CHAPTER-VII

CONCLUSION
AND
SUGGESTIONS
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7.1 Conclusion,

7.2 Suggestions

“The only security of all is in the free press. The force of public opinion cannot be resisted when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary, to keep the waters pure.” – Thomas Jefferson.

The freedom of speech and expression has been characterized as “the very life of civil liberty” in the Constituent Assembly Debates.¹ The freedom of the press, while not recognized as a separate freedom under Fundamental Rights, is folded into the freedom of speech and expression.² The Supreme Court has described this freedom as the “ark of the Covenant of Democracy”.³ 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, “the survival and flowering of Indian democracy owes a great deal to the freedom and vigour of our press.”⁴ The Media is vital in the role it plays in uncovering 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. The Information Technology have expanded horizons, but also brought with it new challenges, 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. The most suitable way to regulate the media will be

² Brij Bhushan and Another vs. The State of Delhi, AIR 1950 SC 129; Sakal Papers (P) Ltd vs. Union of India, AIR 1962 SC.
³ Bennett Coleman & Co. v Union Of India, AIR 1973 SC 106.
to exercise the contempt jurisdiction of the Court to punish those who violate the basic code of conduct. The use of contempt powers against the media channels and newspapers by Courts have been approved by the Supreme Court in a number of cases as has been pointed out earlier. The media cannot be allowed freedom of speech and expression to an extent as to prejudice the trial itself. An ideal proposal will be that the Indian press and the Indian people are not at present democratic enough to allow the press to intrude in the judicial process. What will an ideal proposition is to not allowing the media trial at this moment. It’s definitely an ideal proposition to allow controlled media reporting of the cases once the media is supposed to come out of the profit and sensational considerations. The media has to play the role of a facilitator rather than tilting the scales in favour of one or the other party.

**Trial by Media and Rights of the Accused**

It needs to be careful and cautious in its conduct. The solution lies not in the curbing of media freedom altogether but in making efforts to make it more responsible. No person charged of any crime should be judged by the media because that person is innocent until proven guilty, and it one the basic premise of criminal jurisprudence. The International Covenant on Civil and Political Rights, 1966 (ICCPR) was ratified by India in 1976 and it states in Article 14(2) that “Article 14(2): Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

And, no one, and this includes also the media, should be allowed to temper with the functioning of law. The rule of law as well as the role of law demands a fair trial of any person who comes to the portal of justice seeking justice. To use the words of Ronald Dworkin, it matter how judges decide cases. And, talking in terms of the reality as it exist in society, and as has been documented herein before, there is every possibility that media by creating a ‘pressure condition’ may fetter the judicial process. Today, when we are going through one of the crucial period of history which is taking a new turn thanks to the transition that is sweeping the society world over, it requires to be cautious and adopt a cogent approach that does not deny a person what is due to him, that is, a fair trial. Besides, people at large should not be misguided, advertantly or inadvertently as that may prove to be fatal for the human existence. In a time, when the life is faced with
challenges never seen before, the media needs to be aware of the consequences that may arise because of its irresponsible way of functioning.

Media which decries others for violating people’s right cannot itself continue to do so howsoever its intentions are noble. And, if it does so, it loses its moral ground to condemn others. It will be better if it continues to stick to its primary work of making people aware of what is happening around in world, and in doing so it may also acting cautiously acquaint people with views that are germane in a particular context. But it does not mean ‘polluting’ people’s conscience and consideration. It is pertinent to refer to the observation of Law Commission of India which observed that:

“If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who had indeed committed the crime, it amounts to undue interference with the “administration of justice”, calling for proceedings for contempt of Court against the media. Other issues about the privacy rights of individuals or defendants may also arise.”

Today, there is greater need to devise a delicate and due balance between freedom of speech and expression of the media on the one hand and the due process rights of the suspect and accused. The golden triangle of Indian Constitution, comprising of Articles 14, 19 and 21, assumes a great importance in this respect. Somehow, media trail presents the curios case of conflicting rights. William Blackstone rightly observed:

_The liberty of the Press is indeed essential to the nature of a free State; but this consists in laying no previous restraints upon publication, and notin freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the Press; but if he publishes what is improper, mischievous or illegal, he must take the consequences of his own temerity._

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5 The Commission has suggested that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In the perception of the Commission such an amendment would prevent the media from prejudging or prejudicing the case. Another controversial recommendation suggested was to empower the High Court to direct a print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting to such publication or telecast. The 17th Law Commission has made recommendations to the Centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial.

6 200 Report of Law Commission of India

7 William Blackstone, 4th Book of Commentaries, 1769, p 145
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. Further once a matter comes under intense media glare, there is an added 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 exponential growth and reach of media has shown unhealthy trends of competition, leading to sensationalized reporting giving the well-established rule of sub-judice a go-by. While this is certainly not true across the board to all media publications, the problem is certainly extensive. Some form of restriction on such media trials has been suggested so as to preserve the administration of justice as also to protect privacy of individual.

In response, the Supreme Court in *Sahara India Real Estate Corporation v. Securities and Exchange Board of India*\(^8\) 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 defamation suits, when the application of such order should be sought strictly as a Constitutional remedy.

Today trial has shifted from Courtroom to living room. And the result of such a shift is that rights of people stand to be affected in a manner that has not been seen ever before. Media today is commercialized and globalised. Their primary aim is to increase their

\(^8\) (2012) 10 SCC 603.
profit / TRP ratings. One cannot imagine social responsibility on the contemporary commercialized media. Their primary aim is profit. However, as everything comes for a cost in today’s modern world, the profit making too has some cost. And the cost is human rights of the accused.

The role played by media has led to the victimization of innocent people and violation of their fundamental human rights. The accused is held guilty even before the beginning of the trial. For instance, the recent controversies arisen after the Jamia Encounter has raised many questions regarding the role of the media in such cases. Such irresponsible way of functioning is a flagrant violation of the ethical principles that form the bedrock of a civil society. This is reflected in the Arushi Murder Case where the accused has been socially stigmatised even the case is under consideration before the trial Court. It exemplifies the intrusion by the media into the functioning of agencies of Criminal Justice System. A ‘media trial’ ensued Afzal’s arrest. A week after the attack on Indian Parliament, in a press conference called by the police, Afzal ‘incriminated himself’ in front of the media which media played negative role in influencing the conscience of general public before Afzal was even tried. Similarly, S.A.R. Geelani, one of Afzal’s co-defendants in the Parliament Attack Case, was initially sentenced to death for his alleged involvement notwithstanding the stunning paucity of evidence. He was presented before the public as a dangerous terrorist. The Delhi High Court while overturning Geelani’s conviction described the prosecution’s case as “at best, absurd and tragic”. The media as a conclusive determination of the accused’s guilt represents confession by the accused, even made to the police. This shows the ignorance of media about the basic principles of law. Sec. 25 of the Indian Evidence Act, 1872 categorically prohibits the confession to the police as admissible in law. Thus, something, which is inadmissible in law, becomes sufficient to taint the accused with guilt in the eyes of ordinary people. It is difficult to find a single news channel explaining the rationale behind such inadmissibility or even a mention about the section in their reports. It is germane here to refer to the concern of the Law commission of India which said:

“The media also creates other problems for witnesses. If the identity of witnesses is published, there is danger of the witnesses coming under pressure both from the accused or his associates as well as from the police. At the earliest stage, the witnesses want to

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9 This was one of the most highlighted cases in recent past and generated invigorated debate. It was highly. It was fervently debated in the media - both print and electronic
Retract and get out of the muddle. Witness protection is then a serious casualty. This leads to the question about the admissibility of hostile witness evidence and whether the law should be amended to prevent witnesses changing their statements. Again, if the suspect’s pictures are shown in the media, problems can arise during ‘identification parades’ conducted under the Code of Criminal Procedure for identifying the accused.”

Questions seem to rise also on the fairness of such trials by media.

Being a part of the civil society media has a constructive role to play to see that their irresponsible way of functioning does not result in the violation of the rights of the people, which are succinctly referred to as ‘Human Rights’. Judge Cobb observes: 10

“Liberty includes the right to live as one will, so long as that will do not interfere with the rights of another or of the public. One may desire to live a life of seclusion; another may desire to live a life of publicity; still another may desire to live a life of privacy as to certain matters and publicity as to others.... Each is entitled to a liberty or choice as to his manner of life, and neither an individual nor the public has a right to arbitrarily take away from him his liberty.”

Lastly, one of the much debated issues has been the influence of the media on the decision making process of the judges. Sensationalized journalism has also had an impact on the judiciary. For example, in upholding the imposition of the death penalty on Mohammed Afzal for the December 2001 attack on the Indian Parliament, Justice P. Venkatarama Reddi stated, “the incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender.” 11 The Supreme Court has held that a trial by press, electronic media or by way of a public agitation is the very antithesis of rule of law and can lead to miscarriage of justice. A Judge is to guard himself against such pressure. 12

However, this fact needs to be balanced with the fact that people also have the Right to Information. And media plays a vital role in the dissemination of the information. What

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11 See: http://www.hrdc.net/sahrdc/
need to be seen is that the information must not be misinformation. As Prof. Upen\\
dra Baxi once aptly remarked that ‘I have a basic human right that my mind should not be treated as a dustbin where gossips or misinformation of people can be thrown.’ Thus, media needs to be properly trained in the legal notices and legal knowledge. This point has also been recommended in the 200th report of the Law Commission of India, which observed that:13

“... Journalists need to be trained in certain aspects of law relating to freedom of speech in Art. 9(1)(a) and the restrictions which are permissible under Art. 19(2) of the Constitution, human rights, law of defamation and contempt. We have also suggested that these subjects be included in the syllabus for journalism and special diploma or degree courses on journalism and law be started.,

The commission further observed that:14 The subject of ‘Trial by Media’ is discussed by civil rights activists, Constitutional lawyers, judges and academics almost every day in recent times. With the coming into being of the television and cable-channels, the amount of publicity which any crime or suspect or accused gets in the media has reached alarming proportions. Innocents may be condemned for no reason or those who are guilty may not get a fair trial or may get a higher sentence after trial than they deserved. There appears to be very little restraint in the media in so far as the administration of criminal justice is concerned.’’

Defamation

The issue of defamation vis-à-vis the news media requires careful consideration. On the one hand, instances of fake sting operations or trial by media give credence to allegations of irresponsible journalism. On the other, threats of legal action with punitive damages under the laws of defamation lead to a ‘chilling effect’ on the publication of free and independent news articles and puts undue pressure on journalists and publishing houses. Any change to the laws on defamation in India must balance these two considerations.


14 Id at 11
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).

The Demands have been made in the past by entities such as the Editors’ Guild of India, to decriminalize defamation as it pertains to journalists. The proposal has been 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. Therefore, a comprehensive review of laws regulating the media must consider the question of defamation laws as well.

Publications and Contempt of Court

With the rise of public interest litigation and a more activist judiciary, Courts have been regularly thrust into the limelight in recent years, often provoking confrontations with the media that result in contempt proceedings. The rationale of contempt proceedings is to prevent erosion of public confidence in the administration of justice.

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

In India, the Courts have generally not distinguished between scandalizing the judge as a person, and scandalizing the Court. Other countries have progressed to a more liberal regime. In UK, scandalizing the Court has ceased to be an offence, a change brought in by the Crime and Courts Act 2013. In the USA, the offence of
scandalizing the Court is unknown and Courts initiate action for contempt only when they determine that there is 'clear and present danger' to the administration of justice.

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

A brief overview of the existing legal framework governing the media is essential before attention is turned to methods of regulation. There are distinct systems of regulation for broadcast media, print media and social media.

At present, the law applicable to broadcast media is the Cable TV Networks (Regulation) Act 1995. The Act brought into force the Programme Code and the Advertising Code, which prohibit transmission of any programme or advertisement not in compliance with the code. There is no regulatory authority set up under the Act.

Instead, the broadcasting sector is regulated by the TRAI
d, which notifies rules from time to time on matters such as streamlining of the distribution of television channels to platform operators. Additionally, the Electronic Media Monitoring Centre established by the Ministry of Information & Broadcasting monitors the content of all TV channels up linking and down linking in India to check the violation of the Programme and Advertisement Code. It also monitors content of Private FM Radio Channels. Guidelines and regulations are issued from time to time by these regulatory authorities. The Ministry of Information & Broadcasting, for example has issued Policy Guidelines for Uplinking of Television Channels from India, the latest in 2011, which include mandatory compliance of the Cable TV Networks (Regulation) Act 1995. The Guidelines introduce the three-strike and five-strike rules, whereby

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15 Telecom Regulatory Authority of India
permission to broadcast, and renewal of such permission, is revoked upon three or five violations of the Guidelines respectively.

Self-regulation of content in the broadcast media is conducted through a two-tier mechanism of self-regulation by individual broadcasters as well as industry level regulatory bodies. Regulation of content is divided into news and non-news sectors. For the non-news sector, industry level regulation is enforced by the Broadcasting Content Complaints Council (BCCC) within the Indian Broadcasting Foundation (IBF) that oversees channels other than the news and current affairs channels. The BCCC is an independent council comprising a thirteen member body consisting of a Chairperson being a retired Judge of the Supreme Court or High Court and 12 other members including broadcaster and eminent non-broadcaster members.

The BCCC hears complaints and may issue directions to the channel to modify or withdraw the objectionable content, and can further fine the channel up to Rs. 30 lakhs. If the direction is defied, the matter may be referred to the Ministry of Information and Broadcasting for further action, including revocation of permission to broadcast.

The self-regulatory body for news and current affairs channels is the News Broadcasters Association (NBA) which has set up the News Broadcasting Standards Authority (NBSA) to adjudicate complaints in relation to broadcast content on news channels. The NBA consists only of organizations that are members and submit themselves to regulation by the NBA. Therefore, the jurisdiction of the NBSA is restricted only to members. The NBA has in place a Code of Ethics to regulate television content. The NBSA is empowered to warn, admonish, censure, express disapproval and fine any broadcaster in violation of the Code a sum upto Rs. 1 lakh.

**Cross Media Ownership**

Monopolies in the field of media ownership have a severely negative impact on the quality of media freedom and plurality in the country, specifically with respect to news coverage. Issues related to ownership of media entities have been raised repeatedly in the last few years by both private observers and government bodies. The overarching concern is that media ownership does not receive sufficient public scrutiny and is under-regulated.

On the other hand, hastily imposed regulations in this space could infringe on the freedom of the media, and pave the way towards unwarranted state control. Any
regulation on vertical integration, which connotes ownership of both broadcast and distribution, and on horizontal integration, that takes the shape of cross-media holdings, must balance these two competing considerations.

At this point of time, there are no cross media ownership restrictions across print, television and radio in the country. Some restrictions on vertical integration are in place in the shape of guidelines for obtaining Direct-to-Home platforms. Restrictions also exist on the number of licenses allowed to FM radio operators in a given area. Apart from these specific laws, the general competition law in India applies to the media sector.

As for public interest is concern, Media ownership issues have been raised repeatedly by the Telecom Regulatory Authority of India, the Ministry of Information and Broadcasting and the Parliamentary Standing Committee on Information Technology, among others. The call has been for the introduction of regulations in this area, but no such steps have yet been taken.

**Social Media and the Information Technology Act, 2000**

The ability to disseminate information seamlessly over social media has resulted in a rising need to regulate the content of such information. Section 66A of the IT Act makes it a punishable offence to send messages that are offensive or false or created for the purpose of causing annoyance or inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, through a computer device. Since no guidelines have been laid down for identification of offensive information, the wide amplitude of the provision has often been used for politically motivated arrests. Recently, two professors were arrested in West Bengal for posting a cartoon critiquing a politician. In another incident, two young girls from Maharashtra were arrested – one for posting a Facebook status about the chaotic shut down of Mumbai due to a popular politician’s death and the other for ‘liking’ the status post. Section 66A is currently under challenge for being violation of the freedom of speech and expression. Though no stay on arrests under this provision has been granted, the Supreme Court has held that no person should be arrested for posting objectionable comments online without permission of senior police officials. The Apex Court held that Section 66A of the IT Act is unconstitutional.16

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16 Shreya Singhal v. Union of India, W/P (Civil) No. 167 of 2012.
At the same time, social media has often been used as a conduit for instigating ethnic and communal violence such as false rumors online in August 2012 that led to an exodus of North-eastern migrants from South India. In 2013, the Election Commission introduced guidelines to regulate internet campaigns given the vast use of social media by political parties. Though, the Print and Electronic Media Standards and Regulation Bill, 2012 proposed the establishment of a media regulatory authority, the Bill did not get introduced. Under the present Act, the Cyber Appellate Tribunal is empowered to deal with complaints under the Act but is largely confined to cases of fraud and hacking.

**Regulations over government owned media**

Media in India is owned both by government as well as the private sectors. Government-owned media such as All India Radio, Doordarshan, Directorate of Field Publicity, Press Information Bureau, etc., have a significant role to play as the matters they address are not extensively covered by large sections of privately-owned media. Government-owned media is not only a channel through which news about developmental initiatives is passed on to the common man but can also be an independent filter shaping the common man's perception of government policies and their implementation. However, government owned media is not seen as adequately independent of the government. Hence, the credibility of the development stories they produce may be questioned, especially if they focus exclusively on describing governmental initiatives rather than using their independent judgment on the efficacy of initiatives. Further, issues also arise regarding the quality of such government media when compared to private media.

India is the only known democracy in the world where news on the radio is still a monopoly of the government. Any information broadcast by radio should adhere to the government's codes, and should not have any political content. Print and TV media, in contrast, have self-regulating bodies. Radio still has the highest reach across the country; the illiterate poor as well as people in remote areas rely on it for information. But the only news available to them is that of the government owned and controlled All India Radio (AIR).

**Doctrine of postponement**

The application of postponement orders is narrowed down by introducing guidelines/parameters such as kinds of publications to be covered, categories of proceedings which may be covered.
Media and Individual Privacy

The exponential growth of media, particularly electronic media, has resulted in a corresponding decline in an individual’s privacy. The right to privacy, not specifically enshrined in the Constitution of India, has been held to be implicit in Article 21. Though the freedom of speech and expression, as guaranteed in the Constitution of India, empower the press to disclose information vital to public interest, it often results in intrusion of privacy. In 2012, a news channel aired the molestation of a girl in Guwahati, filmed by one of its reporters. In several instances, sting operations have been used as a medium to exact retribution or have sought to expose information within the realm of an individual’s private domain having no bearing on public interest. In 2008, the Delhi High Court took *suo motu* cognizance of a manipulated sting operation on a schoolteacher resulting in her suspension and assault by a mob and directed the government to consider adopting guidelines for sting operations. EMMC under the I&B Ministry has a set of self-regulatory guidelines for broadcast service providers including guidelines that channels should refrain from using material related to a person’s private affairs unless there is an identifiable larger public interest. The Content Certification Rules 2008 under the Cable Television Networks (Regulation) Act define “identifiable larger public interest” to include revealing or detecting crime or disreputable behavior; protecting public health or safety, exposing misleading claims made by individuals or organizations or disclosing significant incompetence in public office for the larger public interest. Despite the presence of such norms, sting operations invading personal privacy by the media is a fairly common occurrence.

Paid News

Another issue that has received a great deal of attention from various sources is that of paid news. The issue was extensively dealt with by the Press Council’s sub-

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19 In its report on paid news dated 30.07.2010, the Press Council of India (PCI) recommended self-regulation on this issue, and that the PCI be empowered to adjudicate complaints on paid news. In May 2013, the Parliamentary Standing Committee on Information Technology (2012-2013) in its forty-seventh report examined issues related to paid news and recommended that either there be a statutory body to look into content from both print and electronic media or that the PCI be revamped with powers to tackle paid news and a similar statutory body be set up for electronic media. The Committee observed that there was a need to evolve a comprehensive definition of paid news so that ‘news’ and ‘advertisement’ could be demarcated. The Committee noted that the phenomenon of Private Treaties gave rise to Paid News and recommended strict enforcement of existing guidelines and codes to bring transparency in Private Treaties.
committee report on ‘Paid News’ in 2009. The report talked about the way in which the illegal practice has become organized, with ‘rates’ for the publication of ‘news items’. Further, the Parliamentary Standing Committee on Information Technology, in 2013, has brought out its forty-seventh report on the phenomenon of paid news, where it has highlighted the ‘dangerous trend’ of presenting paid-for information as news, that has spread at ‘remarkable pace’ in some parts of the media. The Report also outlined the practice of ‘Private Treaties’, where a non-media company transfers shares to a media company in exchange for advertisements, space and favorable coverage. Guidelines are present both in print and broadcast media that call for clear demarcation of advertisement and news content. These take the shape of norms under the Press Council of India Act, and the Programme and Advertisement Codes under the Cable Television Networks (Regulation) Act. However, these guidelines are either subverted or ignored altogether.

If it is mere merger of news with commercially paid information, or just commercialization of the media’s influence, or vulgar display of bias towards a particular caste or political party or the candidate, it could be a case of ‘ethics’ or ‘breach of code of conduct’, or ‘impropriety’ etc. But selling space or time (by print and electronic media) to propagate falsity is something far above the unethical practice which puts the media on par with poll-criminals. It is not only a transgression against professionalism and ethics but a crime against democracy besides being a punishable offence under both, the Representation of People’s Act and the Indian Penal Code. The syndrome is not just the concern of Press Council of India but a real challenge to the Election Commission, whose aim is to conduct free and fair polls, because media sold ‘free’ news and its freedom for packet, and also spread wrong information to seduce the voters to like a particular candidate. Here again an ethical question arises as the same newspaper, same local bulletin or same page projects the rival candidates for similar amounts of money.

Media regulation in India is therefore not unified, and has a multiplicity of regulatory bodies. Further there are issues surrounding the enforceability of decisions of such bodies. An independent broadcasting media authority along the

20 Paid news, defined by the Press Council of India as “any news or analysis appearing in any media (print and electronic) for a price in cash or kind as consideration” is now a common occurrence that poses a serious threat to democratic processes and financial markets. It misinforms audiences and undermines their freedom of choice.


22 Standing Committee on Information Technology, 15th Lok Sabha, 47th Report on ‘Issues related to paid news’, para 1.2
lines of TRAI was first suggested by the Supreme Court in Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal. Thereafter, the Ministry of Information & Broadcasting has made various attempts, the latest in 2007, to draft a Broadcasting Services Regulation Bill in order to set up a Broadcasting Regulatory Authority of India (BRAI). In Indraprastha People v. Union of India, the Delhi High Court recommended that an independent statutory body be set up under the Cable Television Networks (Regulation) Act, “consisting of men and women of eminence.” Further they said, “Security of tenure of a kind should be provided for the Members of the Board so that they are free from Government interference.” Till this comes into force, the BCCC, according to the Court should be recognized by the Government of India as competent to decide complaints on violation of the law by broadcasters. Its decisions shall be treated by the Union of India as the foundation to take appropriate action against the offender.

A trial by press, electronic media or public agitation is the very antithesis of the rule of law. It can only lead to miscarriage of justice. In MP Lohia v. State of West Bengal, the Apex Court, admonishing the media, stated, “We have no hesitation that this type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who was responsible for the said article against indulging in such trial by media when the issue is sub-judice.” It might be enlightening to examine how other countries combat the ramifications of ‘trial-by-media’. Most countries admit that such practices undermine the authority of Courts and result in loss of confidence in the judicial system.

The view taken by the Courts in New Zealand is laudable: “In the event of conflict between the concept of freedom of speech and the requirements of a fair trial, all

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23 AIR1995 SC 1236
24 WP (C) No.1200/2011, (Del. HC)
26 2005 (2) SCC 686
27 Ibid., para 10.
28 In Sunday Times v. U.K, 1979(2) EHRR 245, the House of Lords’ view that ‘trial by newspaper’ was not permissible was a concern in itself ‘relevant’ to the maintenance of the ‘authority of the judiciary’. However, the European Court accepted that: “If the issues arising in litigation are ventilated in such a way as to lead the public to form its own conclusion thereon in advance, it may lose its respect for and confidence in courts.” See also 200th Report of the Law Commission of India on “Trial by Media-Free Speech and Fair Trial Under Criminal Procedure Code, 1973 (Amendments to the Contempt of Court Act, 1971), August 2006, 154
other things being equal, the latter should prevail.\textsuperscript{29} The Courts in India have taken a similar view. The Punjab High Court in \textit{Rao Harnarain v. Gumori Ram} \textsuperscript{30} stated that “Liberty of the press is subordinate to the administration of justice. The plain duty of a journalist is the reporting and not the adjudication of cases.”

The Orissa High Court in \textit{Bijoyananda v. Bala Kush}\textsuperscript{31} observed that – “the responsibility of the press is greater than the responsibility of an individual because the press has a larger audience. The freedom of the press should not degenerate into a licence to attack litigants and close the door of justice nor can it include any unrestricted liberty to damage the reputation of respectable persons.” The precedence given by the Orissa and Punjab High Courts to the right to fair trial over freedom of expression is an excellent example of judicial craftsmanship since the loss of freedom of press is not absolute but merely temporary. The loss of immediacy is the lesser evil of the two. The media can print its critique of the judicial process with wild abandonment after the trial, as Justice Katju has rightly remarked, “Our shoulders are broad enough and we will ignore it. We are for media freedom.”\textsuperscript{32}

\textbf{Suggestion}

1. There is a need for a self-regulatory as well as statutory regulatory authority with powers to regulate coverage of objectionable material, therefore it is suggested that rules and regulations must be framed in this regard.

2. The regulations can be introduced to ensure Independence of government-owned Media.

3. There is a need of legislative and Constitutional amendments which are necessary to the law on Contempt of Court to ensure Freedom of the Press.

4. There is a need for comprehensive guidelines on reporting of \textit{sub-judice} matters.

\textsuperscript{29} Solicitor General v. Wellington Newspapers Ltd., 1995 (1) NZLR 45: “In pretrial publicity situations, the loss of freedom involved is not absolute. It is merely a delay. The loss is an immediacy; that is precious to any journalist, but is as nothing compared to the need for fair trial.”

\textsuperscript{30} AIR 1958 Punjab 273

\textsuperscript{31} AIR 1953 Orissa 249

\textsuperscript{32} J. Venkatesan, Apex Court to lay down coverage norms, http://www.thehindu.com/2008/08/19/stories/2008081957360100.htm (Last visited on September 28, 2009)
5. The statutory body must have the powers to adjudicate complaints of false sting operations and also a specific statutory provision for treating false sting operations as a punishable offence.

6. The Right to Privacy law must be introduced and existing framework of media laws is to be rightfully amended to include specific guidelines governing disclosure of private information by the media.

7. The Statutory Authority must monitor and regulate the propagation of paid news.

8. The comprehensive, independent competent authority should be introduced as Media Communication Commission for regulation of media and Convergence of Media.

9. It is also suggested that the ethical code should be provided with certain duty and responsibilities of Media personnel.

10. For the Media Accountability is better served, the existing self-regulation mechanisms require strengthening and uniform and comprehensive, Media Law should be introduced across all types of Media.

11. There must be provision for regular training for Media personnel particularly journalists for avoid human rights violations of common men’s particularly right of privacy and fair trial .

12. For uniform curricular of media personnel i.e. Journalists print and electronic both, the Press Council of India is need to be strengthened .This regulatory authority must work in the line of Bar Council of India or Medical Council of India to frame rules.

13. Analyses of various national, international law and policies relating to media and information communication technology as well as concept of speech and expression enshrined in Constitution of India, following Amendments has been made for balance in media and individual freedoms:

   (A) The Media Communication Convergence Bill has been drafted and implemented to regulate the Indian media.
(B) The need of hour that after sixty five years, time is ripe to review and amend some of the Fundamental Rights, particularly those Fundamental Rights which have been judicially deduced, i.e. Art.19 (1) (a), 19(2) and Art.21.