

Freedom of Expression or Grotesque Misrepresentations: A Study with Special Reference to India's Fourth Estate of Democracy

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1. PROLOGUE

“It was left to me to decide whether we should have a government without newspapers or newspapers without Government, I should not hesitate a moment to prefer the latter.”

Thomas Jefferson¹

In society, millions are exposed to a variety of messages each day. Every community consists of groups with diverse backgrounds of social class, economic status and political or religious affiliations. Society needs some communication system so that its various organizations may perform their designated functions. Communication is a process of sharing or exchange of ideas, information, knowledge, attitude or feeling among people, groups or larger section of society. The primary function of communication is to inform, instruct, entertain and influence people to make them function smoothly and efficiently. Such communication takes place through the media.²

The media has always had a profound upshot on how the public perceives and understands legal and justice system. Media predominantly acts as eyes and ears of the masses. Regarded as the fourth pillar of democracy in India, a balanced, fair and free press can take country forward. However, unfortunately World Press Freedom Index Report, 2018 has placed India on 136th position out of 180. The raison d'être being politicization of media. Media in India appears to be polarized and politicized. It is taking sides and is becoming a willing accomplice in the agenda of one political party or another. In this process, it is failing to perform its imperative obligation of disseminating objective information to its readers and viewers.

The term “Media”, this is a plural of medium means, a system through which something is done. It

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¹ Thomas Jefferson in his letter to Edward Carrington dated Jan 16, 1787.

² S. R. Myneni, “Media Law”, Asia Law House: Hyderabad, 2016, p1.

refers to various means of communication. Any media that multiplies messages and takes it to a large number of people is called 'mass-media'. Mass media is a term used to denote that section of media which is specifically envisioned and designed to reach a very large audience, such as the population of a nation. In general, "media" refers to various means of communication. For example, television, radio, and the newspaper are different types of media. The term can also be used as a collective noun for the press or news reporting agencies³.

According to the Oxford Dictionary, Media is the main means of mass communication (broadcasting, publishing, and the Internet) regarded collectively⁴.

According to the Techopedia, Media is the plural form of medium, which broadly describes any channel of communication. This can include anything from printed paper to digital data, and encompasses art, news, educational content and numerous other forms of information⁵.

According to the Business Dictionary, "Media includes every broadcasting and narrowcasting medium such as newspapers, magazines, TV, radio, billboards, direct mail, telephone, fax, and internet. Media is the plural of medium and can take a plural or singular verb, depending on the sense intended"⁶.

Modern media comes in many different formats, including print media (books, magazines and newspapers), television, movies, video games, music, cell phones, various kinds of software, and the Internet. Each type of media involves both content, and also a device or object through which that content is delivered. The classification of media can be done in three categories as follows:

a) Print Media

The term 'print media' is used to describe the traditional or "old-fashioned" print-based media⁷ that today's parents grew up with, including newspapers, magazines, books, and comics or graphic novels. Historically, only wealthy publishers had access to sophisticated type-setting technologies necessary to create printed material, but this has changed in recent years with the widespread

³ Retrieved from, <https://techterms.com/definition/media>, visited on June 6, 2018

⁴ Retrieved from, <https://en.oxforddictionaries.com/definition/media>, visited on June 8, 2018

⁵ Retrieved from, <https://www.techopedia.com/definition/1098/media>, visited on June 12, 2018

⁶ Retrieved from: <http://www.businessdictionary.com/definition/media.html> visited on June 16, 2018.

⁷ S.R. Myneni, p4.

accessibility of desktop publishing software and print-on-demand publication services such as Lulu.com. More recently, electronic book readers such as the Amazon Kindle which store hundreds of books on a single device and which allow readers to directly download books and newspapers have become popular.⁸

b) Broadcast Media

The term 'broadcast media' covers a wide range of different communication methods that include television, radio, podcasts, blogs, advertising, websites, online streaming and digital journalism. Broadcast media provides valuable information that can inform and educate and includes public service announcements, daily news, weather forecasts, interviews, and documentaries. Broadcast media is also recreational and includes reality television, situation and sketch comedies, movies, sports and advertising.

With the expansion of media, its communication and its popularity in terms of disseminating information, in the present paper, an attempt is made by the author to peep deep into the problem of absence of parity in media. An analysis has been done taking into consideration various Laws, historical development of press and media. Also, suggestions have been made to impede the quandary of political interference.

2. FREEDOM OF PRESS IN INDIA: ITS ORIGIN AND CONSTITUTIONAL PERSPECTIVES

In common parlance, by press we mean printing press. However, in legal parlance, Press is an umbrella expression that denotes newspapers, journals, magazines, pamphlets, handbills, etc. it also includes news agencies, press syndicates and feature agencies.⁹ The media is referred to as the fourth estate, an expression attributed to the 19th century historian 'Thomas Carlyle'. He was describing the new-found power of the scribe. The press is regarded as a new estate adding to three established estates; The Executive, the Legislature and The Judiciary. This fourth estate is Media or Press, regarded as the fourth power that checks and counter balances the three organs of authority.

⁸ Retrieved from, <https://www.mentalhelp.net/articles/types-of-media/> visited on June 20, 2018.

⁹ S. R. Myneni, p32.

Freedom of the press is the freedom of communication & expression through vehicles including various electronic media & published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other protection¹⁰.

The liberty of the press is the palladium of all the civil, political, and religious rights. "Liberty of Press" as defined by Lord Mansfield consists in- "printing without previous licence, subject to the consequences of law."¹¹In a democratic set up the press can act as a bridge between the government and the people. This right is very important at the stage of the formation of the government. Democracy cannot survive without this right. Press is the fourth pillar of the democracy, which exercise this right of freedom of speech and expression. The rights originate from the US constitution. The role of media is important as a feedback, exposure, and conduit mechanism in all countries. Most citizens receive their information about what is going on in the government, and how it affects them, through the filter of the media. The media have also played a traditional watchdog and gadfly role, in investigating misbehavior by politicians and officials and private business, a role traditionally summarized as "*comforting the afflicted and afflicting the comfortable*." The media is thus a crucial instrument of accountability, in addition to being an instrument of communication. A free press and free media rank along with an independent judiciary as one of the two institutions that can serve as powerful counter forces to corruption in public and private life¹².

The Indian Press has a long history right from the times of British rule in the country. The British Government enacted a number of legislations to control the press, like the Indian Press Act, 1910, then in 1931-32 the Indian Press (Emergency) Act etc. During the Second World War (1939-45), the executive exercised exhaustive powers under the Defense of India Act & enforced censorship on press.

¹⁰Mayukh Gupta, "Freedom of Press in India", available at <http://www.legalservicesindia.com/article/217/Freedom-of-Press-In-India.html>.

¹¹ Bennett Coleman v. Union of India, AIR 1973 SC 106.

¹²Rahul Deo, "Freedom of Press: Pillar of Democracy" available at <https://www.lawctopus.com/academike/freedom-press-pillar-democracy> last visited on June 22, 2018

In the Post-Constitutional Era, there is a change in the outlook. The Constitution of India in Article 19(1) (a) lays down that “All citizens shall have the right, to freedom of speech & expression.” Unlike, the U.S. Constitution, the Indian Constitution does not expressly provide freedom of press. However, in *Indian Express Newspapers v. Union of India*¹³ it was held by the Apex Court that the words “speech & expression” in Article 19(1) (a) includes freedom of press also. The freedom of press means freedom from interference from authority which would have the effect of interference with the content & circulation of newspapers.

In *RomeshThapar v. State of Madras*,¹⁴ PatanjaliShastri,CJ, observed that “Freedom of speech & of the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.” In this case,⁵ entry and circulation of the English journal “Cross Road”, printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as “without liberty of circulation, publication would be of little value.

3. PAID NEWS : A GROSS POLITICAL INTERFERENCE IN OPERATIONAL PRESS

Once “Let Truth Prevails” used to be rule in Media; today it is merely a slogan. If we consider the facts, on the TV channels sides, Times now and CNN-IBN are anti-congress and pro BJP and vice-versa with NDTV 24x7. In newspapers, Times of India has become increasingly anti-congress, Hindustan Times is supporting congress and highly critical of BJP. Depending upon the media brands you consume, you get diverse interpretations like chalk and cheese of the same news item.

The media being infected with a 'cancer called paid news' is an issue debated many a time. Paid news, as defined by the Press Council of India (PCI) and accepted by the Election Commission of India (ECI), is “any news or analysis appearing in any media (print & electronic) for a price in cash or kind as consideration” An advertisement disguised as editorial is paid news. Paid News Cases may be taken into account from the date of filling his/her nomination for contesting

¹³AIR 1986 SC 515

¹⁴AIR 1950 SC 124

election¹⁵. Published content and TV news is taken seriously, hence political parties plant stories in the media, promoting its candidate. The transaction, obviously, happens in cash.

During this year's Maharashtra assembly elections, this cancer magnified so grievously that, if not dealt with immediately, it could end the media's credibility. Akin to the Lok Sabha elections earlier, the BJP led the race in marketing and advertising. But this time around, the party was not content with front page advertisements in newspapers. It went a step further. Prime Minister Narendra Modi's speech at New York's Madison Square Garden was telecast across all Marathi news channels during prime time. BJP leaders conceded they had to pay up to Rs 20 lakh per episode, which means the whole deal cost them in crores. There is no point projecting this issue as 'the BJP v. Congress'. The foundations of paid news were laid during the Congress regime. Former CM Ashok Chavan's case is a well-known example. Today, the Congress is going hammer and tongs against the BJP, but what are the odds of Congress not doing the same when the tables are reversed? If all the biggies keep this money game alive and kicking, what will happen to small political parties, which do not have such money power? How does our democracy remain a level playing field then? The Election Commission can inspire much needed change in this dark picture. Candidates are answerable to the Election Commission but the media is not. Corruption is a two-way process. The one who offers money is as guilty as the one who accepts it. Then why does the receiver in this case get away scot-free?

The moot question, however, is: should the media sell its prime time slot, which is globally reserved only for news, to a political party?

The second and more important question is about the freedom of the media and viewers. Management selling editorial slots is an attack on the soul of journalism. Gradually, ads have settled themselves on newspapers' front pages. Showing an 'ad disguised as speech' during the 9.00pm slot is an attack on the editorial right as well as viewers' right to watch news, isn't it? It is no secret that hundreds of crores are required to sustain a channel. But if this trend continues, it

¹⁵ Election Commission of India's Compendium of Instructions on Paid News and Related Matters issued in September 2015, p92.

will injure journalism fatally. Is it a deliberate conspiracy by vested interests? For the reason, if a watchdog collapses, everyone is free to do anything.¹⁶

News is meant to be objective, fair and unbiased. This is the only difference between news and opinions. But, recently, the lines between news and advertisements are blurring because paid advertisements are deceived as news which favours a particular organization or a person by selling editorial spaces. The media organizations misguide the readers by providing no true information to them. By doing this, the media questions its own credibility and is fast losing the trust of the society. The readers/viewers cannot distinguish the difference between a news report and advertorials¹⁷.

The media is no longer acting as the fourth estate of journalism as it has become like any other marketable product with reference to paid news. The face of journalism in India has changed. The press is mostly owned and controlled by the 'capitalist class' (i.e. the rich and powerful in society; opinion leaders; gatekeepers), who can use the press to report facts which are convenient to them. Over years, the ownership pattern, organizational structure and the content of the newspapers have changed. They are on sale for paid news and private treaties¹⁸.

4. REQUISITION OF ENACTING STATUTORY PROVISIONS REGARDING PAID NEWS

There is as such no existing laws that deal with the fake news specifically with the Paid news. However certain guidelines have been issued by the Election Commission from time to time. The Paid news is much like an advertisement, but without the 'ad tag'. This kind of news has been considered a serious malpractice since it deceives the citizens, not letting them know that the news is, in fact an advertisement. In the recently-concluded Assembly elections, the Chief Electoral

¹⁶ Retrieved from <https://www.dnaindia.com/india/report-the-growing-cancer-of-paid-news-2026829> last visited on June 24, 2018.

¹⁷MadhaviGoradia Divan, "Facets of Media Law", Lucknow: Eastern Book Company, 2010, p309.

¹⁸Paid News In The Indian Media. Retrieved from <https://www.ukessays.com/essays/media/paid-news-in-the-india-media-media-essay.php?vref=1> visited on June 28, 2018

Officer (CEO), Punjab flagged an alarming 80 cases of paid news, according to Additional Chief Electoral Officer of Punjab, C Sibin. Also, the payment modes usually violate tax laws and election spending laws. More seriously, it has raised electoral concerns because the media has a direct influence on voters. The phenomenon of “paid news” is therefore, a serious matter as it influences the functioning of a free press. The media acts as a repository of public trust for conveying correct and true information to the people. However, when paid information is presented as news content, it could mislead the public and thereby hamper their judgment to form a correct opinion. Thus, there is no denying the fact that there is an urgent need to protect public’s right to unbiased information. There is as such no existing laws that deal with the fake news specifically with the Paid news. However certain guidelines have been issued by the Election Commission from time to time. There is an urgent need to protect the right of the public to accurate information before voters exercise their franchise in favour of a particular candidate in the electoral fray. Starting with June 2010, Election Commission of India has issued instructions to state and district officers to scrutinize, identify and report cases of Paid News. The Commission has appointed a Media Certification & Monitoring Committee (MCMC) at District and State level for checking Paid News. The Committee has Officers from Ministry of I&B and State DIPR. The Committee will scrutinise all media within its jurisdiction to identify political advertisement in the garb of news. MCMC shall also actively consider paid news cases referred to it by the Expenditure Observers. Election Commission has issued a set of guidelines to effectively monitor political advertisement during election campaigns as follows:

- i. All state Chief Electoral Officers will have to obtain a list of all TV and radio channels and newspapers in the state as well as their standard advertisement rate cards six months before the term of the Lok Sabha or the State Legislative Assembly expires.
- ii. The Media Certification and Monitoring Committee at district and state level will have to monitor all political advertisements in relation to candidates, "either overt or covert".
- iii. The committee will intimate the Returning Officer for issue of notices to candidates for inclusion of notional expenditure based on standard rate cards in their election expenses

account, "even if they actually do not pay any amount to the channel/newspaper, that is otherwise the case with paid news."

- iv. The expenditure will also include publicity for a candidate by a "star campaigner" or others, to impact his electoral prospects
- v. Uniformity is needed while dealing with 'paid news,' even when no consideration of cash and kind are involved in giving the candidates publicity. The new guideline would deal with advertisements taken out by candidates on television and cable channels owned by political parties or their functionaries and office-bearers¹⁹.

5. EPILOGUE

Paid news is a phenomenon in Indian media, that refers to the systematic engagement of mainstream media outlets in publishing favorable articles in exchange for payment. This type of news is typically sponsored by politicians, businessmen, and celebrities in order to improve their public image or accomplish political goals. Often such articles are carried under the name "Special report."²⁰The Election Commission's order disqualifying Madhya Pradesh Minister Narottam Mishra for three years is an important step in curbing 'paid news' in the electoral arena. It is not the first such order. An Uttar Pradesh MLA, Umlesh Yadav, was disqualified in 2011 on the same ground, of suppressing expenditure incurred in the publication of paid news.

The remedy for the paid news is responsibility for all sections of media and society, as it is threat to any democratic process. Firstly, there is a need to frame an all-inclusive legal definition of 'paid news' in order to avoid prevailing ambiguity in this regard. Secondly, a mechanism needs to be built to identify the paid news. Thirdly, in order to maintain the autonomy of editors/journalists, an established organisation like MoIB needs to continuously or periodically check the prevailing status of editors/ journalist. Fourthly, the financial stakes of the media houses, including editors and news producers need to be scrutinised. Fifthly, the

¹⁹ Election Commission of India's Compendium of Instructions on Paid News and Related Matters issued in September 2015.

²⁰"Interview with Vineet Jain - Advertisements and runnign newspapers". Times of India. April 17, 2011

media houses need to disclose the 'private treaties' undertaken by them with other organisations that are source of advertising revenue generation for the media house. Sixth, increasing the power of PCI and on similar lines establishing a body for electronic media, which can take strong action against the offenders, is need of the hour. Lastly, at the grass root level, the emphasis should be more on ethical and objective reporting rather than the TRPs and this is a collective endeavor where audience shun the unethical reporting and media houses stop serving the audience irresponsible, unethical paid news²¹.

To curb such evil practice, following suggestions are humbly submitted by the researchers:

- i. The Representation of Peoples Act should be amended to regulate paid news and political advertisements. Some definitions of phrases "paying for news", "receiving payment for news" and "political advertisement" should be defined with the wide amplitude in the Representation of Peoples Act. It must provide for the disqualification of a candidate if found guilty of offence of Paid news.
- ii. Paid news should be made an electoral offence. The said offence must have "stringent punishment if the candidates are found guilty, they should be penalised apart from setting aside their elections.
- iii. The liability of the newspapers, TV channels, radio stations etc that broadcast the paid news must be fixed and they bequeathed with stern penalty.
- iv. The news should be clearly demarcated from advertisements by printing disclaimers. As far as news is concerned, it must always carry a credit line and should be set in a typeface that would distinguish it from advertisements.
- v. The District Collectors should be instructed to take meeting with Political Parties as well as media houses to alert them against Paid News and consequences of violation.

²¹Kriti Singh, "Paid News- A Curse on News Journalism" retrieved from http://capsindia.org/files/documents/CAPS_Infocus_KS2_1.pdf visited on July 8, 2018

- vi. There should be total transparency of political party funding and expenditure. They should disclose what they have received, from whom they have received and if they don't comply with it, they should be ready to face the penalty.

6. EPILOGUE

A common man in his busy life does not know much about what happens next door. He neither has time to inquire into things nor bothered about others. All the information he knows is only through media. Indian media has been recognized as sensitive patriotic and very influential tool in the socio political sphere since the days of the freedom movement. The media is responsible for moulding the mind & thoughts of a common people. We depend only on printed or electronic media for the happenings and latest issues prevailing in our society. But the present trend in media sector of paid news is shameful and poses a big challenge in the path of Indian democracy. It is the high time that we need to take steps in the direction of curtailing paid news. Media organizations must also desist from having their correspondents “double up as agents collecting advertisements for their organizations and receiving a commission on that revenue”, instead of regular salaries, retainers or stipends. The regulatory bodies like the Press Council should be provided more teeth. Media organizations should at the same time adopt principles that would curb “paid news”. Till the time statutory laws are enacted or amended, liberal interpretations should be given to existing laws to overcome this mal practice.