in spreading socio-political as well as economic awareness among the masses. Electronic media has greatly helped in spreading mass agitations and getting justice for victims such as Jessica Lal and Nirbhaya.<sup>10</sup> But it has a negative aspect also, which exists predominantly because of the fact that today largely electronic media is unchecked like an unbridled horse.

### III. Negative Facet of Media

There are various faces of bad journalism, such as yellow journalism, paparazzi, Page 3 journalism, paid news, extortion by the media and media trial, etc. Each of these kinds of bad faces of media deserves independent research, because these are not mere categories of media rather categories of human rights violation by the media. Character assassination by media trials is a very common thing these days. In Arushi murder case within a few days media declared Arushi's parents Rajesh Talwar and Nupur Talwar as murderers, later on C.B.I., investigation declared her father is not the killer. In 2004-05 in Sankeraman murder case, electronic media in India launched a serious campaign against *Sankracharya Jayendra Saraswati* of *Kanchi Muthh*. This media trial continued for several months, which maligned the image of *Jayendra Saraswati* in particular and of the institution of *Sankracharya* in general. Later on, when in 2013 *Sankracharya* was acquitted, then the media did not highlight that news. A similar trend has been seen in print media also. Many times, headlines are made out of wrong reporting, but when the media is forced to make a course correction, then a small undertaking is published somewhere

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<sup>10</sup> Lhendup Gyatso Bhutia, My Sister Jessica Got Justice Due to Media," *DNA*, Sep. 9, 2007. Available at: <http://www.dnaindia.com/india/report-my-sister-jessica-got-justice-due-to-media-1120440> (last visited on August 12, 2018) When Sabrina Lal saw Manu Sharma walk free in the murder trial of her sister Jessica Lal, she knocked on the media's door in a final act of desperation. And, by her own admission, she feels the guilty are behind bars today because a determined media kept shining the spotlight on the loopholes of the case, literally forcing the judiciary to take a fresh look. Sabrina Lal tells DNA why media will always be her best friend. The media proved to be an extremely powerful force that came to our aid. We are not influential people. We have no great contacts and have no great money either. It was the power of the media that enabled us to get justice. When all doors were shut on our faces, it was the media that came to support us. The manner in which newspapers and television channels came out in our support was commendable. Had it not been for the media, people would have never known about how a family was being denied justice. It was this coverage that made people realize the truth and come out in protests and demonstrations in support of us.

in the last pages. In the recent past, by vigilant viewers and other stakeholders, NDTV has been forced to apologize at several occasions. For example, Purnoy Roy had to apologize for showing P.O.K as part of Pakistan,<sup>11</sup> at another occasion the channel had to apologize online to BJP M.P. Mahesh Giri for showing a fake letter in his name.<sup>12</sup> When these wrong reporting are done about some famous personalities and celebrities then the targeted person is not much affected because he or she is already part of that society where sometimes people are benefitted by negative publicity. But when this kind of character assassination is done on the news items related to common people, then sometimes it becomes a fatal blow to the dignity and life of the targeted person. One N.G.O., head who was a J.N.U., scholar, Khurshid Anwar, committed suicide in 2013 when he was media-trialed for two days.<sup>13</sup>

#### IV. Uncontrolled Media as an Oppressor of Fundamental Rights

No, doubt media is a power in modern day governing systems. Hence, the pros and cons otherwise attached to power are attached with media power also. Lord Acton's statement 'Power corrupts and absolute power corrupts absolutely' is an evergreen statement, which fits against all forms of powers; and the media is no exception. Excess of freedom for the media has turned out to be an oppressor of fundamental rights, and a business of extortion in some cases. There are several examples when the media has violated people's fundamental rights. A right based analysis of infringement of fundamental rights by media is presented hereunder.

##### *Adverse Impact on Right to Speech and Expression*

Right to speech and expression is such a right which is the mother of freedom of media in India. But the media has violated this right in many aspects; such as right to correct information and right to accurate broadcast are frequently infringed by Indian media. So far, these rights are not discussed directly in this format, but there are examples when even the Supreme Court has acknowledged some of these rights.

##### *Right to Correct Information:*

Now it is well-established that freedom of speech under the constitution of India includes right to get information also. But here the important moot point is that whether this is a right to receive right

<sup>11</sup> Report, "How a Social Media User Has Forced NDTV into Apologising for Their "Error";" *OpIndia.com*, Dec. 20, 2013, available at: <http://www.opindia.com/2016/10/how-a-social-media-user-has-forced-ndtv-into-apologising-for-their-error/> (last visited on August 31, 2018).

<sup>12</sup>Ayesha Singh, "Exposed: NDTV Apologizes to BJP MP Mahesh Giri For Showing Wrong Letter" *insistpost.com*, Jun.16, 2016, available at: <http://insistpost.com/12145/exposed-ndtv-apologizes-to-bjp-mp-mahesh-giri-for-showing-wrong-letter/> (last visited on February 23, 2018).

<sup>13</sup>Caezar Mandal, "Khurshid Anwer Suicide Case: Colleagues Say He Was Framed" *Times of India*, Dec. 20, 2013.

information or any kind of information? Whether wrong information broadcasted by media houses amounts to an infringement of a fundamental right to get information? Whether meaning of information *per se* is imparting correct knowledge of facts and right interpretation of statements or it includes even wrong information also?

Supreme Court in *P. U. C. L. v. Union of India*<sup>14</sup> held through the bench of P. V. Reddy and K. G. BalakrishnanJJ., that undoubtedly right to get information is part of freedom of speech and expression provided under article 19 (1)(a) of the Constitution of India. Though court held that this right is different from the freedom of press in nature, but court underlined the importance of accurate information in a democratic system as under:<sup>15</sup>

The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State.

Hence, in our view, right of a voter to know bio-data of a candidate is the foundation of democracy. The old dictum - let the people have the truth and the freedom to discuss it and all will go well with the Government - should prevail.<sup>16</sup>

But this right to receive information depends on the press and the electronic media's right to broadcast information. Hence it is very clear that to preserve a democracy people should always be fed by right information so that they can make their opinion.

#### *Right to Accurate Broadcast:*

Another important aspect of freedom of speech and expression is right to have an exact broadcast of views in the same reference in which one had expressed one's views. If the wrong views have been aired; or due to out of context broadcasting the wrong meaning is coming out then it is also a violation of freedom of speech and expression. Out of context broadcasting by the media is nothing but a ban on the real views; and the greatest mockery is that this ban has been imposed by the media itself, who is working under the banner of freedom of speech and expression. But there is no control on this violation of fundamental rights by the media. Though, it can be argued that media is not a 'state' so fundamental rights cannot be enforced against the media; but the media is using state owned satellites and transponders, hence the state is equally participating indirectly in such violation of fundamental rights. Uncontrolled power of media is also dangerous for a democratic country; there should be some control on it.

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<sup>14</sup> Writ Petitions (Civil) 490, 509 and 515 of 2012.

<sup>15</sup> *Id.* at 19.

<sup>16</sup> *Id.* at 38.

The US Supreme Court in *Giltow v. New York*<sup>17</sup> has expressed following views which are very relevant in this context, and were referred to by Indian Supreme Court also, “It is a fundamental principle, long established, that the freedom of speech and of the Press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language, and prevents the punishment of those who abuse this freedom.”<sup>18</sup>

Under Constitution of India the freedom of the press is not unlimited or uncontrolled; it is subject to some restrictions in the interests of following:

- i. The sovereignty and integrity of India;
- ii. The security of the State;
- iii. Friendly relations with foreign States;
- iv. Public order;
- v. Decency or morality;
- vi. In relation to contempt of court;
- vii. Defamation or/ and;
- viii. Incitement to an offence.<sup>19</sup>

Theoretically freedom of the press is also subject to above mentioned restrictions, but practically, Indian media is enjoying immunity in most of the cases. Out of these restrictions defamation is of a private nature, and so far, aggrieved persons have filed only defamation cases against the media. The rest of the grounds of restriction are actually offences of a public nature which come under the domain of criminal law, where state is one party in the prosecution by necessary implication. And Indian state, in the name of democratic freedom, has always ignored such offences of media. May it be the case of inciting reporting of communal riots or the reporting of Mumbai Terrorist Attacks,<sup>20</sup> where live media reports actually helped the terrorists to inflict more harm; governments in India has always shied away from initiating prosecuting against journalists or media houses, with an exception of a ban on NDTV for

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<sup>17</sup> (1924) 69 L.Ed. 1138.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Md. Ajmal Md. Amir Kasab v. State of Maharashtra*, SC 2012.

Para 403: Apart from the transcripts, we can take judicial notice of the fact that the terrorists attacks at all the places, in the goriest details, were shown live on the Indian TV from beginning to end almost non-stop. All the channels were competing with each other in showing the latest developments on a minute to minute basis, including the positions and the movements of the security forces engaged in flushing out the terrorists. The reckless coverage of the terrorist attack by the channels thus gave rise to a situation where on the one hand the terrorists were completely hidden from the security forces and they had no means to know their exact position or even the kind of firearms and explosives they possessed and on the other hand the positions of the security forces, their weapons and all their operational movements were being watched by the collaborators across the border on TV screens and being communicated to the terrorists.

leaking information about Pathankot air base.<sup>21</sup> It is necessary to check whether this action of government was within the constitutional framework or not. Article 19(2) of Constitution of India provides freedom of speech can be restricted on the grounds of national security. Even UNESCO has approved that strict rules should be imposed on media, to stop irresponsible live reporting of anti-terrorist operations.<sup>22</sup> In August 2012 Supreme Court of India in Ajmal Kasab case, held, *inter alia*, that in Mumbai attacks live reporting of anti-terrorist operation, helped terrorists to get information about the position of security forces.<sup>23</sup> In such a scenario, NDTV's action to broadcast sensitive information of an ongoing terrorist operation was rightly considered a dangerous activity. Moreover, government's action against NDTV was not ex-post-facto. In 2015 itself, government of India had imposed a ban on live coverage of anti-terrorist operations.<sup>24</sup> It is well known principle of constitutional law that if there is a conflict between national security interest and freedom of expression, then national security interest will be given priority. Yet, it was a rare example when government of India, tried to make media reporting accountable to national security. Due to such indolence at the part of government, media is continuously violating fundamental rights of people in India. This violation of fundamental rights is not only limited to freedom of speech and expression only, but other important rights such as the right to dignity also, which is being violated by the media reporting.

### ***Adverse Impact on Right to Dignity***

It is well established fact that the right to life provided under the constitution of India provides a right to have a life with dignity and reputation. But today media trials are the biggest source of attack on personal dignity and reputation of people. Comparing article 19 (1)(a) of Constitution of India with

<sup>21</sup> Reporter, "Government Bans NDTV India for a Day Over Pathankot Reportage", *The Wire*, Nov. 3, 2016, available at: <https://thewire.in/77748/government-orders-ndtv-india-go-off-air-day-pathankot-reportage/?fromNewsdog=1> (last visited on August 31, 2018).

The government has ordered that the Hindi channel NDTV India be shut down for a day for allegedly revealing "strategically sensitive" details during its coverage of the Pathankot attacks in January. The order follows the recommendation of an inter-ministerial committee instituted by the Information and Broadcasting ministry. The I&B ministry, while invoking the powers under the Cable TV Networks (Regulation) Act, said it "orders to prohibit the transmission or re-transmission of NDTV India channel for one day on any platform throughout India with effect from 00:01 hrs on 9th November, 2016 till 00:01 hrs of 10th November, 2016".

This is the first time such an order has been issued against a TV channel over its coverage of a terror attack under norms which were notified last year. However, NDTV has the option to appeal the order before a tribunal. The channel allegedly revealed "crucial information" during the operations that could have been picked by the terrorists' handlers, compromising not only national security but also the lives of civilians and defense personnel, the committee alleged.

<sup>22</sup> Jean-Paul Marthoz, *Terrorism and the Media: A Handbook for Journalists*, 74 (UNESCO Publications, Paris, 2017).

<sup>23</sup> Legal Correspondent, "Live TV Coverage Put National Security in Jeopardy, says Bench" *The Hindu*, Aug. 29, 2012, available at: <https://www.thehindu.com/news/national/live-tv-coverage-put-national-security-in-jeopardy-says-bench/article3836676.ece> (last visited on Aug. 25, 2018).

<sup>24</sup> Himanshi Dhawan, "Centre Bans Live Coverage of Anti-Terror Operations" *Times of India*, March 24, 2015, available at: [http://timesofindia.indiatimes.com/articleshow/46670046.cms?&utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/46670046.cms?&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (last visited on August 25, 2018).

article 21 of the Constitution, it can be easily ascertained that the right to life is a superior right as compared to right to speech and expression. Freedom of speech and expression is only an extension of personal liberty, whereas right to life is the supreme right. Where freedom of speech and expression is subject to restrictions, right to life is not subject to restrictions. Supreme Court of India has time and again held that a speaker does not enjoy an absolute right to speak; he cannot have a right to insult others in the garb of freedom of speech and expression.

In *D.C. Saxena (Dr) v. Hon'ble The Chief Justice of India*<sup>25</sup>, Supreme Court of India, underlining the duty of the speaker (which can be read as the press also, according to the need of this article), has held as under:

The interest of the people involved in the acts of expression should be looked at, not only from the perspective of the speaker, but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The State has a legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libelous speech or expression. There is a correlative duty not to interfere with the liberty of others. Each is entitled to dignity of the person and of reputation. Nobody has a right to denigrate others' right to person or reputation.<sup>26</sup>

This opinion of Indian Supreme Court is fully in line with India's international obligations also. In international law no body has a right to attacks any person's honor; neither governments nor media has a right to dishonor any individual.

The Universal Declaration of Human Rights, 1948 (UDHR) under Article 12 also provides that, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."<sup>27</sup>Honor and reputation is one of the most important human rights in the U.D.H.R.

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<sup>25</sup> (1996) 5 SCC 216.

<sup>26</sup> *Ibid.*

<sup>27</sup> Universal Declaration of Human Rights, 1948.

Supreme Court of India in *Subramanyam Swami v. Union of India*<sup>28</sup> has held that the right to dignity is part of the right to life. From above discussions it is clear that wrong reporting by the media is a clear violation of fundamental rights as well as universally cherished basic human rights.

## V. Comparison of Print Media to Electronic Media

Why electronic media is the biggest culprit in wrong reporting? Due to compulsions of its business model, electronic media has turned out to be the violator individual dignity of people. Quest of breaking news and pressure of 24-hour broadcast has pushed television journalism towards irresponsible and unethical reporting.<sup>29</sup> Print media, which bring its issues in the market after a gap of one day/ one week/ a fortnight or a month, have a time to check the veracity of news and present a balanced and constructive analysis of news items. Electronic media does not have much time to explore vital aspects of news, they have to broadcast immediately, and otherwise rival channels will display it first. In the quest for being “*Sabse Tez*” many channels in electronic media has now abandoned all professional ethics. From these examples, it is clear that the media has negative facet also which is present on a considerably larger scale. Such uncontrolled power of media cannot be helpful either in preserving democracy in the long-run or protecting the rights of common people. Every, power becomes more useful when it is controlled, and the same applies to the media.

Is it a right time to analyze whether safeguards against such misuse of media power, if any, are effective or there is a need to introduce some more effective mechanism? At present India has several laws dealing with print media, no specific law leading with electronic media news content; at the most advertisement related rules for electronic media have been introduced.<sup>30</sup> There is a need that India

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<sup>28</sup> Writ Petition (Criminal) No. 184 of 2014.

Right to reputation is an inseparable part of Article 21 of the Constitution. A person's reputation is an inseparable element of an individual's personality and it cannot be allowed to be tarnished in the name of right to freedom of speech and expression because right to free speech does not mean right to offend. Reputation of a person is neither metaphysical nor a property in terms of mundane assets but an integral part of his sublime frame and a dent in it is a rupture of a person's dignity, negates and infringes fundamental values of citizenry right. Thus viewed, the right 36 enshrined under Article 19(1)(a) cannot allowed to brush away the right engrafted under Article 21, but there has to be balancing of rights.

<sup>29</sup> Aggressive commercial goals color every aspect of the new media landscape, pushing up ratings and circulations while dragging down journalistic standards and ethics. Chapter Fourteen-Digital Media in Asia: India and Pakistan in a report on 'Mapping Digital Media-Digital News: Making News and Breaking News.' Mapping Digital Media Global Findings, Open Society Foundations (2014) Available at: <https://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-overviews-20140828.pdf> (last visited on August 22, 2018).

<sup>30</sup>i. Press & Registration of Books Act 1867 ii. Delivery of Books 'and Newspapers' (Public Libraries) Act, 1954 iii. Delivery of Books (Public Libraries) Rules, 1955 iv. Registration of Newspapers (Central) Rules 1956 v. The Newspaper (Prices and Pages) Act, 1956 vi. The Young Persons (Harmful Publications) Act, 1956 vii. The Press and Registration Appellate Board (Practice and Procedure) Order, 1961 viii. The Parliamentary Proceedings (Protection of Publication) Act, 1977 ix. Press Council Act, 1978 x. The Press Council (Procedure for Nomination of Members) Rules, 1978 xi. The Press Council Rules, 1979 xii. The Press Council (Procedure for Conduct of Meetings and Business) Regulations, 1979 xiii. The Press Council of India (Grant of Certified Copies) Regulations, 1999 xiv. Press Council (Procedure for Inquiry) (Amendment) Regulations,

should introduce a media regulatory mechanism in such a manner, which could make media responsible towards the constitutional rights of people as well as national security, while ensuring overall freedom of media. There needs to be a balance between rights and responsibilities of media.

Here it is appropriate to discuss example of United States of America, where Federal Communication Commission, is an autonomous media regulatory body of United States Government. One of the goals of FCC is public safety and homeland security.<sup>31</sup> Through various confidence building regulatory measures, FCC makes U.S. media sensitive towards security needs. Media houses in U.S. are proactive in implementing FCC guidelines and recommendations of 9/11 commission report.<sup>32</sup> Whereas government of India did not try to initiate any active engagement with media for making media sensitive towards national security needs. In such a scenario, a kneejerk reaction of one-day ban on erring news channel cannot generate required sensitivity in Indian media and media experts.

## VI. Regulatory Framework for Media

These examples of abusive journalism show that there is an urgent need to protect people's fundamental rights from the onslaught of media. But another angle of this problem is that democratic norms demand that the media should not be controlled, rather government should facilitate media. Dr. Madhava Menon in his article has aptly opined, "the role of law in directing social change is indeed on test in the matter of broadcasting law. There is no definite model to follow it has to be evolved perhaps, through trial and error. If the Fundamentals are clear the state is willing to play its rightful role as an umpire and guardian of public interest."<sup>33</sup>

Ideally a state has to issue some minimum regulatory mechanism, so that bad practices of media could be restrained. In the absence of regulatory mechanism, any action of the state to protect the citizen's dignity has to be a post facto action, which can never reverse the injury. Self-regulatory mechanism is not sufficient, as it has never provided deterrent punishments to erring journalist or media houses. Recently some media houses revealed the name of Kathhua gang rape victim, but no action was taken

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2006 The following guidelines and policies are applicable for Information – 1) Central News media Accreditation Guidelines, 1999 2) Guidelines for publication of Indian editions of foreign magazines dealing with news and current affairs 21 3) Guidelines for syndication arrangements by newspapers 4) Advertisement Policy 5) Electronic Media Advertisement Policy 6) Guidelines for Empanelment of Audio-Video Producers with DAVP 7) Policy guidelines for empanelment of private C&S TV Channels for government advertisements by DAVP and Other duly authorized agencies of the ministry of I&B 8) Citizens Charter of Registrar of Newspapers for India 9) Guidelines for foreign investment in Indian entities publishing Scientific /Technical /Specialty Magazines/Journals/Periodicals 10) Guidelines for foreign investment in print media news sector/facsimile editions. 11) The Press Council of India's Norms of Journalistic Conduct.

<sup>31</sup> Federal Communication Commission, *Performance and Accountability Report – Fiscal Year 2008* (2008)

<sup>32</sup> The National Commission on Terrorist Attacks upon the United States, *9/11 Commission Report* (Government of U.S.A., 2004).

<sup>33</sup> N.R. Madhava Menon; "Who Controls the Air Waves" III (3) *Voices*, 28 (1995).

against them by media's 'self-regulatory-system', finally Delhi High Court had to impose fine on all these media houses.<sup>34</sup> Due to such indolent approach of self-regulatory mechanism, there is a need of introducing more-efficient system to make media more responsible.

In India, we have seen that there are several regulatory bodies for many spheres of business, which have direct impact on public life. May it be R.B.I. controlling all banks, I.R.D.A. controlling insurance companies, S.E.B.I. controlling share market or T.R.A.I. controlling telecom companies, whenever any commercial activity increases and market forces resort to foul play for increasing their profits, then government has to intervene. But for the economic or commercial activities most of the time state establishes autonomous regulatory bodies so that there should be minimum interference of government departments in the working of market players. But due to its commitment to democracy, government is still shying away from establishing a regulatory body for media. The time has come when there is a need to acknowledge that today's T.R.P. run media is less a democratic device but more a profit seeking market force. Today Electronic Media Monitoring Cell of Ministry of Broadcasting and Information is not effective. The cell is monitoring content aspect of TV channels to look into the violation of the Programme & Advertising Code under the Cable Television Networks (Regulation) Act, 1995. Though there are provisions in the act under Section 19 where government can impose a ban on telecast or re-telecast of T.V. programs on the grounds of spreading hatred among communities and under section 20 of the Cable T.V. Regulatory Act, a programme can be banned on the grounds mentioned in article 19(2) of the constitution of India. But so far monitoring cell has not done any considerable work on the basis of these provisions. Moreover, nature of T.V. contents is such that once a wrong report is aired which may amount to character assassination; the loss inflicted cannot be rectified. This problem is comparatively intense for the T.V. news, because in the times of social media, now even if concerned news channel is not re-telecasting the wrong news, but monitoring cell cannot prevent the circulation of such wrong clippings on social media such as YouTube, Facebook or WhatsApp etc. Whereas the reach of printed photocopies of fake newspaper report is comparatively less. In the 'act' punishments proposed only for the violation of program code and advertisement code, that too is very meagre. Broadly, Electronic Media Monitoring Cell has been proved a toothless branch of the Ministry of Information and Broadcasting.

Since government is unwilling to control the media, due to its quest for appearing democratic, it requested media houses to form their own mechanism for regulating their activities, and to chalk out a

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<sup>34</sup> Soibam Rocky Singh, "Delhi HC Asks Media Houses to Pay Penalty for Revealing Kathua Victim's Identity" *The Hindu*, Apr. 18, 2018. Available at: <https://www.thehindu.com/news/national/media-houses-apologise-before-delhi-hc-for-revealing-kathua-victim-identity/article23583511.ece> (last visited on August 22, 2018).

code of conduct for the reporters. The Self-Regulating Mechanism of media, Indian Broadcasting Foundation' has issued guidelines which reporters should follow and has established a mechanism for redressing of public complaints against the media, but this body has proved merely eyewash in last 5 years. According to the data on IBF website till 2016 IBF had received 33854 complaints out of which 2814 complaints are related to news items, but in response IBF has issued only 13 advisories, but no punitive action has been taken against any media house. Moreover, out of these 13 advisories none is related to fake news or defamatory news etc.<sup>35</sup>

Recently, Ministry of Information and Broadcasting Minister issued a notification providing guidelines, focusing at imposing sanctions on fake news. But it was vehemently opposed by many media person. Within few hours Prime Minister of India' Office had to intervene; and in an unprecedented move P.M.O. asked Ministry of Information and Broadcasting to remove this notification. Prime Minister Modi opined that such guidelines should come from Press Council of India (PCI) and News Broadcasters Association (NBA) themselves; government should not prescribe any guidelines. It is pertinent to analyse these guidelines.<sup>36</sup> These guidelines provided *inter alia* if after inquiry it is found that news is fake, then accreditation of the erring journalist will be suspended for six months first time, if second time same journalist is found broadcasting fake news then his/ her accreditation will be suspended for one year. But if third time the journalist in question is again found guilty then his accreditation will be cancelled permanently.

Though motive of this notification can be appreciated, but it was suffering from following problems:

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<sup>35</sup> "Self-Content Regulation" Indian Broadcasting Foundation, 2016-17, available at: <http://www.ibfindia.com/self-content-regulation> (last visited on August 22, 2018).

<sup>36</sup> Press Information Bureau, *Guidelines: for Accreditation of Journalists Amended to Regulate Fake News* (Ministry of Information & Broadcasting, 02-April-2018). The release stands withdrawn. Available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=178306> (last visited on August 21, 2018).

Text of withdrawn guidelines is as under:

Noticing the increasing instances of fake news in various mediums including print and electronic media, the Government has amended the Guidelines for Accreditation of Journalists. Now on receiving any complaints of such instances of fake news, the same would get referred to the Press Council of India (PCI) if it pertains to print media & to News Broadcasters Association (NBA) if it relates to electronic media, for determination of the news item being fake or not. Determination is expected to be completed within 15 days by these regulating agencies. Once the complaint is registered for determination of fake news, the correspondent/journalist whoever created and/or propagated the fake news will, if accredited, have the accreditation suspended till such time the determination regarding the fake news is made by the regulating agencies mentioned above.

The Accreditation Committee of the PIB which consists of representative of both PCI and NBA shall be invariably be reached out to for validating any accreditation request of any news media agency. While any confirmation of publication or telecast of fake news having been confirmed by any of these agencies, the accreditation shall be suspended for a period of 6 months in the first violation and for one year in the case of 2<sup>nd</sup> violation and in the event of 3<sup>rd</sup> violation it would be cancelled permanently.

While examining the requests seeking accreditation, the regulatory agencies will examine whether the 'Norms of Journalistic Conduct' and 'Code of Ethics and Broadcasting Standards' prescribed by the PCI and NBA respectively are adhered to by the journalists as part of their functioning. It would be obligatory for journalists to abide by these guidelines.

- i. Mere complaint can suspend accreditation for at least 15 days. Any suspension with mere filing of complaint can be grossly misused to send any rival media person off air for next 15 days. Any such action of suspension of accreditation should have been prescribed at least after preliminary inquiry from the regulatory body. If regulator says there exists a case and they are starting proceedings by sending a show cause notice, only then suspension should have taken place.
- ii. These actions could have been taken only against accredited media persons, i.e mainstream media. Whereas sphere of substandard journalism and social media journalism thorough websites was not under its cover. As due to growth of social now newspapers and T.V. channels are not the only sources of news, social media is also there. Any effort to make media responsible, if not applicable to social media platforms, will prove futile.

These problem areas should have been rectified, and as Prime Minister has said these guidelines should come from the regulator itself. Hence now onus is on PCI and NBA, whether they want to fake news flourish or stopped, if they do not come out with any such guidelines to curb fake news.

200th report of the Law Commission of India has pointed out many drawbacks in the working in the media.<sup>37</sup> The commission has reported following acts of media which are especially prejudicial to an accused's right to have a fair trial:

- I. Publications concerning the character of accused or previous conduct;
- II. Publication of Confessions;
- III. Publications which comment or reflect upon the merits of the case;
- IV. Photographs: Apart from publication of photographs interfering with the procedure of identification of the accused, there is also the likelihood of such publication giving a colour of guilt with added emphasis;
- V. Creating an atmosphere of prejudice against the accused;
- VI. Criticism of witnesses. Witnesses may be deterred if they become the object of public criticism; and
- VII. Publication of interviews with witnesses.

But as a remedy commission has mainly suggested amendments in 'The Contempt of Court Act', in order to increase the definitional sphere of the term 'publication', as the commission's main focus was on the media trials; hence it concentrated the recommendation on the contempt of court perspective.

But now the media is not only criticizing the government, but common men and women are also becoming victims of media's unethical reporting. If political leaders are clamoring against out of

<sup>37</sup> Law Commission of India, 200<sup>th</sup> Report on Trial by Media: Free Speech and Fair Trial under Criminal Procedure Code, 1973 (August, 2006). Available at: <http://lawcommissionofindia.nic.in/reports/rep200.pdf> (last visited on August 22, 2018).

context, broadcast of their statements, then celebrities as well as common people are also crying against media trials.

## VII. Conclusion and Suggestions

In many respects, media, which is an important pillar of democracy has worked for the benefit of citizens. But as in 1990s, in the era of 'Liberalization, Globalization and Privatization' media has become an industry. Commercial perspective has gripped Indian media in general and Electronic Media in particular. In the last two decades, the lee side of the media has also appeared and it has proved to be harmful for the democratic norms as well as basic human rights. Now it is a right time when government should establish an autonomous regulatory body for the media, combining PCI and NBA, with a mandate to regulate 'all forms' of media including print, electronic as well as social media news.

### Suggestions:

- i. This researcher proposes that there should be an autonomous regulatory body for regulating the activities of all forms of media and all forms of publications. Which can be named as 'Media Regulatory and Development Authority of India' (MRDAI);
- ii. The proposed body, MRDAI should be headed by such a renowned media personality whose integrity should be beyond doubt. Bureaucratic, influence in this body should be minimized to the extent of giving legal and official support.
- iii. The Tenure of its chairman should be 6 years or the age of 65 years whichever is earlier;
- iv. There should be a ban on such chairman to assume any kind of public office after his stint as Chairman of MRDAI, like Comptroller and Auditor General; and
- v. Funds for such regulatory body should come from the consolidated fund of India.

If such a format is used to setup the proposed Media Regulatory Body, then it can ensure minimum interference by the government and the freedom of media can also be preserved, while making media accountable for its mistakes.