

Media law in India: The current challenges

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ABSTRACT: *Media law in India is not a single statutory law. It is a collection of different statutes which prevail over different medium of media. It has been an evolution in itself and has been revised from time to time as per the requirement to maintain its objectives. But this evolution has faced many challenges throughout and yet it feels that it has lost its crux to deliver the information in the way it deserves. It is a matter of concern that media is changing the perception of people in such a way that people tend to believe even in the misinformation being spread. The press being a powerful medium of mass communication should be free to play its role in building a strong viable society. Denial of freedom of the press to citizens would mean to undermine the power to influence public opinion and be counter to democracy. The right to freedom of speech and expression carries with it the right to publish and circulate one's idealist, opinions and other views with complete freedom and by resorting to all available means of publication. The right to freedom of the press includes the right to propagate ideas and express views and to be able to publish and circulate them. But, the freedom of the press is not absolute in the same way as the freedom of expression is not. The limitation to this fundamental right is not being cooperated in certain ways as the new evolving media is taking advantage of certain fact by demanding support of freedom of speech and expression. The need of time is that the legislation and the judiciary should jointly protect the fundamental right of speech and expression from collapsing in the modern stage of media and byproducts of the internet.*

Key Words:

INTRODUCTION

The relevance of circulating information by media is considered a part of Fundamental Right to Freedom of speech and expression. In fact some philosophers consider media as fourth pillar of Constitution after Legislature, Judiciary & Executive. Hence it is necessary to provide media law so that media and its regulating authorities can perform their functions properly and the journalist can maintain the principle of ethics in the industry. While using the term “media law”, the focus is mainly on the law. It examines the boundaries within which the media organizations and journalists operate. Hence this type of emphasis diverts the focus onto terms like freedom of speech, defamation, confidentiality, privacy, censorship, contempt and freedom & access to information.

DEVELOPING STAGES OF MEDIA LAW IN INDIA

The laws related to media in India have emerged throughout the time in a drastic manner. The press regulation came into existence when the British East India Company started ruling a part of India after the Battle of Plassey in 1757. Then the newspapers in India were published by only Europeans and expulsion of the editor (printer) was ultimate penalty.¹

The first attempt to start the newspaper in India was made by William Bolts, an ex-employee of the British East India Company in 1766 but was deported. Later a number of papers on the affairs of India “especially” in respect to the state of Bengal and its dependencies” was published in 1773 by J. Almon, London as “Considerations on Indian Affairs” in two volumes with maps and survey reports. He has been identified as former Judge of the Mayor’s Court of Calcutta in this publication.

The James Augustus Hickey started The Bengal Gazette or Calcutta General Advertiser in 1780, the first newspaper in India. It was seized in 1872 because of bluntly criticizing the government. Licensing, like censorship was also a European institution to control the press & was introduced in Bengal in 1823 through Adam’s regulations. The East India Company had instructed that no servant of the company should have any connection with a newspaper.²

Metcalfe’ Act was introduced in 1835 which replaced the licensing regulations and was applicable to entire territory of the East India Company. It also stated that the printer and publisher of every newspaper declare

¹Media law in India : An Article by CA Rajkumar S. Adukia

²Ibid

the location of the premises of its publication. However Licensing was reintroduced by Lord Canning in 1857 and was applicable to all kinds of publications. With the introduction of Indian Penal Code in 1860, the act laid down offences which any writer, editor or publisher must avoid - the offences of defamation and obscenity.

The next important event in that era of media laws in India was the enactment of the Press and Registration of Books Act (25 of 1867). This Act is still in force with amendments being made from time to time. The object of this Act was to provide regulation for the printing presses and of periodical containing news, for the preservation of duplicate of books and for the registration of books.

With Swadeshi Movement and partition of Bengal the opposition of the Government reached to its peak, both in the press and the public. In June 1908 the government passed the Newspaper (Incitement to Offences) Act, which provided power to local authorities to sue the editor of any newspaper, who indulges in writings meant to incite rebellion. Nine suits were instituted under this Act as a result of which seven presses were confiscated. Then the Press Act of 1910 was enacted, which empowered the government to demand security from any newspaper, a provision similar to what existed in the Vernacular Press Act. British Parliament passed the Copyright Act in 1911. Similar provisions came to India by Indian Copyright Act, 1914 (3 of 1914). It was replaced by a comprehensive legislation only in 1957 by the new Copyright Act (14 of 1957). In 1918 Government passed the Cinematograph Act (2 of 1918), which was replaced by the Cinematograph Act, 1952 (37 of 1952).³

Before Independence, the Press Laws Enquiry Committee in March 1947 was appointed by the Interim Government to examine the press laws. The Committee gave its report on 22 May 1948 after Independence and partition of India. After the report of this committee was submitted the Act of 1931 was replaced by Press (Objectionable Matter) Act 1951. However, the mood was so much for freedom of press that it was allowed to lapse in February 1956 and was repealed in 1957. The Indian Constitution gives every citizen fundamental right to freedom of speech and expression and the courts have interpreted that it includes freedom of the press (Under Article 19(1)(a)). A major setback to the freedom of press in India was seen when Emergency was imposed in June 1975 and censorship was introduced. However, after the defeat of the then ruling party in 1977 General Elections it has not been possible for anybody to follow the example. Press Council advised the Government not to put curbs on the freedom of press even in disturbed areas like that of Jammu and Kashmir. This policy looked better than the curbs on the press by Government. Liberal ethos reinforced after 1977 has affected broadcasting too. While demand for self governing corporation to control All India Radio and Doordarshan was accepted, Prasar Bharti, an autonomous corporation came into existence from 15 September 1997 after the notification of the Prasar Bharti Act. It has not been possible to come up with a regulator who can control broadcasting content despite several bills that came to Parliament over the years and private satellite and cable channels are enjoying more freedom than in any other part of the world. Though the Government has not allowed news on private radio outfits yet, freedom of print and television channels make India stand out as one of the most liberal countries in the world as far as the freedom of media goes. Right to Information Act 2005 has been implemented which has further extended freedom of media in India. But in this progressing period, the need of restriction in private satellite and cable channels is argued by many committees. . Recent events related to the news media, such as the proliferation and subsequent curbing of social media, the paid news phenomenon, fake sting operations, trial by media, breach of privacy, etc. pose a set of anxieties. ⁴

Previous Analysis and Suggestions

In respect to elections, the Committee on Electoral Reforms constituted by the Ministry of Law & Justice submitted a paper on Electoral Reforms supported by the Election Commission of India which dealt the issues related to media and elections. The committee examined the recommendations and observed the need for restriction in opinion polls. The Parliamentary Standing Committee on Information Technology in its forty-seventh report examined issues related to paid news and recommended that either there be a statutory body to look into content from both print and electronic media or that the PCI be revamped with powers to tackle paid news and a similar statutory body be set up for electronic media.⁵ The Committee

³Mass India law and Regulation: Bahri Sons (India Research Press)

⁴Media law in India : An Article by CA Rajkumar S. Adukia

⁵Consultation on Media Law: Law Commission of India (link:<http://www.lawcommissionofindia.nic.in/views/Consultation%20paper%20on%20media%20law.doc>)

observed the need to provide a comprehensive definition of paid news so that 'news' and 'advertisement' could be demarcated. The Committee noted that the phenomenon of Private Treaties gave ascend to Paid News and suggested strict enforcement of existing guidelines and codes to bring transparency in Private Treaties.

Method of Regulation

Media regulation in India is not unified, and has multiple regulatory bodies. It is also a very complex structure to understand the jurisdiction of each regulation. Further there are issues in enforcing the decision of such regulatory bodies. In Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal, the Supreme Court suggested an independent Broadcasting media authority along the lines of TRAI followed by the Delhi High Court in Indraprastha People v. Union of India recommended that an independent statutory body be set up under the Cable Television Networks (Regulation) Act, “consisting of men and women of eminence.”⁶

Paid News

Press Council of India has defined Paid News as “any news or analysis appearing in any media (print and electronic) for a price in cash or kind as consideration”. Creating misinformation and deception in minds of people effect the true perception of a free mind. The Parliamentary Standing Committee on Information Technology, in 2013, has brought out its forty-seventh report on the phenomenon of paid news, where it has highlighted the ‘dangerous trend’ of presenting paid-for information as news, that has spread at ‘remarkable pace’ in some parts of the media. The Report also outlined the practice of ‘Private Treaties’, where a non-media company transfers shares to a media company in exchange for advertisements, space and favorable coverage. Guidelines are present both in print and broadcast media that call for clear demarcation of advertisement and news content. However the guidelines are either subvert or ignored.⁷

Cross Media Ownership

Monopoly in the field of Media ownership has brought negative impact in the quality of media freedom in our country. This monopoly has not received public scrutiny and is also unregulated.

The regulation must balance the broadcast and distribution in such a way that it does not pave way for single handed control & ownership of both. Another issue with this monopoly is the consolidation of single media entity in a particular zone. Along with that there are no cross media restrictions across print, television and radio in the counter.

Media and Individual Privacy

The growth of Media as certainly caused a decline in the privacy of an individual. Right to Privacy though not expressly defined under the constitution of India but in Rtd. Justice K S Puttaswamy v. Union of India the Supreme Court held Right to privacy as a fundamental Right and is intrinsic part of Article 21 of Constitution of India. Though the freedom of Speech & Expression, as guaranteed in the Constitution of India, empowers the press to disclose information vital to public interest, it often results in intrusion of privacy. In 2018 NDTV was suspended by order of Supreme Court for exposing the confidential information of Indian Army.

In certain cases, Sting operations have been used to extract information or to expose within the realm of an individual which cause no harm to public interest. Sting operations invading personal privacy by the media are fairly common occurrence. The Right to Privacy Bill, drafted as a possible antidote, is yet to be introduced

Trial by Media and Right of the Accused

In case of an ongoing Trial, the difference between an accused and the convict and the basic principle of “innocent until proven guilty” are regularly overlooked by the media. By creating parallel trials, the media put the pressure on the Judge as well as the Advocate. A fair trial and investigation, which are foremost constitutional guarantees, are as much a right of the accused as they are of the victim. But once a matter comes under intense media glare, it puts pressure on the prosecution to secure evidence which may incriminate an accused, lest the media build negative public opinion against the prosecution. In this period of exponential growth and reach of media, unhealthy trends of competition leading to sensationalized reporting has led to give the well-established rule of sub-judice a go-by. While this is certainly not true across the board to all media publications, the problem is certainly extensive. In case of Sahara India Real Estate Corporation v. Securities and Exchange Board of India, the Supreme Court gave Judges the power to

⁶Consultation on Media Law: Law Commission of India (link:<http://www.lawcommissionofindia.nic.in/views/Consultation%20paper%20on%20media%20law.do>)

⁷Ibid

order postponement of publication on a case by case basis so that it does not cause prejudice to fairness of the trial and also protect the administration of justice.

Defamation

The issue of defamation is a very important matter for consideration. The instances of fake sting operations or trial by media give credence to allegations of irresponsible journalism. Also the threats of legal action with punitive damages under the laws of defamation lead to a ‘chilling effect’ on the publication of free and independent news articles and puts undue pressure on journalist and the publishing houses. Any change to the law of defamation in India must balance these two considerations. Currently, civil defamation is discussed under the law of torts whereas criminal defamation is an offence under Section 499 of the Indian Penal Code. A journalist has no special status under defamation laws in India. Although the press enjoys the freedom of speech and expression under Article 19(1)(a) of the Constitution, defamation is considered a ground for a reasonable restriction to this freedom under Art. 19(2).⁸

Demands have been made in the past by entities such as the Editors’ Guild of India, to decriminalize defamation as it pertains to journalists. The proposal has been taken into notice by the Law Ministry as well. In 2003, the newspaper The Hindu mounted an unsuccessful challenge in the Supreme Court against the use of the criminal code for defamation, on the ground that it violates the press freedom guaranteed by the Constitution. Therefore, a comprehensive review of laws regulating the media must consider the question of defamation laws as well.

Publication and Contempt of Court

Certain activities of media have lead to cause Contempt of Court. The rationale of contempt proceeding is to prevent erosion of public confidence in the administration of justice. The law of contempt of Court is one of the grounds for reasonable restrictions under Article 19(2) to the freedom of speech and expression. While civil contempt refers to the willful disobedience to any judgment, or order of a court, criminal contempt is an offence under Section 2(c) of the Contempt of Courts Act, 1971, and is punishable by imprisonment of up to six months. It is defined as the publication of any matter which lowers the authority of any court, or scandalizes or tends to scandalize, prejudices or tends to prejudice, or obstructs or tends to obstruct any judicial proceedings, or the administration of justice. It is evident that this definition is extremely wide, particularly as it is unclear what the words “tends to” encompasses.

There have been repeated calls for reform of contempt of court laws. The NCRWC recommended in 2002 that Article 19(2) be amended to provide for the justification of truth and public interest in matters of contempt. In 2006, Parliament amended the Contempt of Courts Act to introduce Section 13(b), which permitted justification by truth as a valid defense if the same is in public interest and made bona fide. Nevertheless, the manner of application of this defense in the courts has been inconsistent, and a constitutional amendment has not been introduced. Hence, there is a need to revisit the law on contempt and consider the need for further amendments.⁹

Regulations surrounding government owned media

Media organizations in India are owned both by government as well as the private sectors. Government-owned media such as All India Radio, Doordarshan, Directorate of Field Publicity, Press Information Bureau, etc., have an important role to play as the matters they address are not extensively covered by large sections of privately-owned media. Government-owned media is not only a channel through which news about developmental initiatives is passed on to the common man but it can also be an independent filter which helps in shaping the common man's perception of government policies and their implementation. However, government owned media is not seen independent of the government as adequately. Hence, the credibility of the pro-government stories they produce may be questioned, especially if they focus exclusively on describing governmental initiatives rather than using their independent judgment on the efficacy of initiatives. Further, issues also arise regarding the quality of such government media when compared to private media. In January 2013, the Ministry of Information & Broadcasting formed an Expert Committee for the purpose of reviewing the institutional framework of Prasar Bharti including its relationship with

⁸Consultation on Media Law: Law Commission of India (link:<http://www.lawcommissionofindia.nic.in/views/Consultation%20paper%20on%20media%20law.doc>)

⁹Consultation on Media Law: Law Commission of India (link:<http://www.lawcommissionofindia.nic.in/views/Consultation%20paper%20on%20media%20law.doc>)

Government. The Expert Committee submitted its report on 24.01.2014 suggesting recommendations to make Prasar Bharti administratively and financially autonomous of Government.

Social Media and Section 66A of the Information Technology Act, 2000

The ability to disseminate information seamlessly over social media has resulted in a rising need to regulate the content of such information. Section 66A of the IT Act makes it a punishable offence to send messages that are offensive or false or created for the purpose of causing annoyance or inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, through a computer device. Since no guidelines have been laid down for identification of harmful information, the wide amplitude of the provision has often been used for politically motivated arrests. Recently, two professors were arrested in West Bengal for posting a cartoon critiquing a politician. In another incident, two young girls from Maharashtra were arrested – one for posting a Facebook status about the chaotic shut down of Mumbai due to a popular politician's death and the other for 'liking' the status post. Section 66A is currently under challenge for being violating to the freedom of speech and expression. Though no stay on arrests under this section has been granted, the Supreme Court has held that no person should be arrested for posting objectionable comments online without permission of senior police officials.¹⁰

At the same time, social media has often been used as a conduit for instigating ethnic and communal violence such as false rumors online in August 2012 that led to an exodus of North-eastern migrants from South India. In 2013, the Election Commission introduced some principles to regulate internet campaigns given the vast use of social media by political parties. Though, the Print and Electronic Media Standards and Regulation Bill, 2012 proposed the establishment of a media regulatory authority, the Bill did not get introduced. Under the present Act, the Cyber Appellate Tribunal is empowered to deal with complaints under the Act but is largely confined to cases of fraud and hacking.

CONCLUSION

Media ethics has an important role to play in reconstructing the important 4th pillar of constitution. The need of the hour is to revise the regulations in an effective manner so that all the lost grounds and failure can be reinstated in an effective way. Certain pending bill and the recommendation shall be passed as soon as possible. There has to be an unequivocal thought process on what issues are to be dealt with in the legislation of the Press Council of India (PCI Act) and how they shall be instituted effectively. Further, equilibrium is to be maintained between freedom of speech and restriction on speech. Management and the officials need to assure freedom and protection to reporters and journalists so that they can also report the news with no persuasion from political, governmental or rich influential people and organizations. The Press Council should come up with ideas in cooperation with notable journalism training and establishments that make sure that the journalist are well acknowledge with ethical practice. Drafting a common code of conduct for journalists - reporters and editors - separately taking ideas from working journalists across print, TV and web, retired veteran journalists, and those affiliated with media are certain important measures that can be implemented. It can be concluded that if the government really believes in self-regulation, it should make efforts to mandate or facilitate the coming together of the broadcasting fraternity under one umbrella. It should formalize the self-regulatory code and shall pass heavy penalties to have a deterrent impact on unethical media practices. Allocation of funds to media shall pass through Press council of India so that the council can regulate the fund equally and unbiased to all and does leave any scope for paid news. What now remains is the implementation of the suggestion and advice of the council by the government which can play a huge role in correcting the system.

¹⁰ Consultation on Media Law: Law Commission of India (link: <http://www.lawcommissionofindia.nic.in/views/Consultation%20paper%20on%20media%20law.doc>)