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THE FOURTH ESTATE: MEDIA AND THE LAW*

INTRODUCTION

Many different things have been said about the media over the years. While the fourth President of the United States, James Madison said, “The advancement and diffusion of knowledge is the only guardian of true liberty”, Dan Brown, a novelist of international repute, called it the “right arm of anarchy” in his magnum opus *Angels and Demons* (2000). These two statements made by men pursuing two entirely different occupations in two different eras (the 19th and 21st centuries respectively) present the media in two different perspectives. While President Madison envisages a very positive (if idealistic) role for the media as the sole guardian of true liberty, Dan Brown does the opposite, almost as if to indicate how easily the media may be misused by the worst of the governments to serve their ends. Interestingly, both these statements came out *before* the media began to play the kind of role it plays today in shaping our opinion on the biggest as well as the smallest of issues, from issues of global concern like global warming and terrorism to a television actor’s latest starry tantrum. For an objective analysis of how well the media like newspapers, radio, television (and more recently, the social media) have been contributing to the society through the dissemination of information to the masses, it is important to examine both these perspectives from the Indian point of view, with respect to the laws governing them. But how does one define the media? The *Oxford Advanced Learner’s Dictionary*¹ defines “media” as “the main ways that large numbers of people receive information and entertainment, that is radio, newspapers and the Internet.”

THE LAWS

A number of laws govern the mass media in India. Some of them are –

1. First Press Regulations, 1799
2. Gagging Act, 1857
3. Press and Registration of Books Act, 1867
4. Vernacular Press Act, 1878
5. Sea Customs Act, 1878
6. Indian Press Act, 1910

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¹ 7th ed. 2006

7. Official Secrets Act, 1923
8. Delivery of Books and Newspapers (Public Libraries) Act, 1954
9. Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954
10. Young Persons (Harmful Publications) Act, 1956
11. Parliamentary Proceedings (Protection of Publication) Act, 1956
12. Copyright Act, 1957
13. Defence of India Act, 1962
14. Press Council of India Act, 1965
15. Contempt of Courts Act, 1971
16. Police (Incitement to Disaffection) Act, 1972
17. Cable Television Regulation Act, 1995
18. Right to Information Act, 2005

These may be briefly explained as follows -

- I. **FIRST PRESS REGULATIONS, 1799:** On 13th May 1799, Lord Wellesley promulgated the First Press Regulations, which made it compulsory for the newspapers to print the names and addresses of printers, editors and publishers. However, these regulations were abolished in 1813.²
- II. **GAGGING ACT, 1857:** This Act introduced mandatory licensing for running or owning a printing press. It empowered the Government to prohibit the publication or circulation of any newspaper, book or any printed matter. It allowed the Government to ban the publications or dissemination of statements or news stories, which could cause hatred or contempt for the Government, incite disaffection or unlawful resistance to its orders or weaken its lawful authority. The Act was abolished in June 1858.³
- III. **THE PRESS AND REGISTRATION OF BOOKS ACT, 1867:** This Act was enacted with a view to evaluate the present position of books, newspapers, and magazines in the country at any given time. The most important aspect of this Act is that every copy of a newspaper shall contain the names of the owner, publisher, and editor printed clearly on all the copies. The printer of every newspaper is required to deliver to the State Government two free copies of each issue of the newspaper as soon as it is published. The Act is in force even today.⁴

²Vir B. Aggarwal and V.S. Gupta, Handbook of Journalism and Mass Communication, at 66 (2001)

https://books.google.co.in/books?id=sCif8MM1ZlAC&pg=PA103&dq=MAJOR+indian+PRESS+LAWS+DURING+BRITISH+PERIOD&hl=en&sa=X&ved=0CBwQ6AEwAGoVChMI4fenocP5yAIVT_tjCh08CA34#v=onepage&q=MAJOR%20indian%20PRESS%20LAWS%20DURING%20BRITISH%20PERIOD&f=false

²Aparimita Basu, Media Laws – An Overview, Legal Service India
<http://www.legalserviceindia.com/articles/media.htm>

³ Supra, 2

⁴ Ibid

- IV. **VERNACULAR PRESS ACT, 1878:** This Act was enacted on March 1, 1878. It empowered the then British Government to exercise more stringent control over publications in the Indian languages. Under this Act, any District Magistrate or Police Commissioner could demand security from the printer and publisher of a newspaper, forfeit such security or confiscate any printed matter considered objectionable in the interest of the British Government. After much protest against this Draconian legislation, it was repealed in 1881.⁵
- V. **SEA CUSTOMS ACT, 1878:** Section 8 (c) of the Act prohibits the bringing into India whether by land, or by sea "any obscene book, pamphlet, paper, drawing, painting, representation, figure or article." And lays down that these items can be confiscated. Repealed by the Customs Act, 1962.⁶
- VI. **INDIAN PRESS ACT, 1910:** Under this Act, owners of presses were required to tender security deposits, which would be forfeited if they printed any objectionable matter. Also, the police was given extensive powers of search and seizure. The harshness of the legislation was matched by vigorous enforcement of its provisions- the British Government, between 1910 and 1914, is said to have initiated hundreds of cases under various provisions of this Act. It was repealed in 1921.⁷
- VII. **OFFICIAL SECRETS ACT, 1923:** This Act (hereinafter referred to as "OSA" for brevity) consolidates the law relating to official secrets, and is India's only law dealing with offences like spying and wrongful communication of secret information. Section 3 of the Act makes it an offence for any person to (for any purpose prejudicial to the public safety and the interests of the state) approach, inspect, pass over or to be in the vicinity of or enter any prohibited place; make any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy, or obtain, collect, record or publish or communicate to any person such sketch, etc. Under Section 3(1) of the Act, the aforementioned offences are punishable with imprisonment for a term which may extend to 14 years if the offence relates to certain government establishments specified in that very section, and to 3 years in other cases. The First Report of the Second Administrative Reforms Commission, released back in 2006, which was titled "RTI: Master Key To Good Governance", had recommended, inter alia, that the OSA be repealed on grounds of it being a hindrance to the free dissemination of information⁸, but this has clearly not happened as the OSA remains in effect even today.
- VIII. **DELIVERY OF BOOKS AND NEWSPAPERS (PUBLIC LIBRARIES) ACT, 1954:** This Act enjoins upon the publisher of every newspaper to deliver at his own expense one copy of each issue of such newspaper as soon as it is published to each public library as may be notified by the Central Government.

⁵Derek Jones, Censorship: A World Encyclopaedia, at 323 (2001) https://books.google.co.in/books?id=gDqsCQAAQBAJ&pg=PA315&lpg=PA315&dq=MAJOR+PRESS+LAWS+DURING+BRITISH+PERIOD&source=bl&ots=_5FX2pKm2H&sig=eXkzTvWljJ3x8Q54j87T8D9VQmE&hl=en&sa=X&ved=0CCYQ6AEwAjqUahUKEwi9JLquwPnIAhUE2GMKHQIMC54#v=onepage&q=MAJOR%20PRESS%20LAWS%20DURING%20BRITISH%20PERIOD&f=false

⁶ Commonwealth Legal Information Institute, Definition of Suo Motu, http://www.commonlii.org/in/legis/cen/num_act/sca1878146/

⁷ Puja Mondal, History and Development of Press and Press Acts in India, Your Article Library, <http://www.yourarticlelibrary.com/history/history-and-development-of-indian-press-and-press-acts/23717/>

⁸<http://arc.gov.in/rtifinalreport.pdf>

- IX. **DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENT) ACT, 1954:** As per the preamble of this Act, it was meant to “control the advertisements of drugs in certain cases, to prohibit the advertisement, for certain purposes, of remedies alleged to possess magic qualities and to provide for matters connected therewith.
- X. **YOUNG PERSON'S (HARMFUL PUBLICATIONS) ACT, 1956:** Section 2 of this Act defined the term “harmful publication” as any publication which might portray, wholly or partly, the commission of offences or of repulsive or horrible acts, whereas section 3 made the sale, hiring, public distribution, exhibition, circulation or even advertisement punishable with imprisonment of up to 6 months.
- XI. **PARLIAMENTARY PROCEEDINGS (PROTECTION OF PUBLICATION) ACT, 1956:** This Act was enacted with a view to protecting the publications of reports of proceedings of Parliament except in newspapers. As per section 3 of the Act, “no person shall be liable to any proceedings, civil or criminal in any court, in respect of the publication in a newspaper of substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have made with malice.”
- XII. **DEFENSE OF INDIA ACT, 1962:** Clauses 7(a), (b),(c), and (d) of section 3 of the Defence of India Act deal with the entire gamut of printing and publishing of any newspaper or book, such as the demand of forfeiture of security, closing down of a press, etc. when a Proclamation of Emergency under Article 352(1) of the Indian Constitution is in force.
- XIII. **PRESS COUNCIL OF INDIA ACT, 1978:** The Press Council of India, according to its preamble, is established "For protecting the freedom of the press and maintaining and improving the standards of both newspapers and news agencies in India." Succinctly summing up the powers of the Press Council of India (hereinafter called the “PCI” for brevity), V.B. Aggarwal writes thus in his book *Essentials of Practical Journalism* (2006) – “M.V. Kamath pointed out in his book *The Journalists Handbook* that “The council (Press Council of India), it is important to remember, is not a court of law. It is a court of honour. Its verdicts are not judicial pronouncements. Therefore, there is no question of punishment imposed on an offending journalist or newspaper. By that same token the Council cannot award damages to the aggrieved party”. As Justice Mudholkar put it, "The only weapon in the armoury of the Press Council of India is its moral authority. The sole strength of the Council lies in its appeal to conscience.”
- Section 13(1) (a) of this Act requires a newspaper to publish therein the particulars relating to any enquiry under section 13 , but this does not mean that the PCI has any power to punish a defaulting paper. This function, if properly used, can itself become extremely effective. S.14 (1) only empowers the PCI to hold inquiries into the alleged professional misconduct of a journalist and warn, admonish or censure the errant journalist or newspaper on the same.
- XIV. **CONTEMPT OF COURTS ACT, 1971:** Although enacted to maintain the majesty of the courts of law and to enable judges to dispense justice without fear or interference⁹, this Act governs the mass media insofar as it prevents the media from publishing anything which may be prejudicial to the interests to the reputation of any of the judges or the parties to a matter or their representative lawyers in a matter sub-judice or otherwise. Also, the Apex Court has clearly stated that the Contempt of Courts Act comes into play where a party makes unfounded allegations against the judiciary¹⁰ and

⁹See *Chairman, West Bengal Administrative Tribunal v. S.K. Monobbor Hossain*, 3 SCALE 534 (2012)

¹⁰ See *M.R. Prashar v. Dr. Farooq Abdullah*, 1 Cr .L.J. 433 (1984)

hence it forms a reasonable restriction on the freedom of speech and expression of everyone including journalists¹¹. In fact, in 1969, the Supreme Court held in *A.K. Gopalan v. Noordeen*¹² that a publication made after 'arrest' of a person could be contempt if it was prejudicial to the suspect or accused. This continues to be the law as of today so far as Art. 19(1)(a), 19(2) and Art. 21 are concerned.¹³

- XV. **POLICE (INCITEMENT TO DISAFFECTION) ACT, 1922:** Section 3 of this Act penalizes any act, which causes or is likely to cause disaffection towards the Government among the member of the police force or which induces or attempts to induce any member of the police force to withhold his services or to commit a breach of discipline, by imprisonment of a maximum of 6 months.
- XVI. **CABLE TELEVISION REGULATION ACT, 1995:** This Act prohibits any person from operating a cable television network unless he is registered as a cable operator under this Act, or from transmitting or re-transmitting through a cable service any programme unless such programme is in conformity with the prescribed programme code.
- XVII. **RIGHT TO INFORMATION ACT, 2005:** Political analyst James Michael pointed out in his pioneering work *The Politics of Secrecy*(1982) that "freedom of information" and "right to information" are two different concepts. "Freedom" implies the absence of restraint, particularly of legal penalties, as opposed a 'right' which is legally available to all citizens or a section of them, as the law may state. In the context of a democracy like India, "freedom of information" means that a citizen is free to receive and impart information without fear of punishment as long as their activities are not against India's Constitution. However, there is no obligation on the state to provide any information to the citizen under this Act. The right to information is undoubtedly indispensable for the free flow of information, and the reason why the Right to Information Act (hereinafter called "RTI Act" for brevity) merits mention here is that RTI queries are often used by journalists to derive legitimacy for their stand on a given issue. However, time and again concern has been raised on the absence of any mechanism in this Act to protect the identities of those filing RTI requests in order to expose the wrongdoings or to gain knowledge about illegal activities perceived by them to be going on around themselves.¹⁴

THE MEDIA: PROS AND CONS

For a brief introduction to this topic, it would be important to cite the introductory passages of the Twentieth Law Commission of India's Consultation Paper on Media Law¹⁵ released in May 2014 -

¹¹*Ibid*

¹²2 SCC 734 (1969)

¹³ *Supra*, 2

¹⁴ Shreya Ila Anasuya, [At Least Thirty-Nine People Who Used RTI Law Have Been Murdered Over The Last Decade](http://scroll.in/article/739440/at-least-39-people-who-used-right-to-information-law-have-been-murdered-over-the-last-decade), The Scroll (June 09, 2015, 11.30 AM) <http://scroll.in/article/739440/at-least-39-people-who-used-right-to-information-law-have-been-murdered-over-the-last-decade>

¹⁵20th Law Commission of India - www.lawcommissionofindia.nic.in/

The freedom of speech and expression has been characterised as “the very life of civil liberty” in the Constituent Assembly Debates.¹⁶ The freedom of the press, while not recognised as a separate freedom under Fundamental Rights, is folded into the freedom of speech and expression.¹⁷ The Supreme Court has described this freedom as the “ark of the covenant of democracy”.¹⁸ The freedom of the press serves the larger purpose of the right of the people to be informed of a broad spectrum of facts, views and opinions. It is the medium through which people gain access to new information and ideas, an essential component of a functioning democracy. Thus, “[t]he survival and flowering of Indian democracy owes a great deal to the freedom and vigour of our press.”¹⁹ The media is vital in the role it plays in un-covering the truth and rousing public opinion, especially in the face of wrongdoing and corruption. Numerous examples exist where the media has played a central role in revealing corrupt practices and shaping the demand for accountability and good governance In India today, we have every reason to celebrate our news media. However, as society evolves, new challenges are constantly thrown up that require consideration. Technology has expanded our horizons, but also brought with it new concerns. 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. As Lord Justice Leveson wrote in his path-breaking report on ‘Culture, Practice and Ethics of the Press’ in Great Britain, “With these rights (of press freedoms) come responsibilities to the public interest: to respect the truth, to obey the law and to uphold the rights and liberties of individuals.”²⁰

THE POSITIVES

Indian mass media played a very vital role in covering natural calamities such as the 2004 tsunami, which severely affected coastal states on India’s southern coast, particularly Kerala, Tamil Nadu and Andhra Pradesh.²¹ The extensive coverage of the sheer magnitude of the damage caused by this disaster in India as well as in other affected nations²², the suffering of the survivors stranded far away from their homes and families or looking for lost relatives among heaps of debris and corpses²³, the tales of timely acts of bravery performed by good Samaritans²⁴ and the lack of an early tsunami detection and warning system and other related disaster management facilities and initiatives²⁵ not only attracted international attention to the plight of people and of governments with insufficient means to help themselves out of

¹⁶ Constituent Assembly Debates: Official Report, (Delhi, 1946-1950), VII, p. 18.

¹⁷ *Brijbhushan and Another vs. The State of Delhi*, AIR 129 (1950); *Sakal Papers (P) Ltd vs. Union of India*, AIR 305 (1962).

¹⁸ *Bennett Coleman & Co. v Union of India*, AIR 106 (1973).

¹⁹ Amartya Sen, “The Glory and the Blemishes of the Indian News Media”, *The Hindu* (2012)

²⁰ Lord Justice Leveson, ‘An Inquiry into the Culture, Practices and Ethics of the Press’ (Leveson Inquiry Report, London: November 2012).

²¹ Maps of India - <http://www.mapsofindia.com/maps/tsunami-in-india/tsunami-affected-area-india.html>

²² Wikipedia - https://en.wikipedia.org/wiki/2004_Indian_Ocean_earthquake_and_tsunami

²³ Melissa Block, *Sri Lankans Seek Lost Relatives After Tsunami*, NPR (December 24, 2004, 12: 00 AM) <http://www.npr.org/templates/story/story.php?storyId=4246573>

²⁴ *Girl, 10, used geography lesson to save lives*, *The Telegraph* (1 January, 2005, 10:50 AM) <http://www.telegraph.co.uk/news/1480192/Girl-10-used-geography-lesson-to-save-lives.html>

²⁵ *Supra*, 22

this most dangerous situation, but also awoke the Indian government to the possibility of such extreme occurrences and to its lack of preparedness to deal with the same. Subsequently, in the aftermath of the disaster, the Indian Ocean Tsunami Warning System was constructed. It became operational in 2006 and functioned successfully during the 2012 Indian Ocean earthquakes.²⁶ Other disasters covered extensively by the media with similarly positive results include the 2002 Bhuj Earthquake, the 2013 Uttarakhand floods, the 2013 cyclone Phailin which struck Orissa, and most recently, the 2014 Jammu and Kashmir floods. In the international context, the photograph of three-year-old Aylan Kurdi lying face-down after washing up dead on a beach in Turkey, which went viral earlier this year, drew much-needed international attention and sympathy²⁷ to the plight of migrants of different nationalities fleeing poverty and terrorism back home and trying to enter Europe in the hope of a brighter future.

In the legal arena, the media's role was widely applauded by one and all as a sting operation conducted by the English-language news channel NDTV back in 2007²⁸ led to the revelation of collusion between the defence counsel and the public prosecutor in the much-discussed and keenly followed 1999 BMW hit-and-run case.²⁹ Not only did this shock the collective conscience of the nation, but also led to the Delhi High Court taking *suomotu* (Latin for "on one's own motion"³⁰) cognisance of this matter in a case³¹ that culminated in the petitioner, a Senior Advocate of the Supreme Court³² being stripped of his seniority and forbidden from engaging in remunerative legal practice for a period of one year from the date of the judgment. This sent out a clear message that nobody guilty of subverting justice shall be spared regardless of their social standing and prominence in their respective profession.

A recent example of a sting operation ensuring government accountability would be the sacking of Aam Admi Party MLA Asim Ahmed Khan, who was sacked by the Chief Minister of Delhi in October this year after an audio clip emerged of the MLA, the Minister of Food and Civil Supplies until his expulsion from the cabinet, allegedly demanding bribe from a builder and in conversation with another person, supposedly a middleman, in furtherance of the same.³³

As regards the social media, it has enabled countless netizens (a portmanteau word obtained by combining the words "net" and "citizens") all over the world not just to connect or reconnect with near and distant relatives and friends living in farther corners of the globe, but also to operate businesses of a large variety on their own terms, as we know from the example from

²⁶ *Ibid*

²⁷ Adam Withnall, [Aylan Kurdi's story: How a small Syrian child came to be washed up on a beach in Turkey](http://www.independent.co.uk/news/world/europe/aylan-kurdi-s-story-how-a-small-syrian-child-came-to-be-washed-up-on-a-beach-in-turkey-10484588.html) (22 September, 2015) <http://www.independent.co.uk/news/world/europe/aylan-kurdi-s-story-how-a-small-syrian-child-came-to-be-washed-up-on-a-beach-in-turkey-10484588.html>

²⁸ <http://www.legallyindia.com/201105042063/Bar-Bench-Litigation/bwm-hit-and-run-anands-apology-smacked-down-by-sc>

²⁹ Wikipedia - https://en.wikipedia.org/wiki/1999_Delhi_hit-and-run_case

³⁰ Collins Dictionary - <http://www.collinsdictionary.com/submission/8861/suo%20motu>

³¹ R.K. Anand v. Registrar, Delhi High Court , 2 SCC 106 (2009)

³² *Supra*, 28

³³ [<http://www.ibnlive.com/news/politics/delhi-cm-arvind-kejriwal-sacks-his-minister-accused-of-corruption-on-live-tv-1149581.html>](http://www.ibnlive.com/news/politics/delhi-cm-arvind-kejriwal-sacks-minister-asim-ahmed-khan-accused-of-corruption-on-live-tv, CNN – IBN, (9 October, 2015, 4:25 PM)</u></p></div><div data-bbox=)

the social networking site Facebook, which, as of March 2015, had almost 1.4 billion users³⁴ across countries, continents and cultures and has quickly become a hotspot for young entrepreneurs wishing to reach out to a large number of prospective customers in the shortest possible time. In fact, the business and industry portal of the official website³⁵ of the Government of Queensland, Australia's second-largest state by area and third-largest by population³⁶, has listed the ways and advantages of capitalizing on the social media to promote one's business and broaden one's customer base. The internet communicates news across the globe at a significantly faster rate than other media like print and radio could ever hope to, besides ensuring that governments stay accountable to their citizens, as we know from the example of Asim Ahmed Khan mentioned earlier.

THE NEGATIVES

Every coin has two sides to it, and the same holds true for the media. While it's important to know what is happening around us, there's also a need to filter whatever is available on the news. In today's world of twenty-four hour media, where news takes little to no time to spread like wildfire, some instances are seen in certain high profile cases wherein the media often highlights those facts of the case which are likely to cause outrage, which may not always be relevant to the case at large. Often, the damage done by the media is irreparable because of its large outreach, a pertinent case in point being the recent Jasleen Kaur case, wherein a Delhi University student, Jasleen Kaur, posted on her Facebook wall the photo³⁷ of one Sarvjeet Singh, whom she alleged had, in a language filled with sexual innuendo, threatened her of dire consequences if she reported his alleged wrongdoings (jumping a traffic signal, in this case) to the police. Within hours, the photo was all over the social media and the news channels, and Sarvjeet, after having been labelled everything from a "pervert" to a "monster", was apprehended by the police very soon, only to be let out on bail the same day³⁸. However, by about a week later, the tide had turned³⁹, and an increasingly large number of people began coming forward to slam the media for having played judge, jury and executioner all by itself and for having unduly hastened to pronounce Sarvjeet guilty without waiting to hear his version of the story.⁴⁰ It was also questioned whether Jasleen needed to have taken this story to the social media after having filed an FIR against Sarvjeet.

For an older example, as long back as 1890, an article in Harvard Law Review had criticized the media in the following fashion –

³⁴Brittney Helmrich, Social Media for Business: 2015 Marketer's Guide, Business News Daily <http://www.businessnewsdaily.com/7832-social-media-for-business.html>

³⁵Queensland Government - <https://www.business.qld.gov.au/business/running/marketing/online-marketing/social-media-business>

³⁶Wikipedia - <https://en.wikipedia.org/wiki/Queensland>

³⁷Facebook - <https://www.facebook.com/jasleen.kaur.3557/posts/10208075146303606:0>

³⁸She just wanted to be famous, claims biker arrested for abusing Delhi woman Jasleen Kaur, Firstpost.com, (2015)

<http://www.firstpost.com/india/delhi-harassment-case-accused-speaks-up-says-the-girl-wants-publicity-2406738.html>

³⁹India Today - <http://indiatoday.intoday.in/story/jasleen-kaur-case-what-you-know-and-what-you-dont/1/461913.html>

⁴⁰Youth Ki Awaaz - <http://www.youthkiawaaz.com/2015/09/failure-of-journalism-jasleen-kaur/>

“Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that “what is whispered in the closet shall be proclaimed from the house-tops” “The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle.”⁴¹

The evils associated with the media have been extensively dealt with by the Twentieth Law Commission of India’s Consultation Paper on Media Law⁴² as follows –

1. TRIAL BY MEDIA

There is a widespread view that the difference between an accused and a convict and the basic underlying principle of ‘innocent until proven guilty’ are regularly overlooked by sections of the media in its coverage of ongoing trials. By conducting parallel trials, the media, it is felt, not only puts undue pressure on the judge but also creates pressure on lawyers to not take up cases of accused. Once a matter comes under intense media glare, there is pressure on the prosecution to secure evidence which must incriminate an accused, lest the media build negative public opinion against the prosecution. A fair trial and investigation, which are foremost constitutional guarantees, are as much a right of the accused as they are of the victim.

The growth and reach of media has shown unhealthy trends of competition, leading to sensationalised reporting giving the well-established rule of *sub-judice* a go-by. While this is certainly not true of all media publications, the problem is undoubtedly extensive. On the question of whether restrictions should be placed upon such media trials to protect the individual’s privacy and the judicial process, and if so, how, the Supreme Court in *Sahara India Real Estate Corporation v. Securities and Exchange Board of India*,⁴³ gave judges the power to order postponement of publication on a case-by-case basis, the test being, ‘where there is a real and substantial risk of prejudice to fairness of the trial or to proper administration of justice’. However, this is a very general test which does not clarify what publications would fall within this category, leaving it entirely contingent on the content and context of the offending publication. This leaves the higher judiciary with wide discretionary powers to decide what amounts to legitimate restraints on media reporting. Due to the possibility of such subjective interpretation, postponement orders could be used by influential parties as a tool to abuse the process of law. Therefore, the jurisprudence of postponement might be transported into defamations suits, when the application of such order should be sought strictly as a constitutional remedy.

2. DEFAMATION BY MEDIA

Currently, civil defamation is dealt with 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 Art. 19(1)(a) of the Constitution, defamation is a ground for a reasonable restriction to this freedom under Art. 19(2). Demands

⁴¹Samuel D. Warren and Louis D. Brandies, *The Right To Privacy*, 4 Harvard Law Rev. 193, 195-196 (1890)

⁴² Supra, 15

⁴³10 SCC 603 (2012)

have been made in the past by entities such as the Editors' Guild of India, to decriminalise defamation as it pertains to journalists. The proposal has been noted 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. In his book *India Shastra* (2015), incumbent MP and former Foreign Affairs Minister Shashi Tharoor, has spoken at length about how he has repeatedly suffered at the hands of what he calls today's "free and irresponsible media". In one of his chapters he has said – "Perhaps it is our country's weak libel protections that lead publications to feel they can print anything with complete disregard for character assassination."

3. SOCIAL MEDIA AND CYBER CRIMES

Over the last one decade or so, the internet in general and the social media in particular has become a fertile breeding ground for criminals looking to commit dangerous cyber-crimes like phishing (the practice of sending counterfeit e-mail messages in an attempt to get the recipients to divulge confidential information e.g. details of bank accounts⁴⁴), cyberstalking (the use of the internet, e-mail, etc. to harass or abuse another person⁴⁵), cybersquatting (the use of an internet domain name, usually one of a company or a famous person, with the intention of selling it on a profit⁴⁶), cyber-bullying (the use of information and communication technologies to support deliberate, repeated, hostile behaviour by an individual that is intended to harm others⁴⁷), and cyber terrorism (the act of internet terrorism in terrorist activities, including acts of deliberate, large-scale disruption of computer networks, especially of personal computers attached to the internet, by the means of tools such as computer viruses⁴⁸). While phishing, cyber-terrorism and cyber-stalking have been made punishable offences under sections 66D, 66F and 67, the remaining crimes are yet to find explicit recognition under the *Information Technology Act, 2000*.

RECOMMENDATIONS

The following recommendations are offered by the authors for the improvement of the status quo regarding the media laws –

- 1.) The powers of the PCI are restricted to warning, admonishing and censuring errant *newspapers*, and thereby the press media. The PCI Act needs to be amended so as to also bring within the jurisdiction of the PCI the social and the broadcast media, in light of the powerful role played by the social as well as the broadcast media in formulating public opinion regarding the 3 biggest national parties – the Bhartiya Janata Party, the Indian National Congress and the AamAdmi Party - which has been elaborately discussed by noted political scientist Zoya Hasan in her article⁴⁹ which appeared in The Hindu shortly after the results of the 2014 Lok Sabha elections came out. This would make the PCI the centralized regulating authority pertaining to all the media.

⁴⁴ The Chambers Dictionary (12th ed. 2011)

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Pavan Duggal, *Mobile Law*, 18 (2nd ed. 2013)

⁴⁸ <https://en.wikipedia.org/wiki/Cyberterrorism>

⁴⁹

- 2.) The concluding part of the observation made by the Apex Court over the role played by the media during the 26/11 terrorist attack while affirming the conviction and the death sentence of Ajmal Amir Kasab reads as follows –

“ It is in such extreme cases that the credibility of an institution is tested. The coverage of the Mumbai terror attack case by the mainstream electronic media has done much harm to the argument that any regulatory mechanism for the media must only come from within.”⁵⁰

Although the remarks by the Supreme Court were just an obiter amidst its voluminous judgment, The Court expressed its deep concern over the actions of certain TV channels in covering live the terror strikes on Mumbai the way it was done. What is even more shocking to note is that all the coverage was done in spite of an “important advisory” having already been issued on November 27, 2008 by the News Broadcasting Association, a private organization which represents over 22 leading news and current affairs broadcasters comprising 41 channels, wherein it requested all members to exercise self-restraint and ensure that national security is not sacrificed to commercial interests.⁵¹ Such transgressions should be severely punished by the PCI in proportion with the viewership/readership numbers of the errant newspapers/news channels as the case may be.

- 3.) The PCI should be empowered to impose a blanket ban on all the print and broadcast media to prevent them from providing live coverage of certain events concerning national sovereignty and harmony such as terrorist attacks and communal riots, as also from holding group discussions, debates or any other programmes which may lower the reputation of the judges, lawyers or parties to any sub-judice matter in the estimation of the public at large and any disobedience of the same must be punished seriously.
- 4.) Through an amendment to the *Information Technology Act, 2000*, statutory recognition must be awarded to cyber-crimes like cyber-bullying and cyber-squatting.
- 5.) None of the aforementioned recommendations should be carried out in such a way as to interfere with the provisions of the Constitution, and in consonance with the recommendations of the 2002 Constitution Review Commission, the “Right to Freedom of the Press” must be explicitly recognised by inclusion in Article 19(1) (a) of the Constitution.⁵²

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⁵⁰ *Mohammad Ajmal Amir Kasab @ Abu Mujahid v. State of Maharashtra*, 9 SCC 1 (2012)

⁵¹ Hemant Kumar, Reining Berserk Media, 18 Lawyers Update 16, 16 (2012)

⁵² Ibid