

Need for Regulation of media.

Balaka Das and Girish Kumar ¹

Abstract

Media is the most important organ of democratic society. Freedom of press is the parameter to measure smooth working of a parliamentary government. Media is the most powerful medium to communicate with the masses. But lately media have degraded its standard and quality to a great extent. Corruptions, paid news, invading privacy are some of the things which have led to increase in complaints. The unlimited power and freedom given to media, has led to the arbitrary use of it. The need of the hour is some kind of regulations so that media cannot abuse the freedom given to it. No doubt there are many rules and regulations that have been already laid down for media regulation, but all those have proved to be of no use. Regularizing media does not mean violation of Article 19(1)(a) of the Indian Constitution. The courts in many cases have laid down that regulation and restriction can be put on media if it is needed for fair trial and for administration of justice. Thus, regulation of media regulation is of utmost importance so that it works within the limitations.

Whoever controls the media, controls the mind - Jim Morrison

In today's World, media is the fourth pillar of democracy. Undoubtedly, media has marked its much important status in the development of today's society. In a democratic country, freedom of media is of utmost importance. As it is quoted by Thomas Jefferson, 'Where the press is free and every man able to read, all is safe.'

Freedom of speech and expression is so important that without it, democracy becomes an empty slogan. The maturity of the government can be measured by acceptance of free speech and expression. Freedom of expression will be almost a vague idea if it does not include in itself free

¹ 4th year (5 year B.A.,LL.B) ,Bangalore Institute of Legal Studies

media. It is the most important criteria for a parliamentary democracy. Media largely shapes the mind and thoughts of the public and there a great deal of responsibility lies in their shoulders.

Freedom of media is not expressly mentioned anywhere in the Articles of the Indian Constitution but one can find it inherent in Article 19(1)(a). The preamble of the Indian Constitution embodies for its citizens the liberty of expression, thought and belief. Article 19 (1)(a) of the Indian constitution states protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;

The word media originated from the Latin word tunica or membrana, which is the plural form of media. It may be defined as the means of communication like radio, television, newspaper or magazine, that reaches out to the public and influence them whether directly or indirectly.

Media is the most important means of mass expression. It had a tremendous amount of impact on the sentiments of the people whether within the country or globally. It throws light to every nook and corner of a country's plight as well as its developments. Media has successfully played a perfect role of a critic on different governmental policies and activities. Nobody can question the eligibility of media when it comes to highlighting an important issue. It is one such medium through which thought, ideas and views can be expressed and discussed in a wider platform. The media being the sentinel of modern democratic freedom, has in many instances played a important role in bringing the country together and uniting them against any kind of social evils and bringing the problem into limelight. The media industry in India is the largest in the world and has grown in leaps and bounds over the years in terms of both quality and quantity. In India media is consisted of different forms of communication such as newspaper, radio, television, cinema, magazines, websites etc

This Article guarantees the right to speech and expression. This can be interpreted as any person can express his views in the form of writing or by mouth or printing pictures or any other available mode. This also includes publication and therefore freedom of press has been very aptly included.

However, lately there has been much speculation about media and the regulations on it. Regulation on media no doubt is a restraint on the freedom of speech and expressions but on the other hand, due to the ever-changing dimensions of media, some regulations are necessary. Freedom can be misused when it is unlimited and unaccountable. The regulation of media that we are talking about is none other than for the preservation and protection of the fundamental right to information and freedom of expression. Where on one hand the Constitution of India guarantees the freedom of speech and expression in Article 19 (1)(a), on the other hand in article 19(2) it gives an opportunity to the state to put reasonable restriction by making laws to maintain public order or to prevent the sovereignty and integrity of the state.

A survivor of sexual harassment or rape whose name has been flashed by media, digging into the matter just to increase public interest, hampering and increasing the mental trauma of the victim forces us to understand the need of regulation on media. It is no doubt that the freedom of press is guaranteed by the Constitution of India but it is not absolute. Some interviews of the guilty or the accused is been held to elaborately that it has resulted in an adverse effect in the society.

In the case of *Smt. Prabha Dutt v. Union of India*², the apex court gave a new dimension to the notion of freedom of press. The apex court while delivering the judgment said that, “Before considering the merits of the application, we would like to observe that the constitutional right to freedom of speech and expression conferred by Article 19(1)(a) of the Constitution, which includes the freedom of the Press, is not an absolute right, nor indeed does it confer any right on the Press to have an unrestricted access to means of information. The Press is entitled to exercise its freedom of speech and expression by publishing a matter which does not invade the rights of other citizens and which does not violate the sovereignty and integrity of India, the security of the State, public order, decency and morality.”

The above judgment of the apex court was again upheld in a similar case of *Sate v. Charulata Joshi*³, the Hon’ble Supreme court of India observed that, “In *Smt. Prabha's* case (supra) this Court had observed that the Constitutional Right to Freedom of Speech and Expression conferred by Article 19(1)(a) of the Constitution which includes the Freedom of Press is not an absolute right and does not confer any right on the Press to have an unrestricted access to means of

² (1982) 1SCC 1

³ (1999)4 SCC 65

information. The Press is entitled to exercise its freedom of speech and expression by publishing a matter which does not invade the rights of other citizens and which does not violate the sovereignty and integrity of India, the security of the State, public order, decency and morality.”

The impact of globalization can be seen in media in the form of paid news. Due to increase in competition, the media industry has commercialized itself largely. There has been a gradual shift from quality news to quantity news. Corruption has risen in all the spheres of the society and it has grasped media too. News for money, called as ‘paid news’ or selling reports of journals has worsened the scenario. All this have led to such a negative impact on the people that they have lost the trust on media largely. With each passing day, the situation is becoming even more pathetic. Whether it is the corporate world or any other for the instance, everywhere it is tinted with the mark of paid news. In today’s world, there are so many news channels because of which the competition has risen to its peak. The outcome is very predictable, which is biased news, under report or inaccurate perception just to fulfill the hunger of profit.

In US, press is considered a powerful engine, which is liable to be grossly abused in every possible sphere. In *Rosenbloom v. Matromedia*⁴ it was observed that, “There comes a time when even speech loses its constitutional immunity. Speech innocuous one year may at another time fan such destructive flames that it must be halted in the interest of the safety of the Republic. When conditions will be so critical that there will be no time to avoid the evil that the speech threatens, it is time to call a halt. Otherwise free speech which is the strength of the nation will be the cause of destruction.” It can be easily conferred from the above that freedom of press without any regulation or limitation can easily become the scourge for a nation.

A new area of concern has come up regarding sub-judice matter. A matter is said to be sub-judice when a case is pending in a Court of Law and judgment is yet to be pronounced.

In another case, *Venjaramoodu M.Ziyad S/O Muhammed v. Union of India*⁵ it is argued by the learned counsel for the petitioner that the reporting of the proceedings of the various courts in this country by media on some occasions is either inaccurate and sometimes even false. Any wrongful message published in the medias, regarding the court proceedings and judge's opinion,

⁴ (1971) 403 US 29

⁵ Judgment pronounced on 7-4-2011 in WP(C).No. 8450 of 2011(S).

will certainly decrease the credibility of the judiciary in the society and hence the medias should not be permitted to publish the court proceedings and Judge's opinion regarding the pending cases in their own interpretation and if the media wants to publish the court proceedings and Judge's opinion in a pending case, there must be some procedures to be followed. The court further stated that it is not unconstitutional to impose some restriction to speech or publish any matter, which defames the entire judicial system. The public in general always believe the judiciary and its independence and its credibility and hence no one shall be permitted to raise an allegation against the judiciary and the judicial system by a speech in a public meeting. However, it was held by the court that the regulation in media would have adverse effect. Nevertheless, it can be inferred that it not beyond the notice of the judiciary that media is not an absolute body and needs some kind of regulation.

The Supreme Court of India, in *Sahara India Real Estate v. SEBI*⁶ wonderfully highlighted the need of media regulation and the need to strive for it. The learned council of Sahara had shared some confidential documents with the learned council of SEBI, and the same was published in the news by a TV channel even before the hearing in the court. Detailed news which included even the valuer who did the asset valuation was made public. The court regarded the above incident as very distressing and it is pertinent, nowadays, that these types of incidents are increasing. It effects the business and in administration of justice. The learned council of Sahara said it was high time the court should lay down some regulations regarding the publication of sub-judice matters. They further state that it is highly not recommendable if any comment is made in any matter regarding a sub-judice matter and hence media commits contempt of court. If there is any proposal, made inter-parties, than the parties have the privilege of opting for non-disclosure. It was argued that when there is no public concern involved the matter should not be made public. The court should give guidelines regarding the manner as well as to the extent of publicity on the matters, which is yet to be adjudicated. It was argued that the court should lay down directions and frame guidelines as it deems fit. The court regarding this matter made it clear that it is concerned with the basic question, whether any guidelines is to be laid down and if yes whether it should be self regulatory.

⁶ (2013)1 SCC 1

In United Kingdom, the parliament is supreme and the constitution is not written. Therefore, the Parliament can put limits on the freedom of speech. Under the Act of 1981, sec 4(2), the court has the power to postpone the publication until they deem fit or till the substantial risk for administration of justice ends. There are times when even fair and accurate reporting may give rise to substantial risk of prejudice. In such a situation, the only course left is that of postponement orders. It not only prevents the risk of prejudice but also safeguards the fairness of the trial and possible contempt. The important question that arises is that whether the freedom of expression is given more importance over fair trial?

In Australia, the courts can ban the publication of its own proceeding by exercising their jurisdiction. It embodies a different concept named 'sub-judice contempt'. The court of record under Article 129/ Article 215 have the power to restraint publication or evidence.

*Naresh Shridhar Mirajkar v. State of Maharashtra*⁷, the court held that open justice is not absolute. It was held that the High Court has inherent powers to restraint media from reporting a matter for the proper administration of justice, and if any question arises about violation of Article 19(1)(a), than it will not be treated as violation of fundamental right, as it might be required to meet the ends of justice. All courts have an inherent power to restraint media for proper administration of justice and it will not be considered as violative of Art 19(1)(a).

Regulation on media broadcasting has been the centre of attention. In a number of cases, the court has laid down in its judgments, the need for regulation in media. The court again reaffirmed its stand on the matter in the case of *Indraprastha People & Anr v. Union of India*⁸. The Delhi High Court while passing the judgment considered mass media to be the foundation of democracy. The extent of independence of media, according to philosophers and statesmen, is the scale to measure the democratic credentials. Been considered as an important part of refinement, thought and character, media and the freedom enjoyed by media has lately occupied public concern and has become a major topic for debate. We have witnessed many times that television, a type of media, has used unethical means to increase its viewership, which on the other hand results in increased revenue through advertisements. The main motive behind this remains simple and i.e. easy and quick gains in the shortest time possible. Is has become a

⁷ *AIR 1967 SC 1*

⁸ *Judgment pronounced on 9-4-2013 in WP(C)No.1200/2011*

known fact that in order to obtain the attention of the public, truth remains secondary. Facts are twisted and produced, adding a tinch of colour and spice, in such a way that it receives maximum amount of gossips and the attention of the people. The worse is that when an individual's privacy is invaded, cheating and deceiving happens it is made a big hue and cry that it leads to negative impact on the persons and the public. The court further stated that people themselves provide news as well as receive it. Media personnel has to deal with a vast arena of topics some of which are very sensitive such as sexual harassment stories or infiltration or topics such as child labour or exploitation of under privileged, the list is ever increasing. Therefore, it will be obviously expected from the media that they change their language or mode of broadcast according to circumstance. Therefore, the court came up with a six-fold path consisting of (i) right action, (ii) right speech, (iii) right resolution, (iv) tight exertion, (v) right mindedness (vi) right point of view. These six-fold path consists of physical control, mental control and intellectual development.

The growing concern now, with regard to the independence of judiciary, is the publication of sub-judice matter through mass media. Even much before a judgment is pronounced by the court, the media publicize the matter in such a way that the public already forms a mindset towards accused ignoring the actual judgment. The media depicts the matter in such a way that it causes a greater harm rather than a greater good. In my opinion, media must carefully broadcast matters, which are sub-judice, and a reasonable restriction must be imposed and thereby providing a better protection for the state and the public.

Hon'ble Justice G.N Ray⁹ expressed in an article that, "The experience of the Press Council of India clearly demonstrates that even by a statute, a free and independent body can be set up to function as a regulatory watch dog over the fourth estate which by virtue of the legal sanction behind its action/adjudication, can ensure that the press properly discharges its duties and responsibilities towards the public and the society at large. Therefore, functioning of Press Council of India under a statute deserves meritorious consideration while evaluating the pros and cons and efficacy of different types of regulatory bodies for the media."

⁹ *Need for Regulation: The Indian Experience Justice G.N. Ray,*
http://gfm.d.info/images/uploads/presentation_Chief_Justice_Ray.pdf

The Press Council of India was formed on the recommendations of the First Press Commission, the main object of which was to change the functioning of media from the colonial rule to the new democratic setup. The body is a purely autonomous body without any kind of intervention from the government or any other body. The Press Council of India is entrusted with the work of safeguarding the freedom of press. It has to make sure that press maintains its standards and quality regarding the information that it broadcasts.

Media performs a vital role in reporting the open trial matters to the public. The basic reason of reporting a open trial is that people should be aware that justice is served correctly and the court has taken right course to achieve it. However, many a times such reports are tainted as media shows such matters to grab the eyeballs of the public. The court is justified in exceptional cases in holding a trial in camera if at all it is in the public interest or for proper administering the justice. It was held by the apex court in one of its cases that the main objective of the court is to render justice to both parties and if the very purpose of finding the truth is being defeated when the trial is subjected to public gaze, the court can limitations on open trials.

There has been a gradual increase in competition in the field of media, this may be attributed to changing demand of the viewers and to cope up with this demand media groups are tending towards such methods that are dangerous to the very principle of alternative dispute resolution especially mediation. Media has started to publicize matters, which are in the nature of interpersonal relationship between husband and wife, and this will have direct effect on matters that can be settled through mediation. Once such matters, which are generally preferred to be In-camera, is publicized by media, the scope for mediation nullifies. This can be attributed to the fact that once a party is brought before the media general conception of the society upon him goes down, such person even before the dispute gets decided by the court, whether in his favour or not, people tend to form their own opinion. This mentally traumatizes the party concerned. Henceforth media should take outmost care while handling such situations and regulations in such matters is the need of the hour.

Thus, regulation on media can be subject to reasonable restriction under the criteria of public decency and morality. Whenever media broadcast any matter, it should not have the tendency to corrupt the public morality or degrade the sovereignty and integrity of the state. Whenever there

is any regulation on media subject to the exercise of law and freedom of speech and expression is affected then such regulation cannot be struck down as invalid.

In a judgment given by a bench, which was headed by Chief Justice S.H Kapadia, stated that if any news related to trial were published, it would create real as well as substantial risk in administration of justice or even in the fairness of the trial. Therefore, the court can order media for postponement order or atleast not broadcasting it until a suitable time.

With freedom and power comes great accountability as well as responsibility. The main concern of the Press Council of India, Broadcasting Content Complaint Council (BCCC) and News Broadcasting Standards Association (NBSA) is not about whether there should be any kind of regulation or not but what kind of regulation must be there. The present chairman of PCI, Justice Markandey Katju is in favour of power to regulate media. He suggests that media should prioritize its functions and should introduce punishment for misdemeanors. Justice Katju's argument is based on Art. 19(2), which imposes reasonable restriction on media. Media should occupy such a position that it can command respect rather than demanding it. Every person associated with media has a responsibility to act sensibly towards the people of the society, towards the nation and towards their profession. Media is considered to be the eyes and ears of the people regarding any issue. It is the inherent duty of the media to impart information in the nature of public interest. Indeed there have been many attempts earlier to regulate, for instance earlier this year, Meenakshi Natarajan, congress member of parliament, introduced the Print and Electronic Media Standards and Regulation Bill, 2012, which however was eventually abandoned.

There is no doubt that it is high time for media to have some regulations. They should come at par with their limitations and at the same time should be punished if they cross their limitations. From past we can see many council and committees being formed for the same but they, till date, do not have any fruitful result. The no. of complaints of the people against media has never been this high. Freedom of media is indeed needed but there should be a process of checks and balance. Rules and regulations, which are laid down, should be strictly followed and in reality should be brought into force. The revenue hungry media and rise in corruption and scandals calls for media regulation. Media is tainted with the phenomenons like paid news, invading privacy, sensationalism, corruption, degrading working conditions etc. directs us for regulating media

activities. With 650 television channels and approx 2000 publications, media should have regulation to maintain its standard.

The government can do the following to regulate media:

- The Council of India should come into force and follow the rules and regulations laid down by them strictly. For years now, we have experienced that they have not done their job properly. It has failed to command authority or perform as a watchdog.
- Media, before reporting any sub-judice matter should take permission of the court. The court after scrutinizing its content should approve for broadcasting. If the court feels that the matter which should not be published, then media should abide by the orders given.
- Personal relationship matters should not be publicized. If the parties concerned want it to be out of the media's glare, the media should keep it private rather making a hue and cry out of it.
- Every matter which media broadcasts should be scrutinized before public display and scrutinizing does not mean curbing the freedom of media.
- The parliament and the courts should form rules that are more stringent and must see to it that it comes into force on time. Imposing reasonable restriction is a vital for smooth functioning of media.

Media is the most important source of information in today's world. A great amount of power lies in the hands of media. Media needs to use this power in the right course in the right way, and if misused, huge blunders and disasters can take place. People have a lot of faith in media, they, without giving a second thought believe in whatever media shows. Media should not take undue advantage of it and should realize the responsibilities. There should be limitations and boundaries within which they need to work. At last, we can conclude by saying that regulation for media is the need of the hour.

As quoted by Malcolm X,

“The media's the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power. Because they control the minds of the masses.”

