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With this thought, we hereby present to you

LawPublicus The Legal Portal

Constitutional Values **and** **the Role of Media**

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Constitutional Values and the Role of Media

By: Aryan Birewar

Prefatory

The government does not want to control the content of TV channels. It respects the right to free speech and the expression of media¹.

This statement was given by Shri. Tushar Mehta, The Solicitor General of India, in the light of the Tablighi Jamaat news controversy in March 2020.

Free citizens cannot exist when the news media is chained to adhere to one position².

This statement was given by Hon. Justice D.Y. Chandrachud in the late news battle between Arnab Goswami and the Maharashtra government.

The media is one of the most powerful institutions in a country. History is witness to the ability of the media to mobilize people of different backgrounds to work for one common objective. Even during our freedom struggle, newspapers like Kesari, Young India, Amrit Bazar Patrika, Navjivan, etc., helped in fuelling patriotic fervour in the country. With the advent of technology, the role of the media has certainly changed. Gone are the days of simple news reporting. Today, the media is a platform for discussion and analysis of various local and international issues. Indian media has seen growth from James Hickey's Bengal Gazette of 1780 to electronic news sources like The Print, Quint, Scroll, etc. This generation, through digital campaigns and social media movements, has experienced a novel form of media. However, being the fourth pillar of our democracy, the responsibility of this institution has also intensified. This article focuses on the constitutional and legal alignment of this vital institution of our country.

¹ "Tablighi case: Freedom of speech & expression most abused right in recent times, says SC" outlookindia.com, October 8, 2020, available at: <https://www.outlookindia.com/newscroll/tablighi-case-freedom-of-speech--expression-most-abused-right-in-recent-times-says-sc/1951481> (last visited on December 6, 2020).

² "India's freedom is safe as long as journos can speak to power without reprisal: SC" deccanherald.com, May 19, 2020, available at: <https://www.deccanherald.com/national/indias-freedom-is-safe-as-long-as-journos-can-speak-to-power-without-reprisal-sc-839503.html> (last visited on December 6, 2020).

Constitutionality of the Media

Our Preamble, at the very outset, punctuates liberty of thought, expression, and belief. Further, Article 19(1)(a) gives us the freedom of speech and expression. We have the right to acquire, disseminate, and communicate information through electronic or audio-visual means. We also have Article 19(2) to offset the liberty given by the previous article. This article restricts liberty on the grounds of sovereignty and integrity of the state, morality, decency, public order, etc.

The Supreme Court has always highlighted the importance of the media in educating the people. In the case *Bennett Coleman & Co. v. Union of India*, the Court underlined freedom of the press as ‘Ark of the Covenant of Democracy’³. People deposit their faith in institutions like the media for authentic reportage. This faith is puissant to swing public opinion to an unimaginable extent. The Constitution does not shy away from conceding the impact of this pillar on our democracy. This acknowledgment has given birth to the censorship of the media.

India was ranked a low 142nd in the ‘World Press Freedom Index’ of 2020⁴. The influence of the media is mammoth to the extent where it cannot go unregulated. It is a vital component of public order and thus needs to be checked democratically. Censorship does not barricade the liberty of the media. As opposed to many superpowers, our Supreme Court, in the case *S. Rangarajan & Ors. v. P. Jagjivan Ram & Ors.* held open criticism of government policies is not a valid ground to restrict expression. Intolerance is as harmful to democracy as to the person himself⁵.

The media has been at the forefront of battling against unconstitutional legislations, unearthing scams, or corrupt practices, and bridging the voices of the common people. For example, its role in the 2G Spectrum scam, Coalgate scam, CWG scam, or the Satyam scam cannot go

³ *Bennett Coleman & Co. v. Union of India*, (1973) 2 SCR 757, available at: <https://indiankanoon.org/doc/125596/> (last visited on December 5, 2020).

⁴ *S. Rangarajan & Ors. v. P. Jagjivan Ram & Ors.*, (1989) 2 SCC 574, available at: <https://indiankanoon.org/doc/341773/> (last visited on December 5, 2020).

⁵ “World Press Freedom Index (2020)” available at: <https://rsf.org/en/ranking> (last visited on December 5, 2020).

unnoticed. During these political stress points, over the years, several media trends have developed which are not in the spirit of the Indian Constitution.

Despicable Traits

In recent years, the media has been a cesspool of all kinds of malpractices. Paid news is one big contributor to the media's rising notoriety. As per the Press Council of India's investigative report of 2010, journalists and media houses are paid by political parties, NGOs, corporates, film producers, and celebrities to maintain their reputation in the public eye. This is done by suppressing unfavourable news and giving positive or reformatory coverage. The Securities and Exchange Board of India explains that this happens through '*Private Treaties*' between media houses and the interested corporates and individuals. The corporates usually transfer shares to the media houses in return for image-building coverage⁶. The Parliamentary Standing Committee on Information Technology headed by Shri. Rao Inderjit Singh presented its report on '*Issues of Paid News*' to the Lok Sabha on 6th May 2013. It identified corporatization of media, contract-based journalism, and lack of accountability to the Ministry of Information and Broadcasting as the primary reasons⁷. This has compromised the trust of people in one of the most powerful institutions of our democracy.

An abysmal product of the competition in the business of media is fake news. It means spreading false information or inaccurate information. With the advent of social media, this malpractice has spiralled in the forms of memes, clickbait, GIFs, messages, forwards, etc. India has close to 500 million active users over WhatsApp, Facebook, and Twitter. Thus, these social media platforms become a central hub for the proliferation of fake news. Owing to lack of awareness, paid and fake news get the leeway to oscillate the public opinion as per their whims and fancies. The 2019 General elections were called 'India's first WhatsApp election'. Loads of misinformation were circulated on this platform about parties and candidates by unknown

⁶ Press Council of India, "Report on Paid News", (July 30, 2010), available at: <https://presscouncil.nic.in/oldwebsite/councilreport.pdf> (last visited on December 4, 2020).

⁷ "Issues Related to Paid News" prsindia.org, available at: <https://www.prsindia.org/report-summaries/issues-related-paid-news> (last visited on December 4, 2020).

sources. The more recent Citizenship Amendment Act of 2019 witnessed innumerable miscreants taking advantage of a lack of public awareness to spread false information about the act. Advocate Ashwini Upadhyay filed a plea in The Supreme Court against the misinformation about CAA. He said, *"I visited Jamia and Seelampur yesterday. 95% of the protesters do not know about the CAA. They feel the law will take back their citizenship."*⁸ This issue of misinformation shot up in the COVID-19 lockdown period. Recently, the Press Information Bureau started a series of fact-checking notifications to debunk frequent false rumours about nationwide lockdowns. The constitutional values of liberty and free speech need to be understood with the power of this institution. The infamy caused by fake news and paid media outlets is the grossest transgression of our constitutional fabric.

Legal Overreach

The media during the days of Doordarshan has changed on many fronts today. From simply reporting news, today the media has become a source of analysis and criticism. The very recent arrest of Siddique Kappan, a journalist working for Kerala Union of Working Journalists, for having objectionably seditious literature in possession shows the deleteriously changing role of media⁹. From the submission of the UP Government to the Supreme Court, we learn that the accused intended to fuel communal and caste violence across the country¹⁰. A sufficiently clear example would be the case of Mr. Vinod Dua, a journalist of The Wire, who alleged that PM Modi garnered votes through acts of terrorism¹¹. These are a few of the many instances when the media has disgustingly exploited their liberty and freedom of speech.

⁸ "Supreme Court asks Centre to consider publicising info about CAA to curb circulation of fake news" *thehindu.com*, December 20, 2019, available at: <https://www.thehindu.com/news/national/supreme-court-asks-centre-to-consider-publicising-info-about-cao-to-curb-circulation-of-fake-news/article30339988.ece> (last visited on December 4, 2020).

⁹ "Hathras rape: Sedition case filed against Kerala journalist and others arrested for alleged PFI link" *scroll.in*, October 7, 2020, available at: <https://scroll.in/latest/975157/hathras-rape-sedition-case-filed-against-kerala-journalist-others-arrested-for-alleged-pfi-links> (last visited on December 3, 2020).

¹⁰ "Shocking facts have emerged against Siddique Kappan, UP tells SC" *tribuneindia.com*, December 2, 2020, available at: <https://www.tribuneindia.com/news/nation/shocking-facts-have-emerged-against-siddique-kappan-up-tells-sc-178994> (last visited on December 3, 2020).

¹¹ "Vinod Dua Case: Handover complete records of investigation, SC tells Himachal Police" *thehindu.com*, July 7, 2020, available at: <https://www.thehindu.com/news/national/vinod-dua-case-hand-over-complete-records-of-investigation-sc-tells-himachal-police/article32010872.ece> (last visited on December 2, 2020).

Media houses often extend their scope of authority beyond what the law states. The case in point will be the reportage done around the death of actor Sushant Singh Rajput. Chief Justice of Bombay HC Dipankar Dutta and Justice G.S. Kulkarni said, “*If you become the investigator, prosecutor and the judge, what is the use of us? Why are we here?*” They also said, “*When a case is under investigation and the issue is whether it’s a homicide or a suicide and a channel is saying it is murder, is all this investigative journalism?*”¹² This was observed in the light of a PIL filed against the yellow journalism conducted by Republic TV. Throughout the investigation and case proceedings, the said news channel ran its set of media trials or parallel investigations. Clauses (1) (f) and (i) of Rule 6 of the Programme and Advertising Codes, under the Cable Television Network Rules, 1994 prohibit the cable service from carrying any programme that maligns any individual or groups in segments of social, public, and moral life¹³. The media has the power to build an impression of guilt irrespective of the verdict of the court. Several constitutional values along with the ‘*Right to Fair Trial*’ can get defeated by a single media release. Instead of exploiting the pulse of the people, the media should direct it in line with constitutional and judicial principles. Indians are emotion-driven, and the media should take extraordinary care not to misuse it.

Conclusion

Our former PM Rajiv Gandhi said, “*Freedom of Press is an Article of Faith with us, sanctified by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation.*”¹⁴ Our basic constitutional values like justice, equality and liberty ascertain respect for the rights of every individual and institution. Unfortunately, an institution as powerful as the media is drifting away from the very purpose that the constitution identified. The biggest threat to our democracy is institutions that misuse their power and forget their responsibility. Private self-regulatory bodies set up a decade ago like The National

¹² “If You Become an Investigator, Prosecutor & Judge, Why Are We Here?” Bombay HC Expresses Concerns Over Media Trial” *livelaw.in*, October 21, 2020, available at: <https://www.livelaw.in/top-stories/if-you-become-investigator-prosecutor-judge-why-are-we-here-bombay-hc-expresses-concerns-over-media-trial-164783> (last visited on December 2, 2020).

¹³ “Programme and Advertising Codes prescribed under the Cable Television Network Rules, 1994 (Rule 6 and 7)” available at: <https://mib.gov.in/sites/default/files/pac1.pdf> (last visited on December 2, 2020).

¹⁴ Gaur, K. (1994). CONSTITUTIONAL RIGHTS AND FREEDOM OF MEDIA IN INDIA. *Journal of the Indian Law Institute*, 36(4), 429-454, available at: <http://www.jstor.org/stable/43952367> (last visited on December 2, 2020).

Broadcasters Association (NBA) and The National Broadcasting Standards Authority (NBSA) have proved to be ineffective. The root issue can only be tackled by the media outlets themselves, when and how they realize their power.

This case study is for information purpose only. Nothing contained herein shall be deemed or interpreted as providing legal or investment advice.